

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**I.T.A. No. 244/Del/2023
(Assessment Year : 2018-19)**

Jagdish Kumar
House No.651, 1st Floor,
Sector – 10A, Nr. G.D.
Goenka Public School,
Gurgaon, Haryana-01

Vs. ITO
Ward – 2(2)
Gurgaon

PAN: AMDPK 1568 L

(Appellant)

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(Respondent)

Appellant by :

Shri M. R. Sahu, C.A.

Respondent by :

Shri Sandeep Kr. Mishra, Sr. D.R.

Date of Hearing

09.05.2024

Date of Pronouncement

20.05.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The instant appeal filed by the assessee is directed against the order dated 30.11.2022 passed by the Commissioner of Income Tax (Appeals) – NFAC, Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the assessment

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order dated 08.01.2020 passed by the DCIT, CPC, Bengaluru under Section 143(1) of the Act for the Assessment Year (A.Y.) 2018-19.

2. Assessee filed its return of income for A.Y. 2018-19 on 31.10.2018 declaring total income at Rs.57,82,054/-, which was processed under Section 143(1) of the Act by CPC, Bengaluru and by and under Intimation dated 08.01.2020, addition to the tune of Rs.46,31,856/- made on account of “Delayed Payment of Employees Contribution” towards EPF/ESI under Section 36(1)(va) of the Act, was informed which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

3. The details of salary and wages paid to the employees, the actual date of deposit of employee’s shares of PF/ESI to the Government account and the due date for deposit of the same on the basis of salary

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and wages disbursed during the month has been narrated by the assessee

before us in the following manner :

Due	Salary & Wages Amt (Rs.)	Salary & Wages Payment Date	Employees Share of PF & ESI Deduction Date	Employees Share of PF & ESI Deduction Amt (Rs.)	Employees Share of PF & ESI Deposit Date to the Govt. Account.	Due date for deposit of EPF and ESI on the basis of salary and wages Due for the Month	Due date for deposit of EPF and ESI on the basis of salary and wages disbursed during the Month	Whether deposit of EPF and ESI is within the due date considering date of disbursement of salary
Apr-17	6,039,588	5/5/2017	5/5/2017	477,275	16.18 & 23.05.2017	5/15/2017	6/15/2017	Yes
May-17	6,074,371	6/7/2017	6/7/2017	517,014	19 & 22.06.2017	6/15/2017	7/15/2017	Yes
Jun-17	6,075,967	7/6/2017	7/6/2017	480,982	15.07.2017	7/15/2017	8/16/2017	Yes
Jul-17	6,284,432	8/5/2017	8/5/2017	488,510	23 & 24.08.2017	8/16/2017	9/15/2017	Yes
Aug-17	6,338,855	9/7/2017	9/7/2017	485,088	19 & 21.09.2017	9/15/2017	10/15/2017	Yes
Sep-17	6,559,039	10/7/2017	10/7/2017	490,913	27 & 28.10.2017	10/15/2017	11/15/2017	Yes
Oct-17	6,608,920	11/7/2017	11/7/2017	506,760	20 & 29.11.2017	11/15/2017	12/15/2017	Yes
Nov-17	6,453,853	12/7/2017	12/7/2017	483,070	16.12.2017	12/15/2017	1/15/2018	Yes
Dec-17	6,831,979	1/8/2018	1/8/2018	520,600	19 & 21.01.2018	1/15/2018	2/15/2018	Yes
Jan-18	7,103,803	2/8/2018	2/8/2018	528,678	26.02.2018	2/15/2018	3/15/2018	Yes
Feb-18	6,472,733	3/8/2018	3/8/2018	522,155	15 & 18.03.2018	3/15/2018	4/15/2018	Yes
Mar-18	5,855,304	4/7/2018	4/7/2018	600,042	14.04.2018	4/15/2018	5/15/2018	Yes
Total	76,698,844			6,101,087				

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4. On the basis of the above tabulated sheet, it is the case made out by the assessee that as the due date for depositing employee's contribution to the Govt. account is 15th of the next month of payment actually made for a particular month and since the assessee has duly remitted the same within the due date from the end of the month, in which salary was actually disbursed, the assessee would be entitled to relief under Section 36(1) of the Act and no addition, therefore, is sustainable in the eyes of law. In that view of the matter, he prays for setting aside the issue to the file of Learned AO for verification of the same on the basis of the details as narrated hereinabove. Such prayer made by the assessee has not been controverted by the Learned DR with all his fairness.

5. Having heard the Learned Counsels appeared for the parties and having regard to the facts and circumstances of the case, we are of the considered opinion that the issue is required to be adjudicated afresh on

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the basis of the details narrated hereinabove in regard to the deposit of employee's contribution by the employer afresh. We, thus, set aside the issue to the file of Learned AO to pass a reasoned order in light of the above observations upon granting of an opportunity of being heard to the assessee and upon considering the evidence on record and any other evidence which the assessee may choose to file at the time of hearing of the matter.

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

This Order pronounced in Open Court on 20/05/2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Dated 20/05/2024

*Priti Yadav, Sr.PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI