

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos.988 & 989/Mum/2023
(A.Ys. 2019-20 to 2020-21)**

| | | |
|---|-----|--|
| Advanced Bolting Solutions Private Limited Plot No. W116(A), ABS House, TTC Industrial Area, MIDC, Khairane, Thane, Belapur Road, Navi Mumbai – 400708 | Vs. | Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHCA0785E | | |
| Appellant | .. | Respondent |

| | |
|-----------------|------------------|
| Appellant by : | Anuj Kisnadwala |
| Respondent by : | Ratnakar Shelake |

| | |
|-----------------------|------------|
| Date of Hearing | 07.07.2023 |
| Date of Pronouncement | 24.07.2023 |

आदेश / O R D E R

Per Amarjit Singh (AM):

These 2 appeals filed by the assessee are directed against the different order u/s 250 of the Act passed by the Id. CIT(A) for the assessment year 2019-20 & 2020-21. Since both these appeals are based on identical facts on similar issue, therefore, for the sake convenience both these appeals are adjudicated together by taking ITA No.989/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal of the assessee.

ITA No. 989/Mum/2023

- “1. That the Learned Commissioner of Income-Tax (Appeals) passed an order under section 250 of the Income-Tax Act 1961 on 28/02/2023 having DIN & Order No. ITBA/NFAC/S/250/2022-23/1050223108(1) dismissed the grounds of appeal and thereby Appeal without considering Appellant submissions.
2. That the Appellant denies their liability to be assessed at total income of Rs.3,47,37,050 against returned income of Rs.3,46,82,120 and accordingly denies their liability. This disallowance create hardship on the Assessee part who is genuine in deposit of funds.
3. That disallowance of Contribution to EPF and ESI aggregating to Rs.54,934 not deposited before due date but the same was paid before the due date of furnishing the Income-Tax return
4. That on the facts and in the circumstances of the case and in law, the Assessing Officer erred in framing of assessment under section 36 (1) (iv) read with section 2 (24) (x) of the Income Tax Act, 1961 where employees contribution received by the Assessee shall be first held as income under Section 2(24) (x) of the Act [as deemed income] and where it is deposited shall be then available as a deduction.
5. That appellant hereby states to their facts on the ground of case laws in *Shree Neeraj Maheshwari v. CIT CPC Bengaluru, Gulermak and PR Packaging*.
6. The appellant craves leave to substantiate and strengthen the grounds of appeal by presenting and putting forward further germane and factual materials and proofs before or at the time of hearing.
7. The appellant craves leave to make detailed and elaborate written submissions in relation to each grounds of appeal, as and when the occasion demands.
8. That the relied prayed for may kindly be allowed and the order of the Commissioner of Income-Tax (Appeals) may kindly be quashed, set aside or modified.”

2. The fact in brief is that assessing officer made adjustment in the intimation passed u/s 143(1) of the Act by way of disallowance of delayed remittance of employees contribution to PF/ESI to the amount of Rs.54,934/- for assessment year 2019-20 on the ground that same was paid beyond the due date.

3. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceeding before us the Id. Counsel contended that employee's contribution of Rs.54934/- to the EPF/ESI was paid before the due date of filing return of income for the assessment year 2019-20. However, out of the above payment on amount of Rs.14,784/- was pertained to ESI for the month of June 2018 and its due date for payment was 15 July 2018 but the actual payment was made on 16.07.2018 because 15th July 2018 was falling on Sunday. The Id. Counsel contended that disallowance was made without considering this fact that due date was falling on Sunday.

The Id. Counsel has also contended that the employer is required to deposit the PF/ESI contribution of the employees within 15 days of the close of every month. According to the, the Id. Counsel term every month is the month of payment of salary/remuneration to the employee and not the month for the salary or wages were due to the employees. In this regard, the Id. Counsel has referred the decision of ITAT in the case of New Rampgreen Technologies Pvt. Ltd. Vs. ITO-7(2)94) vide ITA No. 3216/Mum/2022 dated 15.05.2023 for A.Y. 2015-16 and the decision in the case of The Masters Polishers Vs. ACIT, CPC Bangalore vide ITA No. 252/Mum/2023 for AY. 2020-21 dated 26.04.2023.

On the other hand, the Id. D.R has supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above we consider that Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1, Civil Appeal No. 2833 of 2016 dated 12.10.2022 set at rest the entire controversy wherein it is held that employer have to deposit the employees contribution towards PF/ESIC on or before the due date prescribed in the respective law for availing the deduction. Regarding the contention of the assessee that whether it is the month for the

salary/wages are due or month of the payment of the salary to be taken for the purpose of deposit the PF/ESI contribution of the employee. In this regard, we find that the cases referred by the Id. Counsel are of no help in view of the decision of Hon'ble Madras High Court in the case of Radiators & Pressing Ltd. 263 ITR 620 wherein it is held that the term 'every month' in clause 38 of the provident fund scheme should be read as month in which the wages were actually earned i.e. salary payable. We find that coordinate bench of the ITAT in the case of Creative Textiles Mills Pvt. Ltd. Vs. DCIT CPC vide ITA No. 409/Mum/2022 A.Y. 2018-19 dated 31.05.2023 after following the decision of Hon'ble Madras High Court as referred above as dismissed the appeal of the assessee. The relevant part of the decision as reproduced as under:

"3.1 However, we find that the Hon'ble Madras High Court in the case of the Commissioner of Income-tax v. Madras Radiators & Pressing Ltd. 264 ITR 620 Madras 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 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 authorised 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 CIT (1997) 91 F.J.R. 661*, wherein the Division Bench of this court held as follows :*

“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.”

(emphasis supplied externally)

3.2 The Hon'ble High Court being higher in hierarchy of judiciary than the Tribunal, therefore, 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 Assessing Officer. The grounds of appeal of the assessee are accordingly dismissed.

4. In the result, the appeal of the assessee is dismissed.”

Following the decision of Hon'ble Madras High Court as referred above we don't find any merit in this plea of the assessee.

However, regarding the other contention of the assessee that one payment to the amount of Rs.14,784/- was actually paid on 16.07.2018 as against the due date of payment 15.07.2018 which was falling on Sunday i.e. public holiday. Considering this fact we restore this limited issue to the file of the AO for deciding after verification and examination of the detail filed by the assessee. Therefore, the ground of appeal of the assessee is partly allowed for statistical purposes.

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

ITA No.988/Mum/2023

7. This appeal of the assessee is based on the identical issue on similar facts as we have adjudicated vide ITA No. 989/Mum/2023 as supra, therefore, applying the same finding as mutatis mutandis this appeal of the assessee stand dismissed.

8. In the result, the appeal of the assessee i.e ITA No. 989/Mum/2023 is partly allowed and ITA No. 988/Mum/2023 is dismissed.

Order pronounced in the open court on 24.07.2023

Sd/-

(Kavitha Rajagopal)
Judicial Member

Place: Mumbai

Date 24.07.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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