

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.44/Del/2023
Assessment Year: 2017-18

Ahluwalia Contracts India Ltd., Vs ACIT,
A-177, Okhla Industrial Area, Central Circle-31,
Phase I, New Delhi.
New Delhi – 110 020.

PAN: AABCA4304K

(Appellant)

(Respondent)

Assessee by : Shri K. Sampath, Advocate &
Shri Vishal Sehgal, CA
Revenue by : Shri Kanav Bali, Sr. DR
Date of Hearing : 15.02.2024
Date of Pronouncement : 29.02.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Assessee against the order dated 17.11.2022 of the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.10464/2016-17 arising out of the appeal before it against the order dated 20.10.2021 passed u/s. 154 r.w.s 250 and 143(3) of the Income Tax Act,

1961 (hereinafter referred as 'the Act') by the DCIT, Central Circle-31, New Delhi (hereinafter referred to as the Ld. AO).

2. The appellant's grievance arises from the order passed under section 154 r.w.s. 143(3) of the Act by the DCIT, Central Circle-31, New Delhi, vide order dated 20.10.2021 wherein the AO has disallowed an amount of Rs.89,90,278/- on account of payment of employee's contribution of EPF/ESI beyond the due date stipulated in the respective Act which has been sustained by the Id.CIT(A) on the basis of the judgement of the Hon'ble Supreme Court in the case ***Checkmate Services P. Ltd. vs. Commissioner Of Income Tax-I in CA No. 2833/2016 vide order dated 12.10.2022.***

2.1 On hearing ld. AR, it comes up that it is only with regard to an amount of Rs.73,03,161/- which was due on 15.02.2017, with date of payment as 16.02.2017 the appellant is contesting here before the Tribunal. The ld. AR has submitted that the process of deposit with authorities concerned is initiated with generation of a challan and in the case in hand, with regard to this amount, the challan was generated on 16.02.2017 at 11:48:52 hours. Copy of this challan has been placed on record at page 53 of the paper book. The deposit was, thereafter, made but delayed by 11 hours and Ld. AR says that the same was due to technical glitch in the software or internet connectivity. The ld. AR has relied certain judgements mentioned below to submit that if the delay is on

technical reasons, the deposit has to be considered to have been made before the due date:-

- (i) FIL India Business & Research Services P. Ltd. vs. DCIT (2023) 154 taxmann.com 251 (Delhi - Trib.);
- (ii) Catwalk Worldwide P. Ltd. vs. ACIT (2023) 152 taxmann.com 215 (Mumbai - Trib.); and
- (iii) G.D. Foods and Manufacturing (India) P. Ltd. vs. ADIT (2023) 152 taxmann.com 323 (Delhi - Trib.)

3. The ld. DR has, however, supported the orders of the ld. tax authorities and submitted that when the deposit is made after the due date, there is no difference if the delay is of hours or of days. He submitted that judgments relied are in regard to delayed deposit as last day was holiday.

4. We have given thoughtful consideration to the matter on record and the submissions and are of the considered view that the generation of a challan is a stage of initiation of process of deposit and by generation of the challan, intention of deposit is exhibited. If the assessee claims that there was technical glitch due to which the amount could not be deposited immediately, within due time, on generation of challan but got delayed by around eleven hours, the same should have been accepted by ld. Tax authorities, as there was nothing to disbelieve this assertion. We are of considered view that being quasi judicial authorities, the tax authorities below have inherent power to accept a plea of

assessee, which otherwise is not against the facts or law, but claimed on rules of prudence and flowing from natural course of events.

5. Resultantly we are inclined to allow the grounds. The appeal is allowed with consequential effect to be given by Ld. AO.

Order pronounced in the open court on 29.02.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 29th February, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi