

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President(KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 572/KOL/2022
Assessment Year: 2017-2018**

***Balaji Solutions Limited,.....Appellant
Plot No. B4 & B5, Anmol South City Infra Park,
Mouza-Jagdishpur, JL No. 2, Howrah-711205
[PAN: AABCB7810R]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-2(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Dinesh Bajaj, A.R., appeared on behalf of the
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : February 08, 2023

Date of pronouncing the order : February 20, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2017-18 is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.08.2022, which is arising out of the order under section 143(3) of

the Act on 20.12.2019 framed by ACIT, Circle-2(1), Kolkata.

2. The grounds of appeal raised by the assessee read as under:-

(1) That the Ld. CIT(A) was wrong in confirming the order of A.O which was passed without properly appreciating the facts of the case and without providing proper opportunity of being heard to the appellant. Therefore, the order confirmed by the CIT(A) is in gross violation of natural justice and needs to be quashed.

(2) That the Ld. CIT(A) was wrong in confirming the addition of Rs. 25,00,000/- by treating the same as undisclosed cash credit u/s 68 of the Act. The Ld. CIT(A) as well as Ld. A.O failed to consider the facts that the aforesaid loan was interest bearing, taken through banking channel and was repaid back in the same financial year through proper banking channel. Further, TDS was duly deducted on the payment of interest. As such, there can't be any doubt regarding the genuineness of transaction. Therefore, the addition confirmed by CIT(A) is bad in law and needs to be deleted.

(3) That the Ld. CIT(A) was wrong in confirming the disallowance of Rs.2,86,814/- u/s 36(1)(va) of the Income Tax Act on account of delay in deposit employee's contribution towards PF & ESI within the due date prescribed under PF/ESI law. The Ld. CIT (A) as well as Ld. A.O failed to consider the fact that the aforesaid payments were made within the due date of filing of return u/s 139(1) of the Act. Further, the delay was due to technical glitch in the PF/ESI Portal. It is a well settled preposition that employee's contribution towards PF & ESI is allowed as deduction if the same is paid within the due date of filing of return u/s 139(1) of the Act. Further, the Amendment made by Finance Act, 2021 is also not applicable for A.Y 2017-18. Therefore, the addition confirmed by CIT(A) is bad in law and needs to be deleted.

3. At the time of hearing, the assessee prayed for adjournment. However, looking to the smallness of the issues, the case was heard with the assistance of ld. A.R. as well as that of the ld. D.R.

4. Brief facts of the case are that the assessee is a Limited Company engaged in business. Income of Rs.15,09,69,250/- declared in the e-return was filed on 30.10.2017. Case selected for complete scrutiny through CASS followed by serving of notices under section 143(2) and 142(1). Relevant details were called for by the assessee and in response to the notices, assessee-company submitted audited accounts and copies of relevant documents through e-assessment portal. Assessment completed after making disallowance under section 36(1)(va) of the Act on account of delay in deposit employees' contribution towards P.F. and ESI amounting to Rs.2,86,814/-. The ld. Assessing Officer also made an addition under section 68 of the Act at Rs.25,00,000/- for unexplained cash credit. Income assessed by the ld. Assessing Officer at Rs.15,37,56,064/-.

5. Aggrieved, the assessee preferred appeal before the ld. CIT(Appeals), but failed to succeed on any of the grounds. Being aggrieved, the assessee is now in appeal before the Tribunal.

6. Ld. Authorized Representative for the assessee vehemently supporting the written submission placed before the ld. CIT(Appeals) with regard to disallowance under section 36(1)(va)

of the Act and submitted that there is no delay in the said deposit towards employees' contribution as it has been paid mostly before the grace period provided under the P.F. and ESI Act and, therefore, disallowance is uncalled for.

7. On the other hand, ld. D.R. vehemently supported the order of ld. CIT(Appeals).

8. We have heard the rival contentions and perused the relevant records placed before us. Ground No. 1 in this appeal is general in nature, which does not need for any adjudication.

9. Apropos to Ground No. 2 regarding the issue of unexplained cash credit amounting to Rs.25,00,000/- under section 68 of the Act is concerned, we find that the assessee took loan from M/s. Ambala Trafin Pvt. Limited. It is not in dispute before us that the aforesaid loan was interest-bearing loan taken through normal banking channel and was repaid back in the same financial year through banking channel and tax at source has been deducted on the interest paid thereon and all the documentary evidence in order to explain alleged credit has been duly placed before the lower authorities. Since no specific discrepancy has been observed by the lower authorities and the said loan being taken and repaid during the year itself and also considering the income of Rs.15.10 crores offered by the assessee, we do not find any reason to question the genuineness of the said loan. We,

therefore, reverse the finding of the Id. CIT(Appeals) and delete the addition of Rs.25,00,000/- under section 68 of the Act and allow Ground No. 2 raised by the assessee.

10. Apropos to Ground No. 3 for disallowance under section 36(1)(va) of the Act at Rs.2,86,814/-, following details has been placed by the assessee to show that in most of the cases there is no delay in the payment of employees' contribution for various funds and the same is reproduced below:-

ITA 572/KOL/2022, A.Y. 2017-18 DT:

Extracted from Form 3CD (AY 17-18)
 20(b) - Details of Contributions received from employees for various funds as referred in Section 36(1)(va)

S.No.	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned
1	Any Fund set up under the provisions of ESI Act,1948	26,037	21-05-2016	26,037	19-05-2016
2	Any Fund set up under the provisions of ESI Act,1948	26,729	21-06-2016	26,339	21-06-2016
3	Any Fund set up under the provisions of ESI Act,1948	-	21-06-2016	390	22-06-2016 ✓
4	Any Fund set up under the provisions of ESI Act,1948	27,721	21-07-2016	27,721	20-07-2016
5	Any Fund set up under the provisions of ESI Act,1948	28,489	21-08-2016	26,132	20-08-2016
6	Any Fund set up under the provisions of ESI Act,1948	-	21-08-2016	2,357	31-08-2016
7	Any Fund set up under the provisions of ESI Act,1948	29,118	21-09-2016	29,118	20-09-2016
8	Any Fund set up under the provisions of ESI Act,1948	29,893	21-10-2016	29,893	20-10-2016
9	Any Fund set up under the provisions of ESI Act,1948	31,040	21-11-2016	20,085	19-11-2016
10	Any Fund set up under the provisions of ESI Act,1948	-	21-11-2016	10,955	21-11-2016
11	Any Fund set up under the provisions of ESI Act,1948	30,490	21-12-2016	30,490	21-12-2016
12	Any Fund set up under the provisions of ESI Act,1948	31,281	21-01-2017	31,281	21-01-2017
13	Any Fund set up under the provisions of ESI Act,1948	50,386	21-02-2017	50,386	21-02-2017
14	Any Fund set up under the provisions of ESI Act,1948	50,096	21-03-2017	50,096	21-03-2017
15	Any Fund set up under the provisions of ESI Act,1948	50,740	21-04-2017	50,740	20-04-2017
16	Provident Fund	2,84,167	15-05-2016	2,84,167	16-05-2016
17	Provident Fund	2,93,448	15-06-2016	2,93,448	15-06-2016
18	Provident Fund	3,01,962	15-07-2016	3,01,962	14-07-2016
19	Provident Fund	3,05,738	15-08-2016	3,05,738	12-08-2016
20	Provident Fund	3,14,671	15-09-2016	3,14,671	15-09-2016
21	Provident Fund	3,25,663	15-10-2016	3,25,663	14-10-2016
22	Provident Fund	3,51,720	15-11-2016	3,51,720	15-11-2016
23	Provident Fund	3,49,491	15-12-2016	3,49,491	14-12-2016
24	Provident Fund	3,46,935	20-01-2017	3,46,935	20-01-2017
25	Provident Fund	3,45,125	15-02-2017	3,45,125	15-02-2017
26	Provident Fund	3,45,510	15-03-2017	3,45,510	15-03-2017
27	Provident Fund	3,44,039	15-04-2017	3,44,039	13-04-2017

BALAJI SOLUTIONS LIMITED
 Wholetime Director & CFO

11. From the perusal of the above sheet, we notice that in most of the cases, the amount has been deposited on or before the due date of payment except few, which are beyond the due date. Recently Hon'ble Supreme Court in its judgment dated 12.10.2022 in the case of *Checkmate Services Pvt. Limited -vs.- CIT (Civil Appeal No. 2833 of 2016)* has held that if employees contribution towards P.F. and ESI are deposited after the due date prescribed under the Act, the same shall be disallowed and added to the income of the assessee. We are, therefore, of the considered view that this issue needs to be restored to the file of Id. Assessing Officer for necessary verification and examination of the facts for which the assessee shall file the copies of treasury challan for proving the deposit of P.F. and ESI as mentioned in the sheet extracted supra and in case Id. Assessing Officer found that the same has been deposited on or before the due date as prescribed under the PF & ESI Act, then no disallowance is called for, and in case it is found that it is deposited after the due date (considering the grace period as provided under the respective Act governing P.F. and ESI), then the same shall be disallowed as per the ratio laid down by the Hon'ble Apex Court. Thus ground no. 3 raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 20th February, 2023.

Sd/-

**(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 20th day of February, 2023

Sd/-

**(Manish Borad)
Accountant Member**

Copies to :(1) **Balaji Solutions Limited,
Plot No. B4 & B5,
Anmol South City Infra Park,
Mouza-Jagdishpur, JL No. 2,
Howrah-711205**

(2) **Assistant Commissioner of Income Tax,
Circle-2(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069**

(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;

4) *Commissioner of Income Tax- ;*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.