

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA Nos.52 to 54/GTY/2022

Assessment Years: 2018-19 to 2020-21

Poddar Car World Private Limited C/o, Rahul Raj Jain & Co. H. No. 15, 1 st floor, Bye Lane-2 Shaktigarh Path, Bhangagarh, G. S. Road, Assam-781005. (PAN: AADCP 5694 D)	Vs.	Asstt. Commissioner of Income Tax, Circle-2, Guwahati.
(Appellant)		(Respondent)

&

ITA Nos.55 to 57/GTY/2022

Assessment Years: 2018-19 to 2020-21

Balram Singh C/o, Rahul Raj Jain & Co. H. No. 15, 1 st floor, Bye Lane-2 Shaktigarh Path, Bhangagarh, G. S. Road, Assam-781005. (PAN: AWHPS 2544 Q)	Vs.	Income Tax Officer, Ward - 1(1), Guwahati.
(Appellant)		(Respondent)

&

ITA Nos.59 & 60/GTY/2022

Assessment Years: 2019-20 & 2020-21

Better Power Services Pvt. Ltd. C/o, Rahul Raj Jain & Co. H. No. 15, 1 st floor, Bye Lane-2 Shaktigarh Path, Bhangagarh, G. S. Road, Assam-781005. (PAN: AADCB 7283 J)	Vs.	Income Tax Officer, Ward - 1(2), Guwahati.
(Appellant)		(Respondent)

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ITA Nos. 55 to 57/GTY/2022
Balaram Singh &
AYs. 2018-19 to 2020-21
ITA Nos. 59 to 60/GTY/2022
Better Power Services Pvt. Ltd.
AYs: 2019-20 & 2020-21

Present for:

Appellant by : N o n e

Respondent by : Shri N. T. Sherpa, JCIT and Shri P. S.
Thuingaleng, ACIT

Date of Hearing : 08.06.2023

Date of Pronouncement : 14.06.2023

ORDER

PER BENCH:

All these appeals filed by the assessee are against the separate orders passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order Nos. ITBA/NFAC/S/250/2022-23/1047905939(1), ITBA/NFAC/S/250/2022-23/1047902313(1), ITBA/NFAC/S/250/2022-23/1047904105(1) dated 09.12.2022, ITBA/NFAC/S/250/2022-23/1047895350(1), ITBA/NFAC/S/250/2022-23/ 1047896327 (1), ITBA/NFAC/S/250/2022-23/ 1047897534 (1) dated 08.12.2022, ITBA/NFAC/S/250/2022-23/1047770123(1) and ITBA/NFAC/S/250/2022-23/1047770286(1) dated 02.12.2022, respectively, against the separate intimations passed by ITO/Asstt. Director of Income Tax, CPC, Bengaluru, u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AYs 2018-19 to 2020-21. Since grounds are common and facts are similar, we dispose all these appeals by this consolidated order for the sake of convenience.

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2. None appeared on behalf of the assessee. No application for adjournment was also placed on record. Shri N. T. Sherpa, JCIT and Shri P. S. Thuingaleng, ACIT represented the revenue before us. With the able assistance of Ld. DR, we dispose of all these appeals, ex parte qua the assessee.

3. Brief facts in appeals of Poddar Car World Private Ltd. (ITA Nos. 52 to 54/GTY/2022) are that assessee is engaged in the business of dealership of Maruti Suzuki in the name and style of Poddar Car World Private Ltd. Assessee has filed its return of income for AY 2018-19 reporting total income at Rs. 6,58,40,820/- on 30.11.2018. Return was duly processed u/s 143(1) of the Act on 16.08.2020 by making an adjustment u/s. 143(1) amounting to Rs 6,18,026/- since assessee had remitted the employees' contribution to Provident Fund (PF) beyond the due date. For the other two years in appeal before us, similar additions were made for delay in deposit of employees' contribution to FP, amounting to Rs.11,94,775/- for AY 2019-20 and Rs.8,98,707/- for AY 2020-21. In respect of the aforesaid adjustments u/s. 143(1), assessee objected and filed rectification applications u/s. 154 of the Act. The efforts to get the intimation u/s 143(1) rectified u/s 154 did not yield any favourable result. Aggrieved, assessee carried the matter before Ld. CIT(A) but without any success. Aggrieved, assessee is now in appeal before the Tribunal.

4. Brief facts in appeals of Balram Singh (ITA Nos. 55 to 57/GTY/2022) are that assessee is engaged in the business of

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Government Contract works. Assessee filed its return of income in respect of AY 2018-19 reporting total income at Rs. 85,62,520/- on 28.11.2018. Return was duly processed u/s. 143(1) of the Act on 08.01.2020, by making an adjustment u/s. 143(1) amounting to Rs.81,92,336/- since assessee had remitted the employees' contribution to Provident Fund (PF) beyond the due date. For the other two years in appeal before us, similar additions were made for delay in deposit of employees' contribution to PF, amounting to Rs.89,02,868/- for AY 2019-20 and Rs.79,30,788/- for AY 2020-21. Aggrieved, assessee carried the matter before Id. CIT(A) but without any success. Assessee is aggrieved and is in appeal before the Tribunal.

5. Brief facts in appeals of Better Power Services Pvt. Ltd. (ITA Nos. 59 to 60/GTY/2022) are that assessee filed its return of income for AY 2019-20 reporting total income at Rs.44,15,305/-, on 28.10.2019. Return was duly processed u/s 143(1) of the Act on 30.04.2020 by making an adjustment u/s 143(1) amounting to Rs.13,68,973/- since assessee had remitted the employees' contribution to Provident Fund (PF) beyond the due date. Similar disallowance was made for AY 2020-21 amounting to Rs.10,84,170/-. Aggrieved, the assessee carried the matter before Id. CIT(A) but without any success. Assessee is aggrieved and is in appeal before the Tribunal.

6. On the aforesaid issue relating to disallowance in respect of delay in deposit of employees' contribution to Provident Fund, the issue is squarely covered against the assessee by the decision of Hon'ble

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Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* wherein it has been held that “*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees’ contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.*” Hon'ble Supreme Court has held that by virtue of section 2 (24) (x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2 (24)(x) , unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. It is further held that there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

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7. In view of above discussion, we do not find any merit in the appeals of the assesseees and the same are hereby dismissed.

8. In the result, appeals of the assesseees stand dismissed.

Order pronounced in the open Court on 14th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 14th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), NFAC, Delhi.
 4. CIT,
 5. DR, ITAT, Gauhati Bench, Gauhati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata