

IN THE INCOME TAX APPELLATE TRIBUNAL
“PATNA BENCH”, PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
SHRI SONJOY SARMA, JUDICIAL MEMBER

ITA No. 341/PAT/2024
Assessment Year : 2018-19

SIS Limited, Annaurna Bhawan, Patliputra Telephone Exchange, Road Kurji, Patna - 800010 [PAN: AAEC3538A]	Vs.	ACIT/JCIT/DCIT/ITO, National e-Assessment Centre, Delhi
APPELLANT		RESPONDENT

Assessee by	:	Sh. Yesh Nagar, Adv.
Revenue by	:	Md. A H Chowdhury, CIT (DR)

Date of hearing	:	14.01.2026
Date of Pronouncement	:	16.01.2026

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)] dated 02.02.2024, DIN & order No. ITBA/NFAC/S/250/2023-24/1060437985(1) on the following grounds of appeal:

“1. That on facts and circumstances of the case and in law the impugned order dated 02.02.2024 passed by the National Faceless Appeal Centre (the CIT(A)) is without jurisdiction and bad in law.”

2. That the CIT(A) erred in law and on facts of the case in sustaining the addition of Rs.5,60,01,339/- without recording any justifiable dissatisfaction with the appellant's explanations for claim of deduction under section 36(1)(va) of the Income Tax Act, 1961 ('the Act').

3. That on the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law in not appreciating that the amount of Rs. 3,55,74,642/- that the appellant had taken active steps to deposit the employee contribution before the due date prescribed under the Act, however the same could not be deposited due to external reasons purely beyond the control of the appellant.

4. That on the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law in not allowing the deduction of Rs.32,85,439/- without considering the submissions of the appellant.

5. That on the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law in not appreciating that the amount of Rs.1,91,41,258/- had been deposited as amount relating to retrospective revision of wages paid to the employees, however the same has been inadvertently reported incorrectly on the ESI/PF Portal

6. That on the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law in not appreciating that the condition precedent for claiming deduction is deposit within the due date, the incorrect reporting ESI/PF Portal per-se cannot be a ground of disallowance under section 36(1)(va) of the Act.

7. That on the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law in not appreciating that disallowance under section 36(1)(va) of the Act cannot be made on the ground that the appellant had failed to rectify the reporting error on ESI/PF Portal.

The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal."

2. The Ld. Counsel has filed adjournment petition stating that the authorized representative is in the process of collecting the cogent documents for preparation of the case and filing paper book and requested for adjournment. On going through the appeal filed by the assessee, the issue raises before us are related to delayed deposit of ESIC/PF contribution received from the employees which is covered by the judgment of Hon'ble Apex Court in the case of Checkmate Services Pvt. Vs. CIT reported in 143 taxman.com 178 (SC) and appeal was filed

on 27.03.2024 since the issue is covered in favour of the revenue by the above judgment, therefore, we are considering the facts of the case, rejecting the adjournment application and taken up for hearing.

3. Briefly stated the facts of the case are that the assessee filed return of income on 28.11.2018 declaring income of Rs. 46,25,56,430/- . The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act dated 22.09.2019 was issued to the assessee. Subsequently, other statutory notices were issued to the assessee. During the course of assessment proceedings, it was observed from Form No. 3CD report, at 20(b) an amount of Rs. 15,59,60,900/- was received as employees contribution for various funds which were not deposited as per section 36(1)(va) of the Act within due date as specified in the respective Act. Accordingly, while processing the return the same was made the addition u/s 143(1)(a) of the Act. During the course of assessment proceedings, the issue was also discussed and further the AO made disallowance u/s 43B of the Act at Rs. 26,60,000/-. Accordingly, the total income was assessed at Rs. 62,11,77,330/-.

4. Aggrieved from the above order, the assessee filed appeal before the Ld. CIT(A)(NFAC). During the course of appellate proceedings, the assessee has made elaborated submissions which were considered by the Ld. CIT(A) (NFAC) and partly allowed the appeal of the assessee and referring to the judgment of the Hon'ble Apex Court in the case of M/s Checkmate Services Pvt. Ltd. Vs. CIT reported in 143 taxman.com 178 (SC), partly allowed the appeal of the assessee.

5. Aggrieved from the above order, the assessee filed appeal before the ITAT.

6. The Ld. Counsel reiterated the submissions made before the lower authorities.

7. On the other hand, the Ld. DR relied on the order of lower authorities and submitted that the issue is squarely covered by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. noted supra as relied by the Ld. CIT(A). During the course of appellate proceedings, the assessee made detailed written submission and the Ld. CIT(A) carefully gone through the submissions of the assessee and partly allowed the appeal considering the amount which were paid as per the provision of the Act and eligible for deduction u/s 36(1)(va) of the Act, therefore, he requested that the order of Ld. CIT(A) should be upheld.

8. Considering the rival submissions, we noted that hear the dispute is regarding delayed deposit of PF/ESI contribution received from employees as reported in Form No. 3CD at serial no. 20(b). The AO has made addition and the Ld. CIT(A) has also after considering the entire submissions partly allowed the appeal of the assessee after considering the submissions. Since this issue is squarely covered by the judgment of the Hon'ble Apex Court noted supra. Accordingly, we dismiss the Ground Nos.1 to 4 taken by the assessee on this issue.

9. In Ground No. 5 that the assessee has raised the issue regarding addition of Rs. 1,91,41,258/- and raised the issue that this amount is wrongly reported by the Tax Auditor actually this amount are related to the arrears payment of salary from the month of May and onwards and actually paid in the month of September. This issue has been dealt by the Ld. CIT(A) at page no. 29 at para 10.1(iii), the Ld. CIT(A) has dealt this issue as under:

“(iii) The third part of the issue is about disallowance of Rs.1,91,41,258/-. The reason given by the appellant for delay in remittance of this amount is that it is

by virtue of retrospective revision of wages paid to the employees. In this case, the appellant admits that there is a mistake in reporting the due date due to which this amount was treated as paid beyond due date. The appellant has given an example that the wage revision is done in the month of September & with retrospective effect from the month of May. The appellant has paid the arrears of wages from May onwards in the month of September but while reporting it was treated as pertaining to the respective months of May to August. As these were actually paid in September, the dues of May to August were treated as paid beyond due dates. I appreciate that this is a reporting error committed by the appellant but this error has been committed on the portal of PF/ESI. In the said portals, the payments of arrears made have been shown as delayed payments and hence, the appellant cannot get relief under the provisions of the Income tax Act. The appellant could have rectified the mistake on the respective portals so that the appellant could have got relief in appeal. In absence of such a rectification being made in the respective portals, the delayed payments get reflected in the said portals for which no relief can be given. Accordingly, the said addition made by the AO of Rs. 1,91,41,258/- is sustained.”

10. On going through the above observation of the Ld. CIT(A), we noted that this is arrear payments this amount relates to the arrear payments of salary from May to August and actually paid in the month of September but while reporting which was treated as pertaining to respective months of May to August the arrears were actually paid in the month of September, therefore, arrears was actually due for payment in the month of September, though it were related for the previous months in case of arrears the due date is considered the actual date of payment but not from the related period. Therefore, the due should be considered from the month of September. Since, the tax auditor has wrongly reported from the month of May and onwards, therefore, for the genuineness of verification, we are remitting this issue back to the file of AO for fresh examination of the due date for payment of ESI/PF contribution made from the arrears of salary from the month in which arrears of salary have been paid. If the AO finds in order in terms of section 36(1)(va) of the Act then the issue has been allowed. Accordingly, this ground is remitted back to the AO.

11. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 16.01.2026.

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Dated: 16.01.2026

AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches