

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1631/M/2021  
Assessment Year : 2017-18**

M/s. Reliance Fire Brigade Services Private Limited, 5 <sup>th</sup> Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai – 400 002 <b>PAN: AABCR1426R</b>	Vs.	Deputy Commissioner of Income Tax, Centralized Processing Centre (CPC), Bangalore
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nimesh Vora, A.R. &  
Ms. Moksha Mehta, A.R.

Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 10 . 07 . 2023

Date of Pronouncement : 25 . 08 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Reliance Fire Brigade Services Private Limited (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 29.07.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

*“On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (National Faceless Appeal Centre) (hereinafter referred to as CIT(A));*

**Intimation under section 143(1) beyond jurisdiction**

*1. Erred in upholding action of AO by confirming that adjustment made by the learned Deputy Commissioner of Income tax, CPC ('the AO') are within the purview of section 143(1)(a) of the Income-tax Act, 1961 (the Act).*

*2. Failed to appreciate that the issue is debatable in view of contrary views of different High courts and hence no adjustment under section 143(1)(a) is warranted.*

**Ground No.2: Disallowance u/s 36(1)(va) of the Act**

*3. Erred in confirming the action of the AO in disallowing 16,32,527/- under section 36(1)(va) of Act on the basis that there has been delay in depositing of employees' contribution towards Provident Fund (PF) as reported in the Tax Audit Report.*

*4. Failed to appreciate that the payment was either made with the extended period by the respective PF authorities or could not be made within prescribed due date due to technical glitches and non-functioning of the portal.*

*5. Without prejudice to the above, failed to appreciate the fact that the payment of employees' contribution towards PF was made before the due date of filing the return of Income, accordingly such payment cannot be disallowed under section 36(1)(va) or even under section 43B.*

*The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit and craves leave to consider all the grounds as without prejudice to each other.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of supplying manpower as per the requirements of its customers for fire safety operation. The return of income filed by the assessee qua the year under consideration declaring total income at Rs.28,77,058/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act') by the Centralized Processing Centre (CPC)/Assessing Officer (AO), Bangalore by

disallowing an amount of Rs.16,32,527/- on account of delayed deposit being payment of employees contribution towards Provident Fund (PF) under section 36(1)(va) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance made by the CPC/AO by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee company has made delayed payment of employees' contribution on account of PF after due date prescribed under the Act under section 36(1)(va) read with section 2(24)(x) of the Act but certainly before the due date of filing the return.

6. The Ld. A.R. for the assessee company challenging the impugned order passed by the Ld. CIT(A) contended that disallowing employees' contribution to PF while processing the return under section 143(1) is against the provision of the Act as it would not fall within the ambit of prima-facie adjustment, hence liable to be allowed and that when the issue in question is a debatable one view taken in favour of the assessee company is to prevail and relied upon plethora of orders passed by the Hon'ble

High Court of Gujarat, Hon'ble High Court of Madras and co-ordinate Bench of the Tribunal cited as (2023) 148 taxmann.com 153 (Mumbai-Trib.) in case of P.R. Packaging Service vs. ACIT, Income Tax Officer vs. Gujarat Power Corpn. Ltd. (2002) 122 Taxman 367 (Gujarat) and CIT vs. Nameel Leathers & Uppers (2005) 273 ITR 350 (Madras).

7. The Ld. A.R. for the assessee further contended that the entire payment on account of employees' contribution towards PF has been made within time. In case of payment of Rs.8,09,814/- & Rs.8,22,713/- which was due to be paid on 15.01.2017 and 15.03.2017 was made on 19.01.2017 & 18.03.2017 respectively which is well within time as due date of 15.01.2017 & 15.03.2017 was extended to 20.01.2017 & 18.03.2017 by the Employees Provident Fund Officer (EPFO). It is further contended by the Ld. A.R. for the assessee that the initial date for deposit of PF qua the employees' contribution was extended as on the due date prescribed under the Act but EPFO portal was not functioning and drew my attention towards tweet available at page 20 of the paper book and news item published in Indian Express dated December 23, 2016 at page 23, 24 news item published in other news media namely the News Minute, NSE etc. available at page 25 to 39. The assessee also brought on record letter dated 12.01.2017 issued by EPFO Addl. CPFC-I(F&A), to all Employees Provident Fund Organization whereby 5days grace period has been given to the employers to deposit the contribution and other dues for the monthly of December 2016 by 20.01.2017. The assessee also brought on record one letter dated 15.03.2017 issued to EPFO through email making a request therein that due to non functioning

of EPFO portal they are unable to frame the statutory dues for the month of February 2017 payable by 15.03.2017.

8. For the facility of reference statement of contribution of employees' PF has been brought on record by the assessee in tabulated form which is extracted for ready perusal as under:

Before the Income Tax Appellate Tribunal, Mumbai, 'SMC' Bench

Reliance Fire Brigade Services Private Limited

PAN: AABCR1426R

Assessment Year: 2017-18

Appeal No.: ITA 1631/MUM/2021

Statement of Contribution to Employees Provident fund – clause 20(b) of the tax audit report

Sr. No.	for the month of	Amount	payment	payment	Remarks
1	April 2016	6,75,968	15-05-2016	13-05-2016	No delay
2	May 2016	7,78,512	15-06-2016	13-06-2016	No delay
3	June 2016	7,82,118	15-07-2016	13-07-2016	No delay
4	July 2016	7,82,369	15-08-2016	12-08-2016	No delay
5	August 2016	8,18,071	15-09-2016	15-09-2016	No delay
6	September 2016	8,24,763	15-10-2016	14-10-2016	No delay
7	October 2016	8,10,432	15-11-2016	15-11-2016	No delay
8	November 2016	8,05,642	15-12-2016	15-12-2016	No delay
9	December 2016	8,09,814	15-01-2017	19-01-2017	No delay as due date extended to 20-01-2017 by the EPFO
10	January 2017	8,41,055	15-02-2017	15-02-2017	No delay
11	February 2017	8,22,713	15-03-2017	18-03-2017	The EPFO portal not functioning hence, could pay on 18-03-2017 instead of 15-03-2017
12	March 2017	8,21,615	15-04-2017	13-04-2017	No delay

9. Letter for extension of period for the month of December 2016 extending due date by 20.01.2017 instead of 15.01.2017 is also extracted for ready perusal as under:

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For Web Circulation Only

**कर्मचारी भविष्य निधि संगठन**  
**Employees' Provident Fund Organisation**  
(भारत एवं रोजगार मंत्रालय, भारत सरकार)  
(Ministry of Labour & Employment, Govt. of India)  
मुख्य कार्यालय / Head Office  
भविष्य निधि भवन, 14, भीकाइजी कामा प्लेस, नई दिल्ली - 110 066.  
Bhavishya Nidhi Bhawan, 14-Bhikaji Cama Place, New Delhi-110066  
www.epfindia.gov.in www.epfindia.nic.in  
Telephone: 011-26713254 Fax: 011-26166609 Email: jagmohan@epfindia.gov.in

No. WSU/9(1)2013/Settlement of Claims / **26308** Date: 12.01.2017

To

All ACCs (Zones)  
All RPFs-Incharge of  
ROs/SROs.

**Subj: Payment of contributions & other dues by the employers – Grace period for 5 days for the employers for the month of December, 2016.**

Sir/Madam,

Please refer to the above said subject.

2. The Unified Portal of EPFO was made operational on 23<sup>rd</sup> December, 2016. A number of references are being received from the employers highlighting the problems on the portal in upfront allotment of UAN, connectivity issues, login issues, website slowdown/hanging, awareness of new procedures etc. IS Division is making efforts to remove the difficulties and stabilize the unified portal.

3. In view of the above, the competent authority has decided that, as a special case, concession of grace period of 5 days is allowed for the employers to deposit the contribution and other dues for the month of December, 2016 by 20<sup>th</sup> January, 2017.

Yours faithfully,

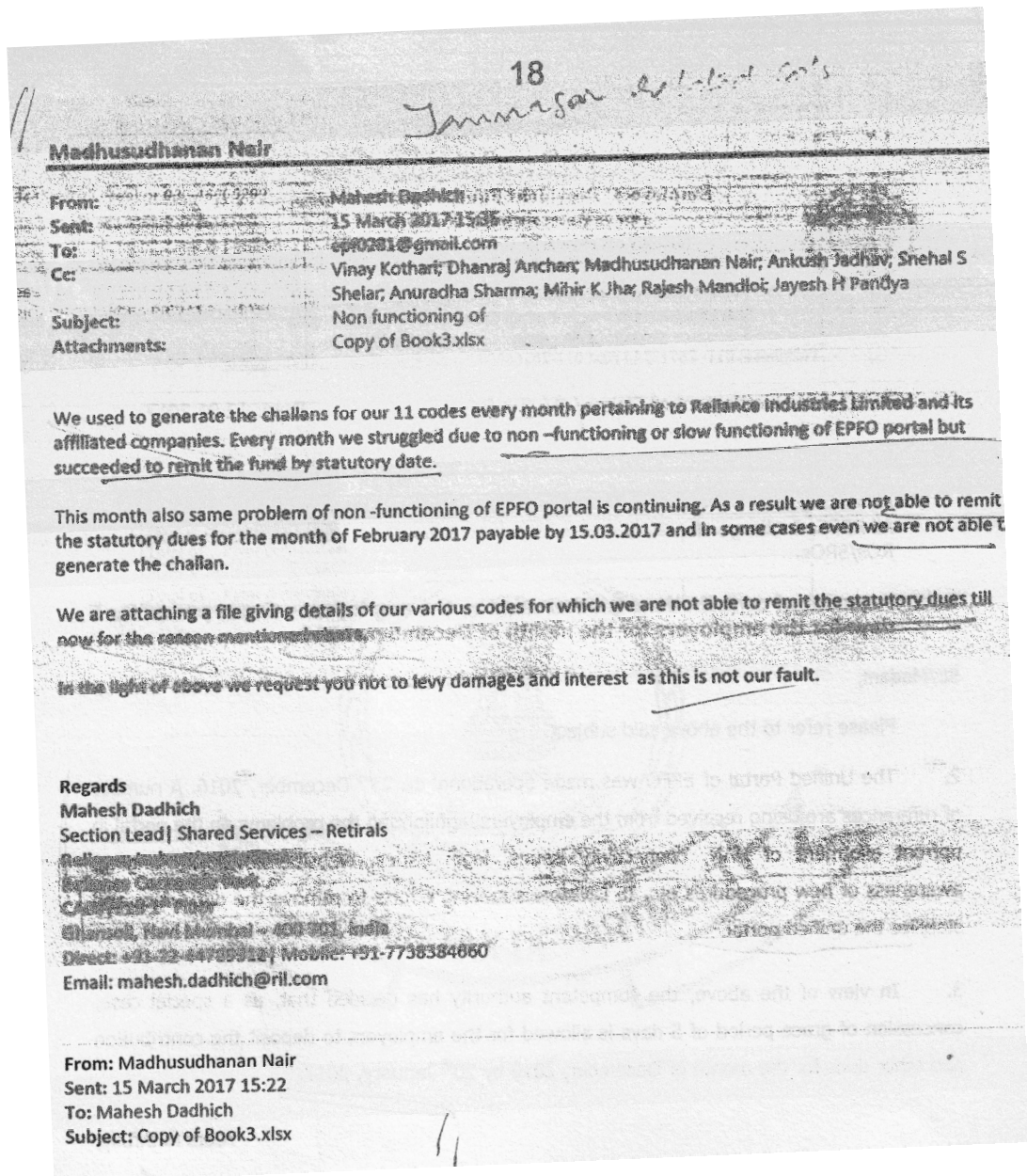
(Jagmohan)  
Addl. CPFC-I (F&A)

**Copy to:**

1. RPF (NDC) for web upload and SMS & Emails to the employers.  
2. DD (OL) for Hindi translation.

CERTIFIED TRUE COPY  
M.No. 125073

10. Letter sent through mail by the assessee company to the EPFO for non functioning of the EPFO portal for depositing the dues for the month of February 2017 payable by 15.03.2017 is extracted for ready perusal as under:



11. From the evidence brought on record by the assessee discussed in the preceding paras it stood proved on record that delay on the part of assessee for depositing the employees contribution towards PF for the month of December 2017 cannot be attributed to the assessee as he has made attempts to deposit the same within due date but due to non functioning of the portal the same could not be deposited and after admitting the factum of non functioning of the portal of the EPFO the date was extended by

which date assessee made the payment of Rs.8,09,814/- required to be deposited by due date on or before 15.01.2017 but deposited on 19.01.2017 prior to the extended date of 20.01.2017.

12. So far as second payment of Rs.8,22,713/- required to be deposited on or before the due date prescribed under the Act i.e. 15.03.2017 was deposited on 18.03.2017 is concerned, no doubt the assessee issued a mail on 15.03.2017 at 3:33 P.M. to the EPFO stating therein that they are unable to remit the statutory dues for the month of February 2017 payable by 15.03.2017 but no such order extending the due date by the EPFO on account of non functioning of the EPFO portal has been brought on record.

13. In these circumstances payment of Rs.8,09,814/- due to be deposited by 15.01.2017 for the month of December 2016 is ordered to be treated having been deposited well within due date as per the order dated 12.01.2017 passed by EPFO as assessee was not at fault to deposit the payment which was delayed due to malfunctioning of the EPFO portal.

14. However, the AO to verify the facts as to payment of Rs.8,22,713/- due to be deposited by 15.03.2017 and actually deposited on 18.03.2017, if pursuant to the request made by the assessee vide mail dated 15.03.2017 (supra) to EPFO, EPFO has extended time to deposit the dues due to malfunctioning of their portal. If the assessee produces any such order before the AO the amount of Rs.8,22,713/- be allowed as deduction under section 36(1)(va) of the Act.

15. The contention raised by the Ld. D.R. for the Revenue that in view of the decision rendered by Hon'ble Supreme Court in case of Checkmate Services in Civil Appeal No.2833 of 2016 order dated 12.10.2022 due date for depositing of the employees' contribution of PF cannot be extended is not sustainable in view of the peculiar facts of this case as the assessee was never at fault nor had its intention to delay the deposit of employees' contribution of PF but delay was caused due to non functioning of the EPFO portal which stood extended vide order dated 12.01.2017 passed by EPFO (supra) for the payment of Rs.8,09,814/- for the month of December 2016.

16. In view of what has been discussed above, appeal filed by the assessee is partly allowed.

**Order pronounced in the open court on 25.08.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 25.08.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.