

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 71/Coch/2023
(Assessment Year:2016-17)

Lakeshore Hospital and Rsearch Centre Ltd. XVI Maradu, NH 47 Bye Pass Netoor P.O., Kochi 682040 [PAN:AAACL4923A]	vs.	Dy. CIT, Corporate Circle 1(1), C.R. Building, IS Press Road, Kochi 682018
(Appellant)		(Respondent)

Assessee by:	Ms. Rohini V. Thampi, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	17.10.2023
Date of Pronouncement:	28.12.2023

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the dismissal of it's appeal contesting rectification order under section 154 of the Income Tax Act, 1961 (the Act) dated 28.01.2022 for Assessment Year (AY) 2016-17 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] vide it's order dated 21.11.2022.

2. Vide the rectification order afore-mentioned, the Revenue has amended the assessment u/s.143(3) of the Act dated 24.12.2018 for the relevant year by disallowing Rs.21,96,064 *qua* the employee's contribution u/s.36(1)(va) of the Act on account of it being paid belatedly on 16.2.2016, i.e., as against the due date of 15.2.2016. Reliance is placed on binding decisions by the Hon'ble jurisdictional High Court in *CIT vs. South India Corporation Ltd.* [2020] 423 ITR 158 (Ker); *CIT v. Harrisons Malayalam Ltd.*[2019] 414 ITR 718 (Ker); *Popular Vehicles & Services P. Ltd. vs. CIT* [2018] 406 ITR 150 (Ker); and *CIT vs. Merchem Ltd.*[2015] 378 ITR 443

(Ker), all to the effect that employee's contribution to the employee welfare fund is covered u/s. 36(1)(va) read with s. 2(24)(x) of the Act, and not u/s. 43B of the Act, which concerns the employer's contribution thereto only. The assessee's explanation of a technical snag being responsible for the one-day delay, sought to be exhibited with reference to the correspondence entered into with EPFO portal on 15.02.2016 and 16.02.2016 (PB pgs. 7 & 8), was found not acceptable by the Revenue as the grace period of 5 days, i.e., beginning the 16th of following month, was withdrawn by the EPFO Circular No. WSU/9(1) 2013/Settlement/35031, dated 08.01.2016. That is, the allowance of 5 days beyond the due date of 15th of the following month, stands withdrawn w.e.f. January, 2016, the payment for which month stands made belatedly by the assessee on 16.2.2016. Aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

There is, clearly, no legal bar for effecting a rectification on the basis of a binding decision by Hon'ble jurisdictional High Court, and toward which the Revenue rightly relies on the decisions in *Asst. CIT vs. Saurashtra Kutch Stock Exchange Ltd.* [2008] 305 ITR 227(SC) and *KilKotagiri Tea & Coffee Estate Co. Ltd. vs. ITAT* [1988] 174 ITR 579 (Ker). The same does not, however, exclude the scope for consideration of the assessee's case, only on hearing whom a rectification u/s. 154, where prejudicial, could be in law made. The issue arising is the consequence of inability to pay in view of the non-acceptance of the payment by the due date due to a technical glitch, which stands established on the basis of the material on record, whereby the EPFO admits thereto, as indeed its removal on the following day, i.e., 16.2.2016, on which date, in the morning itself, i.e., prior to receipt of the revert from the said office, the assessee had made the payment, establishing once again its *bona fides* in the matter, which we clarify, though relevant, is not in issue.

The time period prescribed by law presumes granting of that period. No adverse inference or action, as confirmed by Ms. Thampi, the learned counsel for the

assessee, on enquiry, stands taken by the PF authorities for the said delay, even as there has been, strictly speaking, a breach of the condition of payment by the due date (i.e., 15/2/2016). The assessee was, upon this, asked by the Bench to furnish evidence to that effect, and toward which the assessee has furnished an affidavit dated 20.10.2023, copy of which is placed on record. No rebuttal by way of counter affidavit or otherwise, stands filed by the Revenue, as was clarified at the time of hearing, to date. The same is accordingly taken as true.

The assessee's objection, under the given facts and circumstances, is considered as valid in law. The law can, after all, only provide a condition that is capable of being fulfilled. We also draw support for the purpose from Section 10 of the General Clauses Act, 1977 providing for an extension of the time period where on the last date of the prescribed period the concerned office is closed.

We are conscious that it could well be argued that we are engaging in deliberation, not warranted by the limited scope of section 154 proceedings, besides considering material not on record w.r.t. which the mistake stands found. In our view the doctrine of impossibility of performance, which is the assessee's case in essence, would apply equally for rectification proceedings, i.e., as it does to the regular proceedings. Further, the evidence taken on record is only toward establishing its case, with a view to show that there is therefore no mistake in law in allowing the assessee's claim in the first instance. To deny admission of evidence, or its consideration, would be to deny opportunity of hearing, only whereupon could a rectification, where operating to prejudicethe assessee, be in law effected.

We decide accordingly.

4. In the result, the assessee's appeal is allowed.

*Order pronounced on December 28, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963.*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: December 28, 2023

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin