

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.2990, 2991 & 2992/Del/2022
Assessment Year: 2018-19, 2019-20 & 2020-21

Eastman Industries Ltd. Plot No.101, 1st Floor, Community Centre, Naraina Industrial Area, Phase-1, New Delhi -110028 PAN No.AAACE0633N (APPELLANT)	Vs	ACIT Circle – 7 (1) New Delhi (RESPONDENT)
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Appellant by	Ms. Aditi Gupta, Advocate
Respondent by	Sh. Vivek Kumar Upadhyay, Sr DR

Date of hearing:	16/08/2023
Date of Pronouncement:	18/08/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.2990/Del/2022, 2991/Del/2022 and 2992/Del/2022 are three appeals by the assessee preferred against three separate orders of NFAC dated 25.10.2022 pertaining to A.Y. 2018-19, 2019-20 and 2020-21.

2. Since common grievance is involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The first common grievance in the captioned appeals relates to the disallowance on account of late deposit of employees contribution of provident fund though the quantum may differ in the impugned appeals.

4. We have carefully perused the orders of the authorities below. The impugned issue is fully covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Private Limited 448 ITR 518. But the contention of the Counsel is that the date of payment of the salary should be considered for calculating the delay in the deposit of EPF/ESI under the respective acts, therefore, in the interest of justice and fair play we deem it fit to restore this quarrel to the files of the AO. The AO is directed to consider the date of payment of salaries and decide the issues afresh as per the provisions of the law. This common grievance is allowed for statistical purpose.

5. The second common grievance relates to the denial of foreign tax credit on the ground that the assessee has filed Form -67 beyond the due date in respect of the claim of foreign tax credit.

6. There is no dispute that the assessee has not filed Form -67 in time to claim foreign tax credit. It is also not in dispute that

one of the requirements of rule 128 for claiming FTC is that form – 67 is to be submitted by assessee before filing of the return. In our humble opinion this requirement cannot be treated as mandatory and it is directory in nature for the simple reason that under rule 128 (9) there is no provision for disallowance of FTC in case if there is a delay in filing Form-67. In our considered opinion this is only a procedure delay and there is no negative or adverse consequence provided for non adherence to such procedure.

7. Since in the present case the claim of the assessee was denied on this technical aspect without going into the merits of the FTC, therefore, we deem it fit to restore the issue to the files of the AO. The AO is directed to decide the claim of foreign tax credit as per the provisions of the law after admitting / accepting form -67. This common grievance is also allowed for statistical purpose.

8. In ITA No.2990/Del/2022 in addition to the aforementioned common grievance the assessee is also aggrieved by denial of TDS credit for punching incorrect TAN by the assessee in its return of income.

9. We have gone through the orders of the authorities below. We are of the considered view that the TDS credit should not have been denied for such technical reason when the TDS credit is duly reflected in form 26 AS, therefore, we direct the AO to allow

the credit of TDS reflected in Form 26AS as per the provision of the law.

10. In the result, the captioned appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 18.08.2023.

Sd/-

[YOGESH KUMAR US]
JUDICIAL MEMBER

Dated:18.08.2023

Neha

Copy forwarded to:

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

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi