

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3357/MUM/2024 (A.Y: 2019-20)**

Chandrabhas Mundappa Rai Vs. **DCIT, CPC**
3-1323, R. Navjivan Commercial Society, Lamington Road, Mumbai – 400008. CPC, Bangalore, Karnataka – 560100.

PAN: AADPR9485P

(Appellant)

(Respondent)

Assessee Represented by : **None**
Department Represented by : **Shri. Suresh Gaikwad,**
(Sr. DR)
Date of conclusion of Hearing : **13.08.2024**
Date of Pronouncement : **22.11.2024**

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 22.05.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2019-20.



2. Assessee has raised following grounds in this appeal:

1. *“On the facts and circumstances of the case, and in Law, the CIT(A) NFAC erred in confirming the disallowance made of Rs. 8,55,071/- being Payment of PF and ESIC dues u/s 36(1)(va) of the Act considering the same as not deposited on time ignoring the fact that the delay was marginal and payment was made before filing the return.*
2. *On the facts and circumstances of the case and in law the AO failed to appreciate:*
 - a. *That the payments were deposited in the relevant fund before the due date of filing the return u/s. 139(1) of the Act.*
 - b. *Amendment made in Finance Act 2021 pertaining to non-applicability of due date as provided in Section 43B of the Act is not retrospective in nature.*
3. *The appellant, therefore, prays that the disallowance of Rs. 8,55,071/- in respect of Late payment of PF & ESIC shall be deleted.”*

3. The brief facts giving rise to the present appeal are that the assessee The assessee is an Individual person (Proprietor of M/s. Super Care Catering Services and M/s. Super Care Service) having income from Business & Profession and Other Source. During the year under consideration, the assessee was Under Tax Audit and has filed his return of income on 16.10.2019 declaring Total Income of Rs.92,69,850/-. The assessee's ITR was processed online by CPC Bangalore and accordingly Intimation U/s 143(1) was passed and Disallowance of Rs. 8,55,071/- was made on account of Late payment of Employees Contribution towards PF & ESIC beyond the due dates prescribed under respective Acts.



4. It is further stated that the assessee has regularly discharged his liability towards PF & ESIC except in case of few months where the same were paid after the prescribed due dates of 15th / 21st day of next month as stated in the PF & ESIC Act but fully paid before due date of Filing of Return i.e. before 31.10.2019. Since the Ld. AO has disallowed the sum of Rs. 8,55,071/- u/s. 36(1)(va) of the Act, the assessee filed appeal before the Ld. CIT(A) who has also dismissed the appeal.
5. Noone appeared on behalf of the assessee. We have heard the Ld. DR on behalf of the revenue. The assessee has alleged in grounds of appeal since the deduction amount was deposited before filing of the return hence the deduction of the allowance should have been permitted and the addition made by the Ld. AO is illegal and needs to be set aside. The Ld. DR on the other hand put reliance upon the judgments of Ld. AO and Ld. CIT(A).
6. We have considered the rival submissions. The Ld. CIT(A) while considering the judgement of the Hon'ble Supreme Court in *Checkmate Services (P) Ltd. Vs. Commissioner of Income Tax-1, [2022] 143 taxmann.com 178 (SC)/448 ITR 518 (SC)* has dismissed the appeal observing as:

2. *“In view of the discussion as above, and respectfully following the judgement of the Hon'ble Supreme Court of India (discussed supra), I hold that the employees' contribution to EPF and ESI should be*



remitted before the due date as per explanation to section 36(1)(va) of the I.T. Act, i.e. on or before the due date under the relevant employee welfare legislation like PF Act, ESI Act etc., for the same to be otherwise allowable u/s 43B of the I.T. Act. Therefore, the disallowance on account of late deposit of employee contribution to PF and ESI made by the Ld. Assessing Officer upheld.

Ground No.3:- this ground is general in nature and does not require any adjudication.

In the result, the appeal is dismissed.”

7. As stated in the ground no. 1, it is an admitted fact that the amount of PF and ESIC which was due u/s 36(1)(va) of the Act was paid beyond the prescribed period under the said Acts.
8. With regard to ground no. 2, it is argued that non applicability of Section 43B of the Act to the Employee's Contribution Fund under PF and ESIC Act was done by adding explanation 2 by the Finance Act, 2021 and w.e.f. 01.04.2021 and is not having retrospective effect. Therefore, the benefit of Section 43B should be given to the assessee/appellant because the deducted amount was deposited before the due date for filing of the return.
9. In that regard, we are of the considered opinion that this argument and the ground no. 2 raised by the assessee/appellant is a fallacious ground because the legal position was made clear by the Hon'ble Supreme Court



in judgment of Checkmate Services (P) Ltd. (supra) and para 63 is relevant and reproduced as under:

63. *“In the opinion of this Court, the reasoning in the impugned judgment* that the non obstante clause would not in any manner dilute or override the employer’s obligation to deposit the amounts retained by it or deducted by it from the employee’s income, unless the condition that it is deposited on or before the due date, is correct and justified. The non obstante clause has to be understood in the context of the entire provision of Section 43-B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees’ contributions— which are deducted from their income. They are not part of the assessee employer’s income, nor are they heads of deduction per se in the form of statutory payout. They are others’ income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non obstante clause under Section 43-B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee’s contribution on or before the due date as a condition for deduction.”*

10. As is clear from the above law laid down by the Hon'ble Supreme Court and also the mere reading of explanation 2 to the Section 36(1)(va), it is clear that the explanation 2 was added in order to clarify the existing



position. There is nothing that the said condition will be applicable only w.e.f. 01.04.2021 i.e., Finance Act, 2021. Since the amount by the assessee was not deposited within the time limit provided by the PF and ESIC Act, therefore, the Ld. CIT(A) has rightly dismissed the appeal as the matter is covered by the law laid down by the Hon'ble Apex Court.

11. For these reasons, the grounds of appeal are liable to be dismissed. We find no illegality in the order of the Ld. CIT(A) and the same is accordingly confirmed and the appeal filed by the assessee is dismissed.

12. In the result, appeal filed by the assessee is dismissed in the above terms.

Order pronounced on 22.11.2024

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 22.11.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai