

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 109/Del/2023  
Assessment Year: 2017-18**

<b>Bintu, 133, Sector-02, HSIIDC, Bawal, Rewari-123501. PAN: AUEPB 8154 E</b>	<b><u>Vs</u></b>	<b>Income-tax Officer, Ward-2, Rewari.</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA Nos. 720 & 721/Del/2023  
Assessment Yrs: 2018-19 & 2019-20**

<b>Balraj Sharma, 604/01, Opp. Fire Station, New Railway Road, Dayanand Colony, Gurgaon-122001. PAN: AXRPS 9683 D</b>	<b><u>Vs</u></b>	<b>ACIT, Circle 1(1), Gurgaon.</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No. 992/Del/2023  
Assessment Year: 2018-19**

<b>Major Rajesh Kumar, C-188, Nirman Vihar, Delhi-110092. PAN: AHEPK 8449 G</b>	<b><u>Vs</u></b>	<b>Income-tax Officer, Ward-68(5), Delhi.</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee represented by</b>	<b>Shri Nitin Kanwar, Adv.; Shri Rajeev Kumar, Adv.; &amp; Shri Farman Mohd. Adv.</b>
<b>Department represented by</b>	<b>Shri Javed Akhtar, CIT(DR) &amp; Shri Rajesh Mahajan, Sr. DR</b>
<b>Date of hearing</b>	<b>18.12.2024</b>
<b>Date of pronouncement</b>	<b>27.12.2024</b>

## **ORDER**

### **PER MAHAVIR SINGH, VICE PRESIDENT:**

These four appeals, by three different assessee, are arising out of different orders of Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi i.e. in ITA no. 109/Del/2023 order of CIT/NFAC in appeal no. CIT(A), Rohtak/10049/2020-21 dated 21.10.2022; in ITA nos. 720 & 721/Del/2023 orders of CIT(A)/NFAC in appeal nos. NFAC/2017-18/10085629 & NFAC/2018-19/10092821 of even date i.e. 15.01.2023; and in ITA no. 992/Del/2023 the order of CIT(A)/NFAC is dated 13.03.2023 in appeal no. NFAC/2017-18/10083741.

2. The first common issue in all these four appeals is as regards to orders of CIT(A) confirming the action of the Assessing Officer in making addition towards belated payment of employees' contribution to PF & ESI in view of the decision of

Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT [2022] 448 ITR 518/ [2022]143 taxmann.com 178 (SC). Since the facts and circumstances in all these four appeals are identical, hence we will take the appeal in ITA no. 992/Del/2023 for assessment year 2018-19 and will decide the issue for all the four appeals.

3. Brief facts are, the Assessing Officer processed the electronically filed original return of income vide order u/s 143(1) of the Income-tax Act, 1961 ("the Act" in short) dated 06.02.2020 after making adjustment on account of late payment of employees' contribution of PF & ESI. Subsequently, assessee moved rectification application u/s 154 of the Act dated 05.03.2020 and 03.04.2021 objecting to the adjustment made u/s 143(1) and order was passed u/s 154 of the Act on 12.05.2020 and 29.04.2021 rejecting the application of the assessee.

4. The CIT(A) after considering the submissions of the assessee and the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra), confirmed the action of the assessing Officer by observing in paras 8 & 9 as under:

*"8. The intent of the legislation on the existing dispute due to different interpretation by various courts on the legality of the issue would be evident from the explanatory notes reproduced in para-5.6 above. However, the*

*amendments in law having been made effective from A.Y.2021-22, a question arises what will happen to identical pending issues pertaining to earlier assessment years?*

*Very recently, vide judgement dated 12.10.2022, the Hon'ble Supreme Court in CIVIL APPEAL NO. 2833 OF 2016 in CHECKMATE SERVICES P. LTD.v- CIT-1 [2022] 143 taxmann.com 178 (SC) after an elaborate discussion, has decided the issue in favour of revenue by upholding the decision of the Hon'ble Gujarat High Court and thereby finally set the dispute at rest. The A.Y. involved was 2009-10. It was held in Para-54 & 55 of the judgement as under:*

*"54. 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 43B 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 pay out. 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 43B 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.*

*55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."*

*Therefore, Hon'ble Supreme Court clearly laid down the law that the non-obstante clause under Section 43B 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 mandated by the concerned Act as a condition for deduction. Thus, in order to get the deduction, the assessee must deposit the employees' contribution to PF, ESI etc. on or before the due date stipulated in the respective statute. This decision by the Hon'ble Apex Court has also made it the law of the land, bringing the issue out of the ambit of any debate and thus within the scope of adjustment u/s 143(1)(iv) of the Income Tax Act, 1961.*

*9. In the light of the above decision of the Hon'ble Apex Court, the disallowance of employees contribution of ESI and PF, aggregating to Rs.*

*8,82,116/- made by the AO u/s 36(1)(va) is confirmed. Ground No.s 1 is, therefore, dismissed.”*

Aggrieved, now the assessee is in appeal before us.

5. We have heard rival submissions and gone through the material available on record. We note that this issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra). Now the limited argument made by the learned counsel for the assessee is that there are two issues i.e. due date as prescribed under the respective statutes of ESI & PF has not been verified by the Assessing Officer. Further, the assessee made the issue of employees being on the role of contractor received salary payment in the next month and the date of payment will be the determining factor for depositing the PF. When this fact was inquired whether the details of contribution received from employees of various funds i.e. PF & ESI u/s 36(i)(va) of the Act are available, he pointed out from the assessee's paper book pages 155 to 162, which are available. When these were confronted to learned Sr. Departmental Representative he only requested that the details of contribution received from employees for various funds can be verified, whether the same are deposited within due dates as prescribed under the respective Acts i.e. PF & ESI Act. In terms of the above we are setting aside the order of CIT(A) as well as that of the Assessing Officer on this limited issue for verification of the fact whether the employees' contribution is

within the due date or not. Hence, this issue of the assessee's appeal is remanded back to the file of Assessing Officer and is allowed for statistical purpose.

6. As regards to next three appeals i.e. 720, 721 & 992/Del/2023 all are having this common issue and exactly on same directions these appeals are remanded back to the file of Assessing Officer and allowed for statistical purposes.

7. One more issue in ITA no. 992/Del/2023 is with regards to not allowing TDS credit by the Assessing Officer while issuing intimation u/s 143(1) of the Act. For this, assessee has raised following ground no. 7:

*“Ground7. There are mismatch in the TDS credit claimed by assessee and computed under intimation under 143(1) and order under section 154:- TDS Claimed by assessee while filing ITR Rs. 19,14,931/-, In Intimation under section 143(1) dated 12.05.2020 Rs. 16,54,435/-, In order under section 154 dated 29.04.2021 Rs. 16,54,435/-.”*

8. We have heard rival contentions and gone through the material available on record. We note that the assessee claimed in its return of income Rs. 19,14,931/- but vide intimation u/s 143(1) dated 12.05.2020 while processing this return the CPC allowed credit at Rs. 16,54,435/-. Even in the rectification order also the Assessing Officer credit of TDS of Rs. 16,54,435/-. We note that this credit is subject to verification. Hence, we set aside this issue back to the file of Assessing Officer with the following direction:

- (i) The assessee will file all TDS certificates before the Assessing

Officer and in turn the Assessing Officer will verify these TDS certificates and;

- (ii) in case, if it is so required, the Assessing Officer will call the concerned party who has deducted the TDS. In term of the above, this matter is also restored to the file of Assessing Officer.

9. All these four appeals are allowed for statistical purposes.

**Order pronounced in the open court on this 27<sup>th</sup> day of December, 2024.**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT**

**Dated : 27.12.2024**

**MP**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**