

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 202/Ind/2022
(Assessment Year:2018-19)

Devendra Singh Chauhan 9, SchemeNo.113, vijay Nagar Indore	vs.	ITO-Ward 1(4) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ADCPC 7046 H		
Assessee by	Shri Girdhar Garg, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	17.05.2023	
Date of Pronouncement	25 .07.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 05.07.2021 of Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi for Assessment Year 2018-19.

2. At the outset, we note that this appeal was filed electronically on 01.09.2021 within the period of limitation and subsequently the appeal was also filed physically on 18th August 2022. Accordingly when the appeal was filed electronically within the period of limitation the same is treated as within the limitation.

3. The assessee has raised following grounds of appeal:

“That on the facts and circumstances of the case the Ld CIT(A) is in error to not deleted the addition of Rs. 2,15,634/- on account of delayed payment of employees contribution towards ESIC and PF and not considered the payment made by the assessee before the due date of Income Tax Return.

That the Ld CIT(A) is also not considered the Jurisdictional ITAT order in which the same is allowed. Further in order the CIT (A) has mentioned that MP High court is disallowed the same but in factual position there is no clearance on this issue in the order mentioned by the authorities. The CIT(A) is also not considered the decision of Hon'ble Supreme Court in which the same is allowed.

That the Ld COT (A) is considered the explanation inserted in the finance Act 2021 as retrospective but the same is to be considered as prospective in nature and applicable from 2022- 23 not for the assessment year 2018-2019.

Interest charged u/s 234A,234B and 234-C is arbitrary, illegal and bad-in-law on the facts and the circumstances of the case.

The Appellant craves, to leave, to add, to alter or amend any grounds of appeal at the time of or before final hearing of this appeal..”

4. The only issue arises in this appeal is regarding disallowance of employees contribution to EPF due to delay in payment. Ld. AR of the assessee has submitted that the delay in making payment towards employees contribution to EPF for the month of June 2017 up to due date of 15th July 2017 but actual payment made on 17th July 2017 was beyond the control of the assessee as it is compulsory to make online payment for PF for which the assessee is first required to generate ECR and then proceed for payment. The Ld. AR has submitted that in the Month of July 2017 site of the EPFO for generating ECR was not working properly and assessee was not able to generate the required form ECR for making payment online and ultimately the assessee succeed only on 17th July 2017 and accordingly payment was made on the same date. He has further submitted that even otherwise on 15 & 16 July 2017 was the Government holidays being Saturday and Sunday and banks of the assessee did not allow to make any Government payment on holidays and allowed the payment of Government dues only on next working day. Thus, the Ld. AR

has submitted that the delay of payment of Rs.1,88,760/- of two days was beyond the control of the assessee.

5. He has further submitted that the payments towards employees contribution of ESIC for the month of May was on 16.06.2017 as against the due date on 15.06.2017 due to the problem of the non-working of the ESIC-site. Therefore, there was only one day delay in payment of Employees Contribution on ESIC for the month of May as paid on 16th June 2017 and the said delay was due to non-working of the ESIC site for generating challan which is required for online payment. Ld. AR has submitted that the site was not properly working and assessee was not able to generate challan form and ultimately the assessee was successful only on 16th June 2017 to generate the same and accordingly the payment was made on the same date. Thus, the Ld. AR has submitted this delay of one day was also not in the control of the assessee but due to the reason which were beyond the control of the assessee.

6. The Ld. AR has then submitted that 3rd disallowance was made on account of ESIC payment for month of June 2017 due date for which was 15th July 2017 however the assessee made the payment of 21st July 2017 and therefore, he has fairly submitted that there is a delay in respect of the payment of Rs.18,704/- towards employees contribution to ESIC for the month of June 2017.

7. On the other hand, Ld. DR has submitted that once there is a delay in making payment to the respective account of EPF and ESIC the amount is liable to be disallowed u/s 36(1)(va) of the Act. He has relied upon the order of the Ld. CIT(A).

8. We have considered rival submission as well as relevant material on record. As regards the delay in payment of employee's contribution to EPF for the month of June 2017 is concerned the assessee made the payment of Rs.1,88,760/- on 17th July 2017 against the due date of 15th July 2017. The assessee has explained the delay due to technical glitch and non-functioning of the EPF site for generating ECR required for making online

payment. Further the payment could not be made through bank due to Saturday and Sunday on 15th & 16th of July 2017 respectively and the assessee has finally made the payment on 17th July 2017 when he was able to generate the ECR from the EPF site. The assessee has filed a copy of the communication which shows that the EPFO site was having problems of proper functioning even during the month of June, 2017. Thus, it is clear that the delay of two days in making payment of the employees contribution to EPF was beyond the control of the assessee and further if the limitation expires on closed holidays it would be considered as expired on the next working day. The online payment are not possible due to various reasons including non-availability of internet services in the area as shutdown due to maintenance or the order of the authorities and delay cause by such instances cannot be attributable to the assessee. Similarly when the EPFO site was not working properly and assessee was not able to generate the ECR which is required for making payment online then the cause of delay is certainly beyond the control of the assessee for which the assessee cannot be penalized. Accordingly in the facts and circumstances of the case when the assessee has explained the delay of two days which is beyond the control of the assessee then the payment of employees contribution to the EPF of Rs.1,88,760/- is to be considered as within time and the addition made by the CPC and confirmed by the Ld. CIT(A) on this account is deleted.

9. The other disallowance was made regarding the Employees Contribution to ESIC for the month of May 2017, the due date of payment was 15th June 2017 and payment was actual made by the assessee on 16.6.2017. The Ld. AR of the assessee has explained delay of one day due to non-functioning of ESIC site and consequently the assessee was not able to generate required challan for making online payment and finally the assessee was able to generate required challan and made payment on 16.6.2017. Therefore, the delay of one day due to the problem in functioning of the ESIC site has been explained as beyond the control of the assessee. Considering instances of the non-functioning of the ESIC and

EPF site we are of the considered opinion that the delay of one day due to the problem in non-functioning of the site cannot be attributable to the assessee and consequently the addition made by the CPC and confirmed by the Ld. CIT(A) of Rs. 8,170/- towards Employees Contribution to ESIC for the month of May is deleted.

10. The third addition was made on account of the employee's contribution to ESIC for the month of June, 2017 which was paid by the assessee on 21st July 2017 against the due date on 15th July 2017. Since Ld. AR of the assessee fairly concluded that there is a delay in making this payment on the part of the assessee therefore, the addition of Rs. 18,704/- towards employee's contribution to ESIC for the month of June, 2017 is sustained.

11. In the result, appeal of assessee is partly allowed.

Order in pronounced in Open Court on 25/ 07/2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 25 .07.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore