

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

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 44/KOL/2023  
Assessment Year: 2017-2018**

***Rajmahal Coal Mining Limited,.....Appellant  
Industry House, 18<sup>th</sup> Floor,  
10, Camac Street, Kolkata-700017  
[PAN: AAFCR8453E]***

***-Vs.-***

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

**Appearances by:**

*Shri Akkal Dudhewala, A.R., appeared on behalf of the  
assessee*

*Smt. Ranu Biswas, Addl. CIT (DR), appeared on behalf  
of the Revenue*

**Date of concluding the hearing : March 09, 2023**

**Date of pronouncing the order : March 16, 2023**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi dated 30.11.2022 passed for A.Y. 2017-18.

2. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the disallowance of Rs.40,81,018/- with the aid of section 36(1)(va) of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed its return of income on 31.10.2017 declaring total income at Rs.38,70,71,440/-. The case was selected for scrutiny assessment. A perusal of the record had revealed to the ld. Assessing Officer that the assessee did not make payment of employees' contribution to Provident Fund Account within the due date prescribed under section 36(1)(va) of the Act. Accordingly he disallowed it. Before the ld. 1<sup>st</sup> Appellate Authority, it was contended by the assessee that there is no delay in making the payments. The ld. Counsel for the assessee took us through the written submissions filed before the Tribunal. The synopsis of such submissions is available on pages 1 to 4 of the paper book, which reads as under:-

In the matter of : Rajmahal Coal Mining Limited  
PAN No: AAFCR8453E  
18<sup>th</sup> Floor, Industry House,  
10 Camac Street, Kolkata – 700017

AND

In the matter of : ITA No. 44/Kol/2023  
AY 2017-18

### SYNOPSIS

#### FACTS OF THE CASE

1. The assessee had filed the return of income for AY 2017-18 declaring total income of Rs.38,74,92,240/-. The case of the assessee was selected for complete scrutiny vide issue of notice u/s 143(2) of the Act. In the course of assessment, the AO, vide notice u/s 142(1) dated 22.11.2019 [*Pages 18 & 19 of Paperbook*], requisitioned the assessee to explain as to why the delayed payment of employee's contribution to Provident Fund ('PF') beyond the due date should not be added to the total income of the assessee. In response thereto, the assessee vide letter dated 26.11.2019 [*Page 20 of Paperbook*], relied upon the specific provisions of the 'Coal Mines Provident Fund Scheme' [*Page 21 of Paperbook*], and explained that the due date of payment of the employees' contribution to PF was the last day of the following month i.e. 30<sup>th</sup>/31<sup>st</sup> of the succeeding month. Attention is also invited to Sl No.20(b) of the tax audit report [*Pages 5 to 17 of paperbook*] wherein also the tax auditor had certified that the payments were made within the due date specified in the respective Act i.e. 30<sup>th</sup>/31<sup>st</sup> of the succeeding month.
2. The AO however disallowed the employees' contribution of Rs.40,81,018/- u/s 36(1)(va) of the Act alleging that it was paid beyond the due date, which according to the AO was *3<sup>rd</sup> day of succeeding month*. Kindly refer Para 3 of

the assessment order. This action of the AO was also confirmed by the Ld. CIT(A).

### SUBMISSIONS

3. It is submitted that the lower authorities had erred in making in the impugned disallowance in as much as the sum of Rs.40,81,018/-, being the employee's contribution to PF, **had indeed been deposited within the due dates as prescribed under the relevant Coal Mines Provident Fund Scheme.** Attention in this regard is drawn to the extant provisions of '*Coal Mines Provident Fund Scheme*' applicable in the assessee's case, which reads as under:

*"(2) The employer shall pay to the Fund both the employer's contribution as well as the member's contribution together with an amount [calculated at the rates mentioned in paragraph 33B of this Scheme] to defray the cost of administration of the Fund on or before <sup>3</sup>(the last day) of every month following the month to which the contributions relate.*

.....

<sup>3</sup>The words and figure, "The 15<sup>th</sup> Day" substituted vide G.S.R. 1726 dated 11.9.68."

4. On perusal of the above, it shall be noted that the employee's contribution to the provident fund maintained under the Coal Mines Provident Fund Scheme had to be deposited by the assessee employer within the last day (30<sup>th</sup> or 31<sup>st</sup>) of the month following the month to which the contribution related. It shall be noted that the term '*the last day*' was brought in place of '*the 15<sup>th</sup> day*' by the amendment vide G.S.R. 1726 dated 11.9.68. The same fact also certified at Clause 20(b) of the tax audit report, from which it is ex-facie evident that the assessee had deposited the employee's contribution to the Provident Fund well within the due dates prescribed under the relevant Act/scheme. The details of actual payment and due date thereof is tabulated for your reference:

20(b) Details of contributions received from employees for various funds as referred to in section 36(1)(va):					
Sl. No	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
4	Provident Fund	502445	31/08/2016	502445	04/08/2016
6	Provident Fund	487609	31/10/2016	487609	21/10/2016
7	Provident Fund	500079	30/11/2016	500079	21/11/2016
8	Provident Fund	499047	31/12/2016	499047	26/12/2016
9	Provident Fund	539570	31/01/2017	539570	21/01/2017
10	Provident Fund	504670	28/02/2017	504670	21/02/2017
11	Provident Fund	500211	31/03/2017	500211	21/03/2017
12	Provident Fund	547387	30/04/2017	547387	21/04/2017

5. From the foregoing, it shall be noted that, the employees contribution to the relevant provident fund was deposited well within the prescribed due date i.e. 'the last day of the following month' (30<sup>th</sup> or 31<sup>st</sup> of the following month). Accordingly there was no question of disallowance u/s 36(1)(va) of the Act.
6. It shall be noted that both the Ld. AO as well as the Ld. CIT(A) misread the terms of Coal Mines Provident Fund Scheme [Page 21 of paper book] and incorrectly interpreted the 'subscript 3' inserted in the sub-section (2) of the Coal Mines Provident Fund Scheme to be the *due date i.e. 3<sup>rd</sup> day* for deposit of employee's contribution to provident fund. On careful reading it is amply clear that the 'subscript 3' referred to the date of amendment when the words 'the 15<sup>th</sup> day' were substituted by the words 'the last day' vide G.S.R. 1726 dated 11.9.68. It is thus ex-facie evident that both the AO as well as the

Ld. CIT(A) had wrongly assumed the due date under the Coal Mines Provident Fund Scheme to be the 3<sup>rd</sup> day of the following month instead of the last day of the following month. This action of the lower authorities ought to be held to be unjustified and unsustainable on facts & in law.

7. In view of the above narrated facts of the case, it is therefore prayed that the disallowance of Rs.40,81,018/- being wholly unsustainable may kindly be deleted in full.

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*Akkal Dudhwewala*

(Akkal Dudhwewala)  
Authorized Representative

*A*

4. Ld. Counsel for the assessee, at the very outset, submitted that in response to the notice, the assessee has pleaded that being a Company engaged in execration of coal, the Coal Mines Provident Fund Scheme is applicable upon the assessee and as per the Scheme, the employees' contribution to Provident Fund is to be deposited upto the last day of the month and assessee has deposited the same. He took us through G.S.R. 1726 dated 11.09.1968, which has been amended subsequently. Copy of such regulation is placed as Annexure-C.

5. On the other hand, ld. D.R. was unable to controvert the contention of the ld. Counsel for the assessee.

6. On due consideration of the record, we are of the view that the ld. 1<sup>st</sup> Appellate Authority failed to appreciate the controversy in right perspective. As per Coal Mines Provident Fund Scheme,

the payment was to be made upto the last day of every month. Earlier it was on 15<sup>th</sup> day of the month. However, later on, it was changed to the last day of the month, the expression “on or before 3 (the last day) of every month”. The word ‘3’ is to represent the footnote at the end of the provision of the Scheme. The Id. CIT(Appeals) construed it as 3<sup>rd</sup> day of the month. All these aspects have been explained by the assessee in its written submission elaborately. After examining the facts in the light of the above Scheme, we find that there is no delay in depositing the employees’ contribution to the Provident Fund Account as per the Scheme of Coal Mines and, therefore, no disallowance is to be made. The appeal of the assessee is allowed and disallowance of Rs.40,81,018/- is deleted.

**7. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 16<sup>th</sup> March, 2023.

Sd/-

**(Girish Agrawal)  
Accountant Member**

Sd/-

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

***Kolkata, the 16<sup>th</sup> day of March, 2023***

*Copies to :(1) Rajmahal Coal Mining Limited,  
Industry House, 18<sup>th</sup> Floor,  
10, Camac Street, Kolkata-700017*

***(2) Assistant Commissioner of Income Tax,  
Circle-7(2), 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- , Kolkata;*
- (5) *The Departmental Representative*
- (6) *Guard File*

*TRUE COPY*

*By order*

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

***Laha/Sr. P.S.***