

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3000/DEL/2022: A.Y. 2018-19
&
ITA No.3001/DEL/2022: A.Y. 2019-20**

Vivek Dutta, 201/A, DLF Centre Point, 2 nd Floor, Mathura Road, Sector-11, Faridabad-121006 PAN- AAVPD3877B	<u>Vs</u>	DCIT, Circle-2(1), Faridabad.
APPELLANT		RESPONDENT
Assessee represented by	Shri S.B. Gupta, CA	
Department represented by	Shri Amit Katoch, Sr. DR	
Date of hearing	29.08.2023	
Date of pronouncement	29.08.2023	

ORDER

PER KUL BHARAT, JM:

The captioned appeals, by the assessee, are directed against separate orders of even date passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 03.11.2022, pertaining to

the assessment years 2018-19 & 2019-20 respectively. The assessee has raised following grounds of appeal:

ITA No. 3000/Del/2022 (A.Y. 2018-19):

“1. That the addition in the Intimation u/s 143(1) of the employees' contribution to PF and ESI of Rs. 41,26,006 and Rs. 8,35,858 respectively, totaling to Rs. 49,61,864, on the basis of the date of payment reported in Clause No. 20(b) of the Form 3CD, is illegal and unjustified and, therefore, ought to be deleted.

2. That the addition of the employees' contribution to PF of Rs. 41,26,006 for September, 2017 deposited by the assessee with the concerned authorities under PF Act on or before 16.10.2017, on the basis of date 16.10.2017 reported in Clause No. 20(b) of the Form 3CD, ignoring the fact that the due date was 16.10.2017 itself because 15.10.2017 was holiday being Sunday, is illegal and unjustified and, therefore, ought to be deleted.

3. That the addition of the employees' contribution to ESI of Rs. 8,35,858 deposited by the assessee with the concerned authorities under ESI Act, on the basis of incorrect date 16.12.2017 reported in Clause No 20(b) of the Form 3CD due to typographical clerical error owing to technical glitch while punching data in the Income Tax Department tax audit report filing software, while Rs. 6,11,731 out of the said Rs 8,35,858 was actually paid upto 15.12.2017, i.e. on or before the due date, and, therefore, addition to the extent of Rs. 6,11,731 is illegal and unjustified and thus ought to be deleted.

4. That the evidence of payment by the assessee upto 15.12.2017 of Rs. 6,11,731 towards employees contribution for the month of November 2017 to the concerned authorities under the ESI Act may kindly be admitted as additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 and consequently, addition to the extent of Rs. 6,11,731 out of the addition of Rs. 8,35,858 made in the Intimation u/s 143(1) ought to be deleted.

5. The appellant craves leave to add, delete, amend or modify any ground at the time of hearing.”

ITA No. 3001/Del/2022 (A.Y. 2019-20):

“1. That the addition in the Intimation u/s 143(1) of the employees’ contribution to ESI of Rs. 9,37,580, on the basis of the date of payment reported in Clause No. 20(b) of the Form 3CD, is illegal and unjustified and, therefore, ought to be deleted.

2. That the addition of Rs. 9,37,580 of the employees’ contribution to ESI deposited by the assessee with the concerned authorities under ESI Act, on the basis of incorrect date 14.09.2019 reported in Clause No 20(b) of the Form 3CD due to typographical clerical error owing to technical glitch while punching data in the Income Tax Department tax audit report filing software, instead of actual date of payment 14.09.2018 referred to in the Commissioner (Appeals)’s order, is illegal and unjustified and, therefore, ought to be deleted.

3. That the addition of Rs. 9,37,580 in the intimation u/s 143(1) on the basis of actual date of payment of employees’ contribution to ESI with the concerned authorities under ESI Act reported in Clause No. 20(b) of the Form 3CD as against 14.09.2019 against the due date of 15.09.2018 is illegal and unjustified because the actual date of payment is 14.09.2018 i.e. before the due date and, therefore, the addition ought to be deleted.

4. The appellant craves leave to add, delete, amend or modify any ground at the time of hearing.”

2. Learned counsel for the assessee in regard to appeal for A.Y. 2018-19 submitted that the due date for payment of employees’ contribution towards provident fund and ESI was 15.10.2017, which was Sunday. The assessee made the deposits on 16.10.2017. He thus submitted that qua these two deposits the assessee is entitled to benefit of Section 10 of the General Clauses Act. In support of its contention learned counsel relied on the order dated 18.07.2023 of the

coordinate Bench of the ITAT Delhi Bench 'F' rendered in ITA no. 340/Del/2023 in the case of Radial International Vs. DCIT.

3. With regard to appeal for A.Y. 2019-20, learned counsel submitted that the due date for payment of employees' contribution towards ESI was 15.09.2018 and the payment was made well within time on 14.09.2018. However, by typographical mistake in Clause No. 20(b) of Form no. 3CD the date of payment was written as 14.09.2019. He, therefore, submitted that the appeals of the assessee may be allowed by deleting the additions in question.

4. Learned DR, however, relied on the decision of the Hon'ble Supreme Court in the Bunch case of CheckMate Services P. Ltd. Vs. CIT in Civil Appeal No. 2833 of 2016 & others dated October 12,2022. He however raised no objection in restoring the matter for both the assessment years to the file of AO for verification about the claim of the assessee. We, therefore, set aside the impugned orders for both the assessment years in question and restore the matter to the file of AO to verify whether for A.Y. 2018-19 the limitation for deposit of Employees' contribution of EPF & ESI was expiring on Sunday, if so, the AO would allow the claim of the assessee. Similarly, for A.Y. 2019-20 the AO would verify whether the assessee had made deposit well within time, if so, the AO would delete the addition. Grounds are allowed for statistical purposes.

5. Appeals of the assessee are allowed for statistical purposes.

Order pronounced in open court on 29th August, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI