

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

**BEFORE SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2980/Del/2022  
(Assessment Year : 2020-21)

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| CHW Forge Pvt. Ltd.<br>Near Hapur Road Flyover,<br>Maliwara, Ghaziabad,<br>Uttar Pradesh - 201 001<br><br><b>PAN No. AAACC 6049 C</b><br><b>(APPELLANT)</b> | Vs. | DCIT<br>Special Range 2(4)<br>Ghaziabad<br><br><b>(RESPONDENT)</b> |
|---|-----|--|

|             |                             |
|-------------|-----------------------------|
| Assessee by | Shri Manoj Singhal, C.A.    |
| Revenue by  | Shri N. K. Bansal, Sr. D.R. |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 19.07.2023 |
| Date of Pronouncement: | 16.10.2023 |

**ORDER**

**PER PRADIP KUMAR KEDIA, AM :**

The captioned appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) - NFAC, Delhi ('CIT(A)' in short) dated 25.10.2022 arising from the intimation order dated 24.12.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2021-21.

2. As per the grounds of appeal, the assessee seeks to challenge the disallowance of employees contribution to provident fund under Section 36(1)(va) of the Act read with Section 43B of the Act to the extent of Rs.12,84,043/-.

3. When the matter was called for hearing, the Learned Counsel made two fold submissions; firstly, the contribution on account of Provident Fund/ESIC is not delayed and

the factual assumption in this regard is incorrect. Secondly, after drawing the intimation under Section 143(1) of the Act, the case was selected under scrutiny and the assessment was framed under Section 143(3) of the Act where no such addition/disallowance under Section 36(1)(va) read with Section 143 of the Act were made. The intimation framed under Section 143(1) of the Act thus merges with the assessment order framed under Section 143(3) of the Act and consequently, the addition/adjustment made under Section 143(1) of the Act is no longer sustainable in law.

4. Learned DR for the Revenue, on the other hand, strongly supported the order of the lower authorities and contended that the grace period of 5 days under respective Labour Acts are not available anymore. The assessee is dutifully required to make the payment on or before 15 day from the close of every month towards employees contribution and where the payment is belated even by one day, the benefit of deduction towards employees contribution under Section 36(1)(va) read with Section 43B of the Act is not available as per the scheme of AO. It was further submitted that the intimation was drawn under Section 143(1) of the Act towards belated payment of employees contribution and there is no whisper in the final assessment order as to whether this aspect has been considered while framing the assessment. It was submitted that it was quite possible that such issue has not been examined at all and therefore, the additions made on account of belated payment of contribution would survive and doctrine of merger would not apply.

5. We are carefully considered rival submissions. The controversy revolves around disallowance of employees contribution towards PF/ESIC.

5.1 The factual matrix provided on behalf of the assessee on payment of employees contribution is reproduced hereunder:

***Contributions received from Employees for various funds referred to in section 36(1)(va)***

| <b><i>Sr. No.</i></b> | <b><i>Nature of Funds</i></b> | <b><i>Sum recd. From Employees</i></b> | <b><i>Due date of Payment</i></b> | <b><i>Amount Paid</i></b> | <b><i>Actual date of Payment</i></b> |
|-----------------------|-------------------------------|--|-----------------------------------|---------------------------|--------------------------------------|
| 1.                    | <i>Provident Fund</i>         | 12,83,713                              | 15.12.2019                        | 12,83,713                 | 16.12.2019 as                        |

|              |                              |                  |            |                  |                           |
|--------------|------------------------------|------------------|------------|------------------|---------------------------|
|              |                              |                  |            |                  | 15.12.2019<br>was Sunday. |
| 2.           | Fund set up under<br>ESI Act | 330              | 15.05.2020 | 330              | 15.07.2020                |
| <b>Total</b> |                              | <b>12,84,043</b> |            | <b>12,84,043</b> |                           |

5.2 The assessee has claimed that the payment of Rs.12,83,713/- was made on 16.12.2019 as the immediate preceding day i.e. 15.12.2019 was Sunday i.e. holiday. Same is the case towards ESIC payment. We find that identical issue has been examined by the Co-ordinate Bench in the case of *G. D. Foods and Manufacturing (India) Pvt. Ltd. vs. ADIT (2023) 152 taxmann.com 323 (Delhi)* and thus no longer *res integra*. The relevant head notes of the decision of the Tribunal is reproduced hereunder for ready reference :

*“Section 36(1)(va) of the Income-tax Act, 1961 read with clause 10 of the General clauses Act, 1897-Employee's contributions - Assessment year 2019-20 - Assessee made payment towards employee's contribution towards EPF and ESI-Assessing Officer disallowed same on ground that deposit of contribution towards EPF & ESIC was made beyond stipulated period prescribed in respective Acts - It was noted that due date for depositing contribution of ESIC & EPF fell on Sunday and gazetted holiday and assessee had made payment on very next day - Assessee had no intention not to deposit contribution of ESI & EPF well within time and depositing contribution very next day of holiday proved bona fide off assessee- Whether contributions of ESIC and EPF made by assessee with one day delay was allowable when due date for payment of ESIC and EPF contributions prescribed in respective acts of ESI & PF fell on Sunday or gazetted holiday-Held, yes [Para 11] [In favour of assessee]”*

5.3 We thus do not see any reason to take a different view in the factual matrix. There appears to be no delay in compliance of Labour Acts towards deposit of employees contribution to PF/ESIC and the payment is deemed to be made with the time frame prescribed under Labour enactments. On this ground alone, the case made out on behalf of the assessee requires to be accepted.

6. In this view of the matter, we do not consider it necessary to look into other aspects of the matter.

7. We, thus, set aside the order of the CIT(A) and direct the Assessing Officer to reverse the disallowance.

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

**Order pronounced in the open court on 16.10.2023**

**Sd/-**

**(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER**

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Date:- 16.10.2023

*Priiti Yadav\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI