

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1726/M/2021  
Assessment Year: 2017-18**

M/s. Reliance SMSL Limited, 3 <sup>rd</sup> Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai – 400 002 <b>PAN: AALCS0575Q</b>	Vs.	Deputy Commissioner of Income-Tax, Centralized Processing Centre (CPC), Bangalore- 560500
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nimesh Vora, A.R.  
Revenue by : Smt Mahita Nair, Sr. A.R.

Date of Hearing : 19 . 12 . 2023  
Date of Pronouncement : 12 . 01 . 2024

**O R D E R**

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

The appellant, M/s. Reliance SMSL Limited (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 26.12.2019 passed by 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.

*Order u/s 143(3) supersedes Intimation u/s 143(1)(a)*

3. Without prejudice to the above, failed to appreciate the fact that once the order is passed u / s 143(3) of the Act, intimation u / s 143(1)(a) gets merged with order u / s 143(3) and such intimation doesn't stand independently where no such disallowance was made by the AO in its order passed under section 143(3) on the same issue.

*Disallowance u/s 36(1)(va) of the Act*

4. Erred in confirming the action of the AO in disallowing 2,33,94,090/- under section 36(1)(va) of Act on the basis that there has been delay in depositing of employees' contribution towards Employee State Insurance ("ESI") as reported in the Tax Audit Report.

5. Failed to appreciate that the payment could not be made within prescribed due date due to technical glitches and non-functioning of the portal.

6. Without prejudice to the above, failed to appreciate the fact that the payment of employees' contribution towards ESI 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 providing integrated manpower solutions that encompass sourcing, recruitment, on-boarding, training, engagement and complete staffing to other companies. The return of income filed by the assessee for the year under consideration

declaring loss of Rs.2,01,29,914/- under normal provisions of the Income Tax Act, 1961 (for short 'the Act') and book profit of Rs.1,51,19,026/- under section 115JB of the Act was processed under section 143(1) of the Act by the Central Processing Centre (CPC) [hereinafter referred to as the Assessing Officer (AO)] by assessing the income of Rs.32,64,180/- under normal provisions of the Act. The AO disallowed an amount of Rs.2,33,94,090/- under section 36(1)(va) of the Act on account of delay in depositing employees' contribution towards Employees' State Insurance Scheme of India (ESIC).

**Ground Nos.1 , 2 & 3**

3. Ground Nos.1, 2 & 3 were not pressed at the time of hearing, hence the same are dismissed as not pressed.

**Ground Nos.4 & 5**

4. 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.

5. We 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.

6. 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.

7. It is also not in dispute that the assessee company has made delayed payment of employees' contribution on account of ESIC after due date prescribed under the Act under section 36(1)(va) of the Act. But certainly before the due date of filing the return detailed as under:

Nature of Fund	Sum received from Employees	Due date for payment	The Actual Amt Paid	The Actual date of payment to the concerned authorities
Any Fund set up under the provisions of ESI Act , 1948	59,23,282	<b>21/01/2017</b>	59,23,282	<b>23/01/2017</b>
Any Fund set up under the provisions of ESI Act , 1948	87,18,457	<b>21/02/2017</b>	87,18,457	<b>24/02/2017</b>
Any Fund set up under the provisions of ESI Act , 1948	87,52,351	<b>21/03/2017</b>	87,52,351	<b>24/03/2017</b>
Total	2,33,94,090		2,33,94,090	

8. The Ld. A.R. for the assessee company challenging the impugned order passed by the Ld. CIT(A) contended that the entire payment on account of employees' contribution towards ESIC has been made within time as detailed in the table extracted in the preceding para. Perusal of the table shows that the amount of Rs.59,23,282/-, Rs.87,18,457/- & Rs.87,52,351/- due to be deposited on 21.02.2017 and 21.03.2017 was actually deposited on 23.01.2017 24.02.2017 and 24.03.2017 respectively due to various technical issues which have prevented the assessee to make the payment before the due date of payment prescribed under the Act and accordingly the assessee written a letter/mail to the concerned

ESIC office and State Bank of India (SBI) about non functioning of the portals/payment gateway due to certain technical glitches.

9. The Ld. A.R. for the assessee contended that payment of Rs.59,23,282/- was made on 23.01.2017 which was due to be deposited by 21.01.2017 with two days delay because of the fact that on 21.01.2017 the assessee got regenerated challan at 18:51 hrs. and thereby made an attempt to make the payment through its regular bank account with SBI on 21.01.2017. However, due to technical glitches/snag with the payment gateway of SBI the payment could not be made and the assessee wrote a letter to which SBI vide letter dated 25.10.2013 confirmed the technical glitches. For ready perusal the letter issued by SBI available at page 4 & 5 of the paper book is extracted as under:

“भारतीय स्टेट बैंक

**State Bank of India**

e-Pay Order Details

e-Pay Order Number CH54827067

Debit Status **Failure**

Remarks PAN number is now mandatory in your account for txn. Pl contact your branch for PAN updation

**21-Jan-2017**

Employees' State Insurance Corporation

Two Crores Nineteen Lakhs Fifteen Thousand **2,19,15,519.00**  
Five Hundred and Nineteen only

00000030962766091

RELiance CORPORATE PARK LTD	Shruti Phatakji	HIMANSHU DEVANI	BONNY SHETH
"CH54627057"	Maker	Authorizer 1	Authorizer 2
		03417102035268	

Counterfoil Description -

Transaction Type Real Time Payments

Debit Account Details

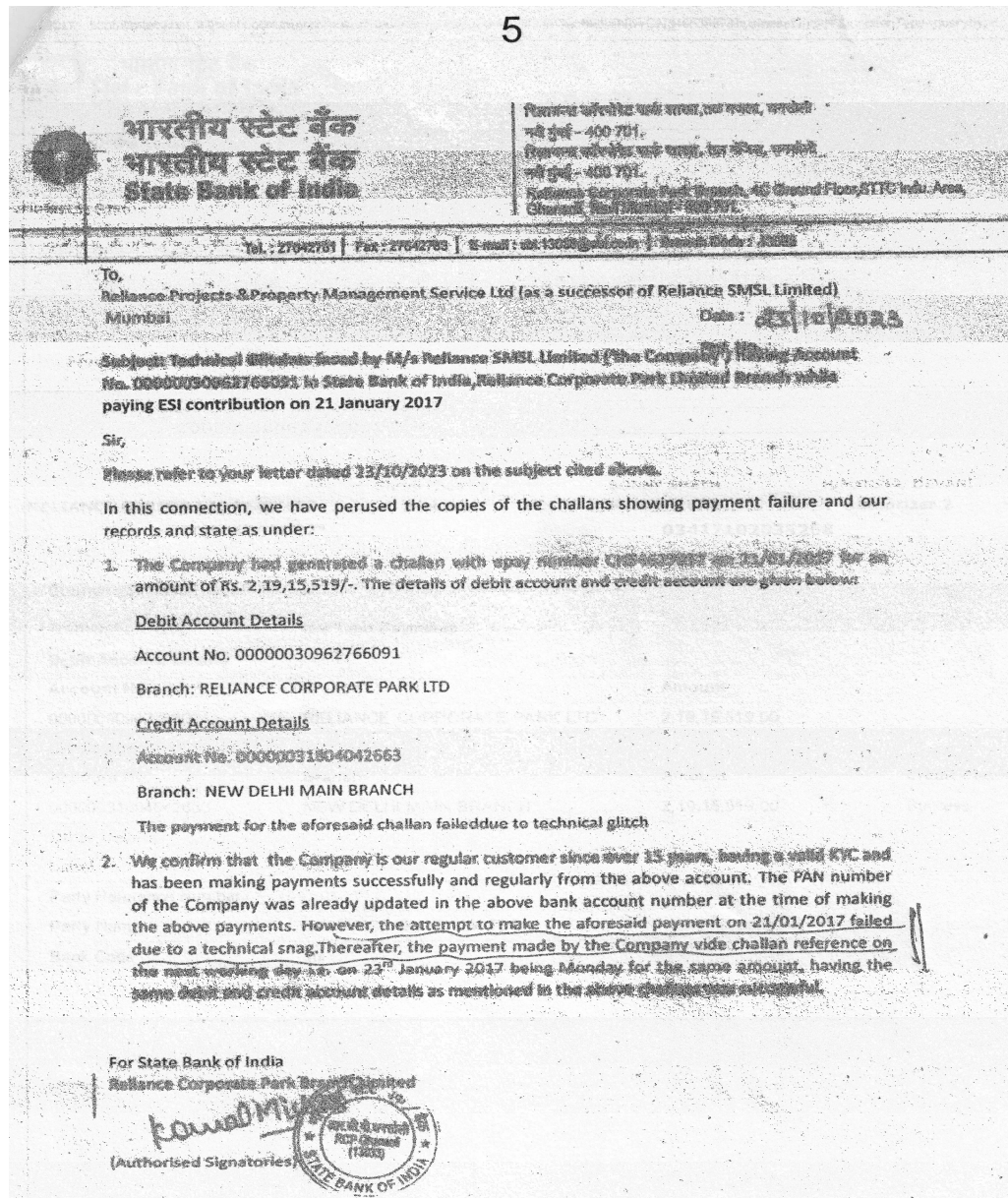
Account No.	Branch	Amount
00000030962766091	RELIANCE CORPORATE PARK LTD	2,19,15,519.00

Credit Account Details

Account No.	Branch	Amount	Credit Status
00000031804042663	NEW DELHI MAIN BRANCH	2,19,15,519.00	Failure

Other Details

Label	Value
Party Reference Number	
Party Name	RELIANCE SMSL LIMITED
Bank Code	sbi



10. We have perused the letter issued by SBI to the assessee available at page 5 of the paper book wherein it is found that attempt to make the aforesaid payment by the assessee on 21.01.2017 was failed due to a technical snag, thus payment was made by the company vide challan reference on the next working day i.e. 23.01.2017 being Monday which is apparent from the receipt issued by the SBI available at page 6 of the paper book. Similarly, the assessee claimed to have deposited an amount of Rs.87,18,457/- and Rs.87,52,351/- due to be deposited on 21.02.2017 and 21.03.2017 respectively and actually deposited on 24.02.2017 and 24.03.2017 respectively with a delay of three days.

11. The Ld. A.R. for the assessee drew our attention towards the letter dated 22.09.2023 issued by the headquarter ESIC available at page 3 of paper book admitting technical glitches in depositing the contribution by the assessee within time, which is extracted as under for ready perusal:

3

RECEIVED

25

No.P-11/14/31/01/2023-Rev.II  
Date:22/09/2023

To  
M/s Reliance SMSL Limited  
3rd Floor, Court House,  
Lokmanya Tilak Marg,  
Dhobi Talao  
Mumbai-400002

Subject: Technical Glitches faced by M/s Reliance SMSL Limited code no. 34000162010001001 in ESIC portal while filing ESI contribution for the month of Dec-2016, Jan-2017 and Feb-2017.

Sir,  
Please refer to your letter No. nil dated 28/08/2023, 11/09/2023 and email dated 20/09/2023 on the subject cited above. In this connection, the matter has been taken up with the ICT Branch and the comments received are as under:

1. The employer while filling the contribution for the month of Dec-2016, faced technical issue which was reported to [itcare@esic.in](mailto:itcare@esic.in) for resolution. The ticket INC000006155733 was generated for error occurring while uploading the consolidated monthly contribution sheet for Dec-16 on 21/01/2017. The complaint was resolved on 21/01/2017 at 16:57 hrs. Further as per audit trail the contribution was filed for the month Dec-16 on 21/01/2017 at 18:51 hrs and the challan no. 03417102035268 for Rs. 2,19,15,519/- was generated with the assistance of ESIC IT Helpdesk. The employer, paid the challan on 23/01/2017.
2. On 20/02/2017 employer complained to [itcare@esic.in](mailto:itcare@esic.in) regarding not able to insert IP and on 21/02/2017 reported that while filing the consolidated contribution for the month of Jan-2017, an error was showing. The ticket INC000006204905 was generated on 23/02/2017 for employer's complaint dated 20.02.2017 and 21.02.2017 for "error connection must be valid and open to rollback transaction". After resolution of the complains (24.02.2017 15:40 hrs) the employer generated the challan No. 03417105031357 amounting to Rs. 3,22,98,019 on 24/02/2017 for the month of Jan-2017 and paid the challan on 24/02/2017.
3. While filing the contribution for the month of Feb-17, employer raised an issue to [itcare@esic.in](mailto:itcare@esic.in) regarding not able to insert IP and upload contribution for Feb-2017 as the ESI portal was not functioning, via email dated 17.03.2017 and various follow up emails. After follow-up with backend team, employer was able to file the monthly contribution for 3,24,46,748 on 24.03.2017 and paid the same on 24.03.2017.
4. IT help desk intimated that employer had logged tickets for issues faced during filing of contribution as mentioned above and the issues were resolved with the support of back-end team.

Thus, ICT has taken all action in this matter a per extant procedure.

यह पत्र सक्षम प्राधिकारी के अनुमोदन से जारी किया जाता है।

12. We have perused the letter dated 22.09.2023 (supra) issued by ESIC wherein it is admitted that ESIC portal was not functioning on 21.02.2017 & 21.03.2017 and issue was resolved on 24.02.2017 and 24.03.2017 (for depositing the due amount for February 2017 and March 2017) on which date the assessee has deposited the due amount.

13. From the evidence brought on record by the assessee discussed in the preceding paras it is proved that delay in depositing the employees' contribution towards ESIC for the month of December 2016, January & February 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 payment gateway of SBI as well as due to non functioning of portal of ESIC as has been admitted in the letters (supra) discussed in the preceding paras the same could not be through and as such delay was beyond the control of the assessee.

14. So in view of the matter, we are of the considered view that when the payment portal of ESIC and payment gateway of SBI was admittedly not functioning on the due dates, on which assessee attempted to deposit the amount, the assessee cannot be called upon to perform the impossible. So we are of the considered view that the payment is ordered to be treated having been deposited well within due date and no disallowance of ESIC under section 36(1)(va) of the Act is called for, however, subjected to the verification of the facts and evidence brought on record by the assessee appreciated in the order (supra).

15. Resultantly, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open court on 12.01.2024.**

**Sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 12.01.2024.

\* 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.