

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No. 1051/Bang/2023
Assessment Year : 2017-18

M/s. Knowledge Hut Solutions Pvt. Ltd., C/o. P Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Karnataka – 560 102. PAN: AA ECC4762E	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri P. Murali Mohana Rao, CA
Revenue by	:	Shri Parithivel, JCIT (DR)

Date of Hearing	:	05-03-2024
Date of Pronouncement	:	05-03-2024

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the Addl./JCIT (A)-9, Mumbai order dated 31.10.2023, DIN & Order No. ITBA/APL/S/250/2023-24/1057553824(1) for A.Y. 2017-18 on the following grounds of appeal:

S. No	Grounds of Appeal	Tax effect
1.	<i>The Ld. CIT(A) erred in rejecting the petition filed by the appellant by seeking condonation for the delay of 861 days in filing the appeal before him, without considering the reasons for delay, as were submitted through an affidavit, dt. 26.08.2021</i>	Technical ground
2.	<i>The Ld. CIT(A) ought to have admitted and heard the appeal on the basis of merits, without dismissing the appeal by condoning that the delay in filing the appeal on the reasons beyond the control of the appellant and with a reasonable cause.</i>	Technical ground
3.	<i>The Ld. CIT(A) ought to have fairly appreciated the fact that the delay in filing of appeal is because the order has been misplaced by the management and could only be traced on 21.03.2020 and the further delay in filing is due to COVID-19 situation which is a reasonable cause for delay in filing of appeal.</i>	Technical ground
4.	<i>The Ld. CIT(A) has erred in rejecting the appeal on the technical reason of delay in filing which amounts to denial of justice to an appellant on the technical and curable delay in seeking justice.</i>	Technical ground
5.	<i>The Ld. CIT(A) ought not to have denied the justice to the appellant by rejecting the appeal on the reason of delayed submission and ought to have condoned the delay.</i>	Technical ground
6.	<i>The Ld. CIT(A) ought to have applied the principles of natural justice to an aggrieved appellant by condoning the delay in filing the appeal.</i>	Technical ground
7.	<i>The Ld. CIT(A) erred in not considering that the intimation passed u/s 143(1) of the IT Act,</i>	Technical ground

	<i>1961 by the Ld. CPC, Bangalore dt. 30.03.2019 as erroneous both on facts and in law to the extent the order is prejudicial to the interests of the appellant.</i>	
8.	<i>The Ld. CIT(A) ought to have appreciated that the Ld. CPC, Bangalore erred in making an addition by way of disallowance of Rs. 15,67,305/- towards Provident fund payment and ESI fund payment without considering the facts of the case.</i>	<i>Technical ground</i>
9.	<i>The Ld. CTT(A) ought to have appreciated that the Ld. CPC, Bangalore erred in not appreciating the fact that all the payments in relation to the Provident fund and ESI fund were made within the time limits prescribed in the Act.</i>	<i>Technical ground</i>
10.	<i>The Ld. CIT(A) erred in not fairly appreciating the fact that the Ld. CPC, Bangalore erred in making the additions without considering Sec 36(1)(va) r.w.s 43B of the Act, that expenditure is allowable if paid before filing return of income.</i>	<i>Technical ground</i>
11.	<i>The Ld. CIT(A) erred in not fairly appreciating the legal position considering that the Ld. CPC, Bangalore ought to have considered the fact that all the payments of Provident fund and ESI fund of employees and employer share are paid before filing of return of income.</i>	<i>Technical ground</i>
12.	<i>Appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.</i>	<i>General ground</i>

2. The brief facts of the case are that the assessee filed the return of income on 25.11.2017 declaring income of Rs.2,22,27,010/-. Later the return of income was processed by the CPC, Bangalore and issued the intimation u/s. 143(1) of the Act dated 30.03.2019 and determined the total income of the assessee at Rs.2,37,94,310/- after disallowing Rs.15,67,305/- towards the Provident Fund and ESI on the reason that these expenditure is not allowable u/s. 36(1)(va) of the act.

3. We note it from the order of CIT(A) that the CIT(A) has not condoned the delay of 861 days for which the assessee has submitted the reasons which is as under:

“I, Mallu Reddy Subramanyam, director of M/s Knowledgehut Solutions Private Limited hereby state that, I am acquainted with the facts of the case in respect of appeal which has been filed with the CIT (appeals), for Assessment Year 2017-18, and I state that: The return of income was fled on 25.11.2019. Subsequently, the return was processed and intimation passed u/s 143(1) dt: 30.03.2019 in respect of the Assessment Year 2017-18. The appeal on the order u/s 143(1) could not be filed in time as due to COVID-19 situation and same has not brought to the notice of me and could be filed on 04.09.2021 with the delay of 861 days as the appeal was due for fling on 28.04.2019 and instead of that the same is being fled on 04.09.2021. And, we could not able to file the appeal as the e-fling portal could not allow to upload the same due to technical issues of Income tax server. The delay in fling of the appeal may please be condoned and as the delay in fling the appeal is for good and sufficient reasons. In view of the above reasons, the delay may please be condoned and the appeal may please be considered as due to circumstances which were beyond the control of the Assessee.”

After going through the reasons it is observed that the assessee has sufficient reason for not filing the appeal within the due date to which the CIT(A) ought to have been accepted. In our opinion there is a sufficient cause for condoning the delay as observed by Hon'ble Supreme Court in case of Collector Land Acquisition Vs. Mst. Katiji & Ors., reported in (1987) 167 ITR 471. We condone the delay in filing the appeal before CIT(A).

4. The Ld.AR of the assessee submitted that there was a delay for payment of PF/ESI because of the gazetted holiday/closure of the bank and the assessee was unable to pay the amount on the particular day which falls due date as per the respective Act and subsequently it was immediately paid by the assessee. Therefore the Ld.AR of the assessee requested that the issue should go back to the CIT(A) for verification.

5. The Ld.DR submitted that the Hon'ble Supreme Court of India has settled this issue in the case of Checkmate Services Pvt. Ltd. reported in (2022) 143 taxmann.com 178 (SC) relied by the revenue authorities.

6. Considering the rival submissions, we note that the Ld.AR of the assessee submitted that the payment was got delayed because of the holiday/closure of the bank. If the amount is remitted in the bank immediately on the next working day of the holiday, the payment should be allowed as within due date. We remit the issue back to the CIT(A) for verification and fresh decision as per

law. The assessee is directed to file necessary documents for substantiating its case.

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

Order pronounced on the 05th day of March, 2024, through virtual hearing.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 05th March, 2024.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore