

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.695/Bang/2023
Assessment Year : 2019-20

M/s. The Bangalore City Co-operative Bank Ltd., No.3, Pampamahakavi Road, Chamarajpet, Bengaluru – 560 018. <b>PAN : AAAAT 4831 H</b>	Vs.	Assistant Commissioner of Income Tax, Circle – 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sandeep Chalapathy, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.11.2023
Date of Pronouncement	:	20.11.2023

**ORDER**

*Per George George K, Vice President :*

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 17.08.2021, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2019-20.

2. There is a delay of 477 days in filing this appeal. Assessee has filed a petition for condonation of delay. The reasons stated for belated filing of appeal before the Tribunal are as under:

*“The order u/s. 250 passed by the Commissioner of Income Tax (Appeals) passed on 17.08.2021 was during the peak time of second wave of COVID — 19. The appellant could not see the notices as the same was settled under "SPAM" of the mails. Further, the appellant received a call from the Demand Facilitation Centre regarding the outstanding demands for assessment years 2017-18, 2018-19, 2019-20 and 2022-23 during August 2023. During the review of the outstanding demands, it was noticed that the CIT(A) has passed order on 17.08.2021 and it was decided ex-parte without noticing that the appellant has made the remittance of contribution within the due date as per the respective statute but wrongly mentioned the due date in Form 3CD. It is prayed that the Hon'ble Income Tax Appellate Tribunal be pleased to condone the delay of 127 days in disposing of the appeal as there is sufficient and reasonable cause for such delay. It is also prayed that the Hon'ble Tribunal be pleased to admit the appeal and decide the case on merits in the interest of equity, justice and good conscience.”*

3. The delay in filing the appeal is on account of the fact that assessee was not aware of the disposal of the appeal since hearing notices issued from the Office of the First Appellate Authority (FAA) had settled under ‘spam’ folder of emails and hence could not attend the hearings. The fact of passing of the order of the CIT(A) came to the knowledge of the assessee when it had received call from Demand Facilitation Centre regarding outstanding demands for the relevant Assessment Year in August, 2023. In view of the aforesaid reasons, we are of the view that there is reasonable cause for belated filing of this appeal and no latches can be attributed to the assessee. Hence, we condone the delay in filing this appeal and proceed to dispose off this appeal on merits.

4. Brief facts of the case are as follows:

Assessee is an Association of Persons. For the Assessment Year 2019-20, the return of income was filed on 30.09.2019 declaring total income of Rs.50,48,19,800/-. The return of income was processed under section 143(1) of the Act vide intimation dated 05.03.2020. In the intimation under section 143(1)

of the Act, there was disallowance of Rs.16,56,544/- being employees' contribution to PF/ESI not remitted before the due date specified under the respective Acts.

5. Aggrieved by the intimation, assessee filed appeal before the FAA. Since hearing notices issued from the Office of the FAA were not responded to by the assessee, the CIT(A) passed an ex-parte order rejecting the appeal of the assessee. The CIT(A), in deciding the issue on merits, relied on the various judicial pronouncements and the amendment brought to sections 36(i)(va) of the Act and section 43B of Finance Act, 2021.

6. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. The learned AR submitted that there is no delay in remittance of employees' contribution of PF and same has been paid within the due date specified under the PF Act. It was stated that there is wrong reporting in the audit report, consequently, disallowance was made under section 143(1) of the Act. It was submitted that in the interest of justice and equity, the matter may be remanded to the AO to examine whether there is a delay in remittance of employees' contribution to the PF account.

7. The learned DR supported the orders of the CIT(A).

8. We have heard the rival submissions and perused the material on record. If employees' contribution to PF is not paid within the due date specified under the respective Acts, the same cannot be allowed as a deduction under section 36(1)(va) of the Act. In holding so, we rely on the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd., reported in 448 ITR 518 (SC). However, in the instant case, it is stated that PF remittance for the month of December, 2018,

has been actually paid within the due date specified and there is a wrong reporting in the audit report that the remittance of employees' contribution to PF is belated. To examine this limited issue, the matter is remanded to the AO. The AO is directed to examine whether employees' contribution to the PF account has been paid within the due date specified under the respective Act. If so, the same shall be entitled to deduction under section 36(1)(va) of the Act. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Sd/-

**(GEORGE GEORGE K)**  
**Vice President**

Bangalore.

Dated: 20.11.2023.

/NS/\*

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent           |
| 3. DRP        | 4. CIT                  |
| 5. CIT(A)     | 6. DR, ITAT, Bangalore. |
| 7. Guard file |                         |

By order

Assistant Registrar,  
ITAT, Bangalore.