

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1212/KOL/2023
Assessment Year: 2020-2021**

***Kalpajeet Basu Mallik,.....Appellant
2C, F-201, Chakraberia Lane,
Elgin Road, L.R. Sarani,
Kolkata-700020
[PAN:AHBPM6983A]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-32(1), Kolkata,
10B, Middleton Row,
Kolkata-700071***

Appearances by:

Shri C. Roy, C.A., appeared on behalf of the assessee

*Shri Manas Mondal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing: April 29, 2024

Date of pronouncing the order: May 01, 2024

O R D E R


Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. ADDL/JCIT(Appeals)-7, Delhi dated 31st October, 2023 passed for A.Y. 2020-21.

2. The solitary substantial grounds of appeal raised by the assessee is, that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.84,66,849/-, which has been made by the ld. Assessing Officer while processing the return under section 143(1). The above amount represents P.F. & ESI contributions of the employees', which according to the Revenue was not deposited within the due date provided under P.F. & E.S.I. Act.

3. The ld. Counsel for the assessee while impugning the orders of Revenue authorities contended that on 15th May, 2020, Employees' Provident Fund Organization had issued a Circular whereby it has been contemplated that if any default made by the employer for depositing the employees' contributions meant for Lockdown period, then no action would be taken against such employer. We deem it appropriate to take note of this Circular, which reads as under:-

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कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार, मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No. C-1/Misc./2020-21/Vol.1/1112
Date: 15.05.2020

To,
All Addl. CPFCs in charge of Zones
All RPFCS in charge of Regional Offices
All OICs in charge of District Offices

Sub: Relief to establishments and factories covered under EPF and MP Act, 1952 from levy of penal damages for delay in deposit of dues during Lockdown to prevent COVID-19.

Sir,

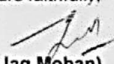
In view of the prolong lockdown announced by the Government to control the spread of COVID-19 pandemic and other disruptions due to Pandemic situation, the establishments covered under EPF & MP Act, 1952 are distressed and not able to function normally.

The Hon'ble Apex Court of India in McLeod Russel India Limited Vs RPF (2014)15 SCC 263 has underlined the broad contours and essential elements of section 14B of the Act and held that *mens rea*, or culpable state of mind of the employer, is a *sine-qua-non* for inviting damages under section 14B. In other words, the provisions of section 14B would get attracted only when there is a positive evidence of *mens rea* on the part of the employer while committing default in timely remittances. This legal position has later been reaffirmed in Assistant Provident Fund Commissioner vs. Management of RSL Textiles. (CA 96-97 of 2017)

Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is evident that such delays are without *mens rea* of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Disasters Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of section 14B of the EPF Act.

Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.

(This issues with the approval of the Central P F Commissioner)

Yours faithfully,

(Jag Mohan)
Addl. CPFC (Hqrs.) Compliance & Legal

4. On the strength of this Circular, Id. Counsel for the assessee submitted that a sum of Rs.18,13,655/- ought to have not been disallowed to the assessee. He further contended that one payment was due on 15th August, 2019 but this was made on 16th August, 2019. The sum paid to ESI Act on 16.08.2019 is of Rs.1,53,292/- . He submitted that since 15th August was Gazetted Holiday, on first working day, the assessee has made the payment. Therefore, this payment ought not to be disallowed to the assessee.

5. The ld. Counsel for the assessee further submitted that as far as the balance amount is concerned, that is covered by the judgment of Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178.

6. The ld. Sr. D.R., on the other hand, contended that the payments were made online and even on Gazetted Holiday, the assessee could easily make the payment. He further submitted that similar step could have been taken during lockdown period.

7. On due consideration of the above facts and circumstances, we are of the view that Employees' Provident Fund Organization waived the condition in its Circular for mandatorily deposits of P.F. & ESI payments to the respective account during COVID period. Therefore, we find that the payments relatable to such period deserves to be excluded from the total amount disallowed by the ld. Assessing Officer. This discussion is not available in the assessment order passed under section 143(1). The ld. 1st Appellate Authority has not dealt this matter with this angle. Therefore, we deem it appropriate to relegate this issue to the file of ld. Assessing Officer for verification. The ld. Assessing Officer shall verify that if payments are relatable for Lockdown period, then, no disallowance of these payments is to be made as per the

Circular issued by the Employees' Provident Fund Organization dated 15th May, 2020.

8. As far as the second issue regarding ESI payment is concerned, we find that a payment of Rs.1,53,292/- was due on 15.08.2019. This payment was made on 16.08.2019. We are of the view that since last date of making the payment was a Gazetted Holiday, therefore, the first working day is to be construed as the last date of the payment. In other words, the payments due on 15th August are to be considered as if such payments are due on 16th August. The assessee has made the payment on 16.08.2019, therefore, we delete the disallowance of Rs.1,53,292/-.

9. In view of the above, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open Court on 01/05/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 1st day of May, 2024

*Copies to :(1) Kalpajeet Basu Mallik,
2C, F-201, Chakraberia Lane,
Elgin Road, L.R. Sarani,
Kolkata-700020*

(2) *Deputy Commissioner of Income Tax,
Circle-32(1), Kolkata,
10B, Middleton Row, Kolkata-700071*

(3) *ADDL/JCIT(A)-7, Delhi;*

(4) *CIT- , Kolkata*

(5) *The Departmental Representative;*

(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.