

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.412/Del/2023
Assessment Year: 2020-21

FIL India Business & Research Services Pvt. Ltd., Private Studio-NCR/AC/PS/00/010B, Ground floor, Worldmark 1, Asset Area 11, Aerocity, Hospitality District, Indira Gandhi International Airport, New Delhi-110037, PAN AABCF 1572 C	vs.	The ACIT, Circle-7(1), New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Shashwat Bajpai, Adv.
For Revenue :	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing :	27.07.2023
Date of Pronouncement :	10.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. NFAC, New Delhi dated 23.12.2022 for AY 2020-21.

2. The grounds have been raised by the assessee are as follows:-

1. That on the facts and circumstances of the case and in law, the order passed by the Commissioner of Income Tax Appeals [CIT(A)]'1 under section 250 of the Income tax Act ('the act) dated 23 December 2022 issued by National Faceless Appeal Centre (NFAC) is bad in law and void ab initio.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in passing an order basis incorrect set of facts, without application of mind and in a mechanical manner.

3. On the facts and circumstances of the case and in law, the CIT(A) failed to appreciate the fact that the delay in deposit of employees' contribution to provident fund (PF)

amounting to IN 21 439 579 is not attributable to the Appellant and the same was attributable to technical glitches on the EPFO portal.

4. On the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the aforesaid addition of IN 22,329,575 could not have been made by the Central Processing Centre under Section 143(1) of the Act as the same constitutes a debatable issue and does not fall within the ambit of prima facie adjustment as per Section 143(1) of the Act.

3. The Id. counsel of assessee submitted that on the facts and circumstances of the case and in law, the order passed by the Commissioner of Income Tax Appeals [CIT(A)] under section 250 of the Income tax Act ('the act') dated 23 December 2022 issued by National Faceless Appeal Centre (NFAC) is bad in law and void ab initio as the same has been passed on the basis of incorrect set of facts without application of mind and in a mechanical manner. The Id. counsel further submitted that the CIT(A) failed to appreciate the fact that the delay in deposit of employees' contribution to provident fund (PF) amounting to IN 21 439 579 is not attributable to the Appellant and the same was attributable to technical glitches on the EPFO portal. It has also been contended on behalf of the assessee that the CIT(A) failed to appreciate that the aforesaid addition of IN 22,329,575 could not have been made by the Central Processing Centre under Section 143(1) of the Act as the same constitutes a debatable issue and does not fall within the ambit of prima facie adjustment as per Section 143(1) of the Act.

4. The Id. counsel submitted that for the month of September 2019 the due date payment was 15.10.2019 and the assessee made payments by generating challan on 09.10.2019 and amount was debited to the bank account of assessee on 10.10.2019 which was reversed on 15.10.2019 crediting the bank account of assessee. He further submitted that in the second round finally the payment was transmitted to the account of concerned authority on 16.10.2019. The Id. counsel submitted that it is clearly evident that the appellant had duly deposited the above payment before the due date as per the PF Act i.e., the appellant had duly generated the challan on 9 October 2019 and made the payment pertaining to the month of September 2019 to the EPFO SBI account on October 10, 2019 i.e. 5 days before the due date of October 15, 2019. However, the payment got reversed on 15 October 2019 to the bank account of the appellant due to technical glitches on the EPFO portal/EPFO's SBI Account. Therefore no disallowance can be made when the amount due was available in the bank account of assessee on 09.10.2019 and it was transmitted to the concerned account on 10.10.2019 then if the payment is reversing and again transmitted the concerned account on 16.10.2019 then the assessee cannot be held as defaulter of payment attracting the action of the Assessing Officer to make disallowance therefore the Assessing Officer may kindly direct to delete the disallowance.

5. The Id. Senior DR supported the orders of the authorities below however, he did not controvert the factual position stated by the Id. counsel of the assessee.

6. On careful consideration of above, first of all, we note that the assessee for making payment for the month of September 2019 generated challan on 09.10.2019 and make payment which was debited to his bank account on 10.10.2019 as per statement given by the bank. However, the same was reversed on 15.10.2019 due to technical glitches on the EPFO portal/EPFO's SBI Account and the amount was again reversed/credited to the bank account of assessee. Finally the payment was transmitted to the bank account of EPFO on 16.10.2019 and realization was shown on 17.10.2019. As per Assessing Officer the payment was made beyond two days of specified date of 15.10.2019 and he made disallowance and the Id. CIT(A) also uphold the same.

7. In our humble understanding when the payment has been debited in the bank account of assessee and flouted further out of coffer of the assessee on 10.10.2019 then the assessee cannot be held responsible attracting the disallowance. Although the amount was again reversed and credited to the bank account of assessee on 15.10.2017 and finally transferred to the EPFO SBI account on 16.10.2019 then also the assessee cannot be held responsible for the two days delay which was caused due to the technical glitches on the EPFO Portal particularly when the assessee was having sufficient funds on 09.10.2019 and after generating challan first transmission of fund was effected on 10.10.2019 five days before the specified date of 15.10.2019. Accordingly, sole grievance of assessee is allowed and Assessing Officer directed to delete the disallowance/addition.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10.08.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 10th August 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi