

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA JUDICIAL MEMBER**

ITA No.931 to 933/Del/2023

Assessment Year: 2020-21, 2018-19 & 2019-20

Devender Singh 11, Hanuman Mandir Complex, Old Palm Road, Dundahera, Gurgaon PAN No.AVLPS5206J (APPELLANT)	Vs	ITO Ward- 30 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Manoj Kumar, CA
Respondent by	Sh. Vivek Kumar Upadhyay, Sr DR

Date of hearing:	05/09/2023
Date of Pronouncement:	05/09/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.931/Del/2023, ITA No.932/Del/2023 and 933/Del/2023 are three separate appeals by the assessee preferred against three separate orders of NFAC dated 26.12.2022 pertaining to A.Y.2020-21, 2018-19 and 2019-20.

2. Since common issues are involved in the captioned appeals they are decided by this common order for the sake of convenience and brevity.

3. The common grievance in all the appeals relates to the addition on account of delay in deposit of ESI/ EPF.

4. The captioned appeals are barred by limitation as there is a delay of 35 days in filing each appeal.

5. We have carefully perused the contents of the application for condoning the delay supported by the affidavit of the assessee. We are convinced that the assessee was prevented by reasonable and sufficient cause in not filing the appeals on time. The delay is condoned.

6. We have carefully perused the orders of the NFAC and there is no dispute that there was a delay in depositing the EPF/ESI. However, the Counsel for the assessee stated that the delay should be considered in the light of the provisions of the respective Act in support of his contentions, the Counsel relied upon the decision of the coordinate Bench in ITA No.164/Del/2023 order dated 04.07.2023.

7. We have carefully considered the decision of the coordinate Bench and the same read as under :-

5. We have heard the rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue – in – dispute is in respect of employee's contribution to provident fund (PF) and employee state insurance corporation

(ESIC) fund amounting to Rs.84,43,087/- and Rs.8,58,774/- respectively. The provisions of the Act provide for payment of the employee's contribution of PF/ESI on or before the due date prescribed under the relevant PF/ESI and the issue-in-dispute is in respect of due date prescribed. According to the assessee, the due has to be reckoned within 15 days from the close of the month in which payment is made to the employee, whereas according to Revenue the contribution has to be deposited within the 15 days from the close of the month for which salary/wages of the employee is due. The Ld. Counsel has referred to the decisions of the Hon'ble Calcutta Tribunal in the case of Kanoi Paper & Industries Ltd. Vs. ACIT ITA No. 1260/Cal/1996. The relevant finding of the Tribunal is reproduced 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 to 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"

5.1 In our opinion, it will be appropriate if the term every month' specified in Provident Fund scheme, whether it is the month for which salary/wages are due or month of the payment is referred to Relevant Authorities for finding out with reference to any judicial precedent in respect of provisions of

the relevant Act. Accordingly, we restored this issue back to the file of the Ld. Assessing Officer with the direction to find out from the relevant PF authorities about the term 'every month' as mentioned in clause 38 of the employees provident fund scheme. Similarly, he may find out from the ESI Authorities. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of appeal of the assessee are accordingly allowed for statistical purposes."

6. Placing reliance on this decision the Id. Counsel submits that a direction may be given to the Assessing Officer to verify the "due date" specified in the PF Act and decide the issue accordingly. Considering the submissions of the Id. Counsel and the decision of the Mumbai Tribunal (supra) we restore this issue to the file of the Assessing Officer to decide the issue keeping in view the directions by the Mumbai Bench of the Tribunal in the case of The Master polishers vs. ACIT (supra). This ground is allowed for statistical purposes.

8. Respectfully following the decision of the coordinate Bench we set aside the issue to the files of the AO with a direction to verify the due date specified in the PF Act and decide accordingly after affording a reasonable and adequate opportunity of being heard to the assessee.

9. In the result, the appeals of the assessee are allowed for statistical purpose.

10. Decision announced in the open court on 05.09.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: .09.2023

Neha

Copy forwarded to:

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

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi