

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 690/Kol/2022**  
**Assessment Year : 2018-19**

Shri Aniruddha Banerjee	vs	DCIT, Circle-29, Kolkata
PAN: ADVPB 9423 C		
Appellant		Respondent

Date of Hearing	21.02.2024
Date of Pronouncement	26.02.2024
For the Assessee	Mr. Sunil Surana, FCA
For the Revenue	Mr. P.P. Barman, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 26.11.2021 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. For that the order of ld. CIT(A), NFAC u/s 250 of the Act is bad in law and liable to be quashed.*

*2. For that the ld. CIT(A) erred in confirming the additions of Rs. 4,85,04,102/- on account of delay in deposit of PF/ESI by invoking the provisions of section 36(1)(va) of the Act.*

*3. For that the ld. CIT(A), NFAC erred in confirming the action of Asst. Director of Income Tax, CPC disallowing the sum of Rs. 4,85,04,102/- being contribution of employees share towards ESI/PF set up for the welfare of the employee u/s 36(1)(va) read with section 2(24)(x) of the Income Tax Act, 1961 when the payments were made within the due dates of filing of return u/s 139 of the Act.*

*4. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing."*

2. At the outset, we find that there is a delay of 311 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. At the time of hearing, ld. AR stated before the bench that while processing the return of income filed by the assessee u/s 143(1) of the Act, the total income of the assessee assessed at Rs. 9,83,05,064/- by making addition of Rs. 4,85,04,102/- on account of delayed depositing of PF/ESI which according to the assessee, ld. AO did not look into the fact that most of the alleged payments were made in time except few could not make in time. Therefore, whole addition is not sustainable in the hands of assessee. Similarly, ld. CIT(A) while passing the impugned order did not consider the above fact by simply dismissing the appeal of the assessee. He, therefore, prayed before bench to remand back the instant issue to the file of AO with the direction to re-examine the issue involved after giving reasonable opportunity of being heard to the assessee and decide the issue in accordance with law.

4. We After hearing the submissions of the parties and examine the issue involved in the appeal find that certain payments in relation with PF & ESI were made by the assessee within the prescribed limit as stated in the Act. Therefore, it is necessary to remand back the whole issue to the file of AO with the direction to re-examine the issue afresh and allow the claim of assessee to the extent of which assessee had deposited within the due date as prescribed under the Act and the remaining amount if it is not paid

within due date that such amount should only be disallowed for the purpose of section 36(1)(va) of the Act. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

5. However, it is clarified that while doing so, the ld. AO should give appropriate notice to the assessee by providing reasonable opportunity of being heard. Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26.02.2024

Sd/-

Sd/-

(Rajesh Kumar)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 26.02.2024  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant – Shri Aniruddha Banerjee, 5A, Palm Avenue, Ballygunge, Kolkata-700019.
2. Respondent – DCIT, Circle-29, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata