

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No.333/Mum/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

Yad Associates 10, Daulat Mension, Barrack Road, New Marine Lines-400020.	<b>बनाम/</b> Vs.	Assessing Officer, Circle- 17(3) Maharshi Karve Rd, New Marine Lines, Churchgate, Mumbai- 400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIFY0039P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sunil Hirawat	
Revenue by:	Ms. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 12/04/2023  
घोषणा की तारीख /Date of Pronouncement: 30/05/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 27.12.2022 for assessment year 2018-19.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the disallowance of Rs.92,627/- by CPC u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") for belated remittance of PF/ESIC u/s 36(1)(va) of the Act.

3. At the outset, the Ld. AR of the assessee Shri Sunil Hirawat drew our attention to the chart (infra) which shows (i) month of salary (ii) date on which salary paid (iii) Employees contribution to ESIC (iv) due date of ESIC payment (v) actual date of ESIC payment and delay in payment in accordance to the assessee. Likewise, the assessee has also given the chart of Provident Fund which is as under: -



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**For the Year Ended 31<sup>st</sup> March, 2018**  
**Assessment Year : 2018-2019**

**Details of contributions received from employees for various funds as referred to in section 36(1)(va)**

**A- ESIC**

Salary Month	Date of which Salary paid	Employees contribution to ESIC	Due Date of ESIC payment	Actual date of ESIC payment	Delay in Payment
April-17	10-May- 17	2,811	15- June-17	20-May-17	-
May-17	10-Jun-17	2,205	15-Jul-17	14-Jun-17	-
June-17	10-Jul-17	2,893	15-Aug-17	12-Jul-17	-
July-17	10-Aug-17	2,511	15-Sep-17	19-Aug-17	-
August-17	10-Sep-17	2,612	15-Oct-17	26-Sep-17	-
September-17	10-Oct-17	2,932	15-Nov-17	23-Oct-17	-
October-17	10-Nov-17	2,768	15-Dec-17	15-Nov-17	-
November-17	11-Dec-17	4,261	15-Jan-18	15-Dec-17	-
December-17	11-Jan-18	4,220	15-Feb-18	15-Jan-18	-
January- 18	03-Feb-18	4,797	15-Mar-18	14-Feb-18	-
February-18	12—Mar-18	5,259	15-Apr-18	15-Mar-18	-
March- 18	09-Apr- 18	4,876	15-Apr-18	31-Mar-18	-
<b>Total Rs.</b>		<b>42,145</b>			

**B-Provident Fund**

Salary Month	Date of which Salary paid	Employees contribution to ESIC	Due Date of ESIC payment	Actual date of ESIC payment	Delay in Payment
April-17	10-May- 17	18,111	15- June-17	20-May-17	-
May-17	10-Jun-17	14,718	15-Jul-17	16-Jun-17	-
June-17	10-Jul-17	18,544	15-Aug-17	12-Jul-17	-
July-17	10-Aug-17	16,121	15-Sep-17	19-Aug-17	-
August-17	10-Sep-17	16,804	15-Oct-17	22-Sep-17	-
September-17	10-Oct-17	18,818	15-Nov-17	16-Oct-17	-
October-17	09-Nov-17	17,714	15-Dec-17	15-Nov-17	-
November-17	11-Dec-17	18,620	15-Jan-18	15-Dec-17	-
December-17	11-Jan-18	18,816	15-Feb-18	13-Jan-18	-
January- 18	03-Feb-18	21,509	15-Mar-18	14-Feb-18	-
February-18	12-Mar-18	21,888	15-Apr-18	15-Mar-18	-
March- 18	09-Apr- 18	21,260	15-Apr-18	09-Apr-18	-
<b>Total Rs.</b>		<b>222,923</b>			

4. According to Ld AR, the chart above has been prepared in line with the decision of Tribunal (Kolkata) in Kanoi Papers (infra) and therefore, the disallowance made u/s 36(1)(va) of the Act is partly incorrect and in support of his submission relied on the decision of the Tribunal (Kol) in the case of Kanoi Papers & Industries Ltd. Vs. ACIT



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reported in (2002) 75 TTJ 448 (Cal) and especially para no. 6 of the order. It would be gainful to reproduce para 6 of the order of the Tribunal in the case of Kanoi Papers & Industries Ltd. (supra) which is as under: -

“6. Clause 38 of the Employees’ Provident Fund Scheme, 1952, fixes the time-limit for making payment in respect of contribution to the provident fund to be 15 days from the close of the month concerned. However, the issue here is whether the "month" should be considered to be the month which the wages relates or the month in which the actual disbursement of the wages is made, we are of the considered opinion that the expression "month" should mean here the month during which the wages/salary is actually disbursed irrespective of month to which the same relates. Thus, the scheme of the Government in this regard is that once a deduction is made in respect of the employees’ contribution to the provident fund from the salary/wages of the employee or the employer also makes his contribution, factually at the time of disbursement of the salary the payment in respect of such contribution should be made forthwith. if for some reason or other the payment of salary for a particular month be held up for considerable period of time it cannot be said that the employer would be liable to make payments in respect of the "employer's" as well as "employees" contribution in respect of wages for such period within a period of 15 days from the close of the month to which the wages relates. On the other hand, in our view, most appropriate interpretation would be that the employer would be at liberty to make payment of the contribution concerned within 15 days (subject however to the further grace period) from the end of the month during which the disbursement of the salary is actually made and the contribution of the provident fund are, thus, generated, inasmuch as, the provision relating to the disallowance of such contribution on account of delay is rather an artificial provision. In our view, a liberal approach has got to be made to this issue. Ultimately, therefore, we reverse the order of the lower authorities and direct the Assessing Officer to examine whether the payments of contribution in the present case were made within 15 days (allowed with further grace period of 5 days) from the close of the respective months during which the disbursement of the salary/wages were actually made. The Assessing Officer should recompute the amount disallowable, if any, on the above basis and take appropriate action accordingly.

7. In the result, the appeal filed by the assessee is partly allowed to the abovementioned extent.”

5. Per contra, the Ld. DR for the revenue cited the decision of the Hon’ble Supreme Court in the case of M/s. Checkmate Services Pvt.



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Ltd. Vs. CIT in (448 ITR 518) (SC) and submitted that the Employee's contribution towards PF/ESI account; if not remitted with in due date as prescribed under the respective PF/ESIC Act, need to be disallowed u/s 36(1)(va) of the Act; and countering the Ld AR's reliance on the decision of Kolkata Tribunal in Kanoi Papers (supra), the Ld DR relied on the decision of the Hon'ble Madras High Court in the case of CIT Vs. Madras Radiators & Pressing Ltd. (264 ITR 620) (Madras) wherein their Lordship has held that the term "*every month*" in clause 58 of the Provident Fund Scheme should be read as month in which the wages were actually earned i.e. *salary payable*. The relevant finding of the Hon'ble Madras High Court is reproduced as under: -

"4. In our considered opinion, we are of the view that the Tribunal is not correct in coming to the conclusion that there was some ambiguity in construing the expression "month" used in para 38 of the Scheme under the Provident Fund Act on the premise that the assessee used to pay the salary to its employees only on the 7th day of succeeding month under section 5 of the Payment of Wages Act. It is true that section 5 of the Payment of Wages Act provided for payment of wages in respect of certain categories of industries on or before the 7th day of succeeding month. However section 4 of the Act provided for fixation of wage period and also provided that no wage period shall extend one month.

5. Para 29 of the Scheme under the Provident Fund Act provided that the contribution payable should be calculated on the basis of the basic wages and other allowances actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis. The expression "basic wages" is defined as all emoluments, which are earned by an employee while on duty or



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on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him.

6. Para 30 of the Scheme of the Provident Fund Act imposed an obligation on the employer to remit both the shares of contributions in the first instance and para 32 empowered the employer to recover the employees' contributions from the wages of the employees. As per para 38 of the Scheme, the employer is required to remit both the contributions together with the administrative charges thereon within 15 days before the close of every month.

7. Thus as seen from the above provisions, it is clear that it is the responsibility of the employer to make payment of the contributions at the first instance irrespective of the fact, whether the wages are paid in time or not. Hence the actual payment of wages on the 7th day of succeeding month would not in any way alter the situation and give room for interpreting that the "close of 15th day" has to be calculated from the end of the month in which the wages were actually paid. The payment of wages on the 7th day of succeeding month would not in any way alter the initial responsibility of the employer for making payment of contributions, which he is statutorily authorized to recover from the employees salary, whether the salary is paid in time or not. Hence the one and only reasonable conclusion is that the employer has to remit both the contributions to the Provident Fund within 15 days from the close of the month for which the employees earned their salary *i.e.* Salary payable. Our view has been fortified by the Division Bench of this Court in *Presidency Kid Leather (P.) Ltd. v. Regional Provident Fund Commissioner* [1997] 91 F.J.R. 661, wherein the Division Bench of this Court held as follows :



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"As per para 38 of the Employees' Provident Funds Scheme, the employer is required to remit both the employees' as well as the employer's share of contributions together with administrative charges thereon before the close of the 15th of every month. Para 30 of the Scheme imposes an obligation on the employer to remit both the shares of contributions in the first instance and para 32 of the Scheme enables the employer to recover the employees' contributions from the wages of the employees. The initial responsibility for making payment of the contributions lies on the employer irrespective of the fact whether the wages are paid in time or not. As such, the Provident Fund payments made after the due date will attract the penal damages under section 14B of the Act."

The Tribunal committed serious error in coming to the contrary conclusion. Hence the first two questions of law referred to us are answered in the negative against the assessee and in favour of the Revenue."

**6.** We have heard both the parties and perused the records. The only grievance of the assessee is that even though it had made the remittance of (Employees contribution of PF/ESIC) within the due-date as per the PF/ESIC Act and as per the decision of the Kolkata Tribunal in the case of Kanoi Papers & Industries Ltd. (supra) and so disallowance ought not to have been made in this case. However, we note that since the Hon'ble High Court in the case of Madras Radiators & Pressing Ltd (supra) has laid the law on the issue, therefore respectfully following the decision of the Hon'ble Madras High Court (supra), we reject the prayer of the Ld. Counsel of the assessee for restoring the matter back to the AO. Therefore, in the light of the Hon'ble Supreme Court decision in the case of M/s. Checkmate Services Pvt. Ltd. (supra), we confirm disallowance confirmed by Ld.



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CIT(A) regarding belated deposit of the Employees contribution of PF/ESIC in the relevant fund u/s 36(1)(va) of the Act.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 30/05/2023.

Sd/-

Sd/-

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

(ABY T. VARKEY)  
JUDICIAL MEMBER

Mumbai; Dated 30/05/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai