

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'E' NEW DELHI)**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND**

SHRI SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 4295/DEL/2024 (A.Y. 2019-20)

ITA No. 4296/DEL/2024 (A.Y. 2021-22)

Manikjeet Singh Kals F-06/09 DLF Phase-1, Gurgaon, 1220202, Haryana, Gurgaon PAN: AZJPK9094L	Vs.	Assistant Director of Income Tax, Centralized Processing centre, Bengaluru, Karnataka
Appellant		Respondent
Assessee by	Sh. Saumitri Pradhan, Adv& Sh. VivekChaurasiya, Adv	
Revenue by	Sh. Amit Katoch, Sr. DR	
Date of Hearing	20/02/2025	
Date of Pronouncement	27/02/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

In both the above captioned Appeals the Assessee has challenged the orders of the Ld. CIT(A) dated 22/07/2024 pertaining to Assessment Year 2019-20 and 2021-22, wherein the Ld. CIT(A) dismissed the Appeal challenging the order passed by the A.O. (NWR/W/(53)(92) u/s 154 of the Income Tax Act, 1961 ('Act' for short).

2. The Ld. Counsel for the Assessee submitting on the issue of late payment of ESI and PF, contended that the orders of the Ld. CIT(A) have been passed in violation of principals of natural justice, the Assessee has paid the Employees Contribution well within the 'due date' as prescribed in the respective acts, the Assessee is having a chart reflecting the dates of payment and also the due date, which proves that no disallowance were called for, thus, sought for remanding the matter to the file of the A.O. for verification.

3. Per contra, the Ld. Departmental Representative submitted that the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, vide order dated 12/10/2022 held that the Employees Contribution deposited after respective due date cannot be allowed as deduction, therefore, submitted that those grounds of appeal may be dismissed.

4. We have heard both the parties and perused the material available on record. The issue of allow-ability of Employees Contribution has been settled by the Hon'ble Supreme Court in the case of Checkmate Services (supra), however, while deciding the verification of 'due date' specified in the respective acts, the Co-ordinate Bench of the Tribunal in the case of RakeshJanghu Vs. DCIT in ITA No. 379/Del/2023 and

connected matters, vide order dated 09/10/2023 in the similar circumstances, after considering the several judicial pronouncements, remanded the matter to the file of the A.O. to verify the 'due date' specified in the respective acts and decide the issue afresh in following manners:-

“8. Now the issue in dispute in the present Appeals is in respect of the actual 'due date prescribed'. It is the case of the Assesseees that the salary/remuneration payment to staff for the month was paid in subsequent months preferably in the first week of the next month. For example, the salary for the month of September, 2023 will be paid in the first week of October, 2023, thus, the Employer is required to deposit the PF/ESI Contribution within 15 days of the close of every month. As per the assessee, the due date has to be calculated within 15 days from the close of the month in which 'payment is made to the employee'. But according to the Revenue, the Contribution has to be deposited within 15 days from the close of the month for which salary/wages of the employee is due.

9. In the case of Master Polishers Vs. ADIT (supra), the Mumbai Tribunal held as under:-

“2. In the ground No. 1 and 2 of the appeal, the assessee is aggrieved with the disallowance upheld by the Ld. CIT (A) in respect of employee's contribution to ESI/PF, which was made by the CPC as an adjustment and further sustained in rectification order u/s 154 of the Act. The Ld. CIT(A) has upheld the disallowance in view of binding precedent of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT in Civil Appeal No. 2833 of 2016, observing as under:

"4. Having pursued the rectification order, the grounds of appeal and the written submissions the issue of admissibility of payment of employees' contribution of SIC/PF beyond the due date as per the relevant Statute, raised through ground number 1 is not tenable in view of decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. VS CIT in Civil Appeal No2833 of 2016 with CA No2830/2016, CA No. 159/2019, CA No.2832/2016 and CA No: 2831/2016 vide judgment dated 12.10.2022, wherein it was held that deduction under 36(1)(va) of the IT Act is admissible only of the amount so received from employees for PF/ESIC is credited in specified account within the due date as per the relevant Statute. In the instant appeal, it is an admitted position of the appellant that there was delay in crediting the contribution so collected in the specified account within the due date as per the relevant Statute."

10. *The Hon'ble Calcutta Tribunal in the case of Konai Paper and Industries Ltd. Vs. ACIT reported in (2002) 75 TTJ Cal 448 held as under:-*

"6. Clause 38 of the Employees Provident Fund Scheme, 1952, fixes the time limit for making payment in respect of contribution to the provident fund to be 15 days from the close of the month concerned. However, the issue here is whether the "month" should be considered to be the month to which the wages relates or the month in which the actual disbursement of the wages is made, we are of the considered opinion that the expression "month" should mean here the month during which the wages/salary is actually disbursed irrespective of month to which the same relates. Thus the scheme of the government in this regard is that once a deduction is made in respect of the employees contribution to the provident fund from the salary/wages of the employee or the employer also makes his contribution, factually at the time of disbursement of the salary the payment in respect of such contribution should be made forthwith. If for some reason or other the payment of salary for a particular month be held up for considerable period of time it cannot be said that the employer

would be liable to make payments in respect of the "employer's" as well as "employees" contribution in respect of wages for such period within a period of 15 days from the close of the month to which the wages relates. On the other hand, in our view, most appropriate interpretation would be that the employer would be at liberty to make payment of the contribution concerned within 15 days (subject however to the further grace period) from the end of the month during which the disbursement of the salary is actually made and the contribution of the, provident fund are, thus, generated, inasmuch as, the provision relating to the disallowance of such contribution on account of delay is rather an artificial provision. In our view, a liberal approach has got to be made to this issue. Ultimately, therefore we reverse the order of the lower authorities and direct the assessing officer to examine whether the payments of contribution in the present case were made within 15 days (allowed with further grace period of 5 days) from the close of the respective months during which the disbursement of the salary/wages were actually made. The assessing officer should recompute the amount disallowable, if any, on the above basis and take appropriate action accordingly"

5.1 In our opinion, it will be appropriate if the term every month' specified in Provident Fund scheme, whether it is the month for which salary/wages are due or month of the payment is referred to Relevant Authorities for finding out with reference to any judicial precedent in respect of provisions of the relevant Act. Accordingly, we restored this issue back to the file of the Ld. Assessing Officer with the direction to find out from the relevant PF authorities about the term every month' as mentioned in clause 38 of the employees provident fund scheme. Similarly, he may find out from the ESI Authorities. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of appeal of the assessee are accordingly allowed for statistical purposes."

11. *The assessee placing the reliance on the above decisions, sought for direction to the A.O. to verify the 'due date' specified in the respective Acts and decide the issue afresh. Considering the above facts and circumstances and also the decision of the Mumbai Tribunal in the case of Master Polishers (supra), we restore the issue to the file of the A.O. to decide the same afresh keeping in view the directions of the Mumbai Bench of the Tribunal in the case of Master Polishers Vs. ACIT (supra) along with the Tax Audit Report filed by the Assessee and the return of income filed u/s 44AB of the Act. Needless to say, the Assessee shall be provided with reasonable opportunity of being heard. Accordingly, we partly allow/dispose off the above Appeals/C.Os. for statistical purpose.*

5. By respectfully following the ratio laid down in the case of Rakesh Janghu (supra), we remand the issue of disallowance made on account of delayed deposits of ESI and PF to the file of the A.O. with a direction to decide the same as per the ratio laid down in the case of Rakesh Janghu (supra).

6. The another grievance of the Assessee is that the Department has not given TDS Credit reflected in the Form No. 26AS. Considering the submission made by the Ld. Assessee's Representative, we remand the matter to the file of the A.O. to

verify and allow the TDS Credit in accordance with law after providing opportunity of being heard to the Assessee.

7. In the result, the Appeals filed by the Assessee in ITA Nos. 4295/Del/2024 and 4296/Del/2024 are partly allowed for statistical purpose.

Order pronounced in the open court on 27th February, 2025

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 27.02.2025
R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

