

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.978/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2019-20

Atlas Copco (India) Ltd.,  
Mumbai-Pune Road,  
Sveanagar, Dapodi,  
Pune City, Pune - 411012

PAN : AAACA4074D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle - 8, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ketan K. Ved  
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 27-10-2023  
घोषणा की तारीख / Date of Pronouncement : 31-10-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 16-12-2022 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2019-20.

2. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC, Delhi justified in confirming the disallowance made by the CPC, Bangalore

u/s. 154 of the Act on account of disallowance of employees contribution to PF.

3. We find this appeal was filed with a delay of 204 days. The assessee filed notarized affidavit dated 04-09-2023 explaining the reasons for the said delay. The deponent, Managing Director of the assessee states that the impugned order dated 16-12-2022 passed by the CIT(A) was received by the assessee on the same day against which an appeal required to be filed before this Tribunal on or before 23-02-2023. The present appeal filed realizing a favourable judicial precedent on exactly identical fact by the ITAT, Delhi. The ld. AR taking reference to such averments made by the deponent therein, submits that the appeal was not filed in time due to fact that the Hon'ble Supreme Court decided an issue in the case of Checkmate Services Pvt. Ltd. reported in (2022) 448 ITR 518 (SC) which was followed by the CIT(A), but, later on, the assessee came to the knowledge of passing of order by the Delhi, ITAT exactly the same issue, thereafter the assessee decided to file the appeal with delay and drew our attention to the case laws compilation.

4. The ld. DR, Shri Ramnath P. Murkude submits that there was no sufficient cause made out by the assessee in not filing the appeal in time and the reasons stated by the assessee does not show the sufficient cause. The ld. DR submits that non-filing of appeal within time suggests acceptance of impugned order and filing an appeal with delay realizing favourable orders from higher forum does not amount to showing the sufficient cause, but amounts to taking advantage of process of law. This Tribunal shall not allow such kind of delay condonation petition, if allowed which amounts to opening of gates to entertain such kind of appeal i.e. filed with frivolous reasons. The assessee did not file an appeal against

impugned order as an issue was settled by the Hon'ble Supreme Court decided in the case of Checkmate Services Pvt. Ltd. (supra) and having failed to show sufficient cause to condone the delay of 204 days, opposed vehemently in condoning the delay.

5. After hearing both the parties, we find force in the arguments of ld. DR as the fact remains admitted that the assessee did not file an appeal against the impugned order, wherein, the First Appellate Authority by following the decision of Hon'ble Supreme Court decided in the case of Checkmate Services Pvt. Ltd. (supra) confirmed the addition made by the AO on account of late deposit of employees contribution to the respective funds, which means the assessee has no grievance to file an appeal before this Tribunal. Further, the facts remains admitted that the assessee filed this appeal on 07-09-2023 exactly two days after the decision of Hon'ble High Court of Delhi in the case of Pepsico India Holding Pvt. Ltd. reported in TS-565-HC-2023 (Del.) which held that the assessee is entitled to claim deduction as a deposit of employees contribution towards Provident Fund was made on 16-08-2018 following a national holiday i.e. 15-08-2018. As we examined merits of the case during the course of hearing of delay condonation petition, we find the facts and circumstances involved in the present case are similar to the fact before Hon'ble High Court of Delhi in the case of Pepsico India Holding Pvt. Ltd. (supra). As rightly pointed by the ld. DR if we allow this delay condonation petition in condoning the delay of 204 days it would certainly open gates for filing such kind of appeals, even after 1, 2,3 years etc., but however, since, the issue is covered in favour of the assessee by the decision of Hon'ble High Court of Delhi in the case of Pepsico India Holding Pvt. Ltd. (supra), we deem it proper to condone the delay of 204 days.

6. Coming to the merits of the case, on perusal of para 8 of the impugned order, it was claimed by the assessee that the due date for depositing Provident Fund was on 15-08-2018, being the national holiday the assessee could not deposit, but however, deposited the said amount very next day i.e. 16-08-2018. The ld. DR as well CIT(A) also, did not dispute the same. We find the facts and circumstances in the present case are identical to the facts before the Hon'ble Delhi High Court and therefore, we hold that the assessee is entitled to claim deduction. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 31<sup>st</sup> October, 2023.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> October, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune