

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 679/M/2024  
Assessment Year: 2020-21**

<b>M/s. Khandelwal Laboratories Private Limited</b> 79/87 D Lad Path, Chinchpokli, Maharashtra- 400033. <b>PAN: AAACK4225E</b>		<b>Additional Commissioner of Income Tax, CPC</b> DCIT 6.1.2., Aayakar Bhavan CPC Bengaluru, Karnataka- 560001.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Anuj Kisnadwala, A.R.  
Revenue by : Shri P. D. Chougule (Addl. CIT), Sr. D.R.

Date of Hearing : 21 . 05 . 2024  
Date of Pronouncement : 30 . 05 . 2024

**O R D E R**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act ("Act" in short) vide its order no. ITBA/APL/S/250/2023-24/1060570585(1) dated 06.02.2024 for assessment year 2020-21.
2. The following grounds of appeal have been raised:

*"1. On the facts and in the circumstances of the case, the CIT(A) legally erred in upholding the action of the AO, CPC in*

*disallowing a sum of Rs.33,01,889/- in the intimation processed u/s 143(1) processed on account of employee's contribution of Provident Fund and ESIC being paid after the due date of the fund disregarding the fact that these contributions were duly paid on or before the due date of filing the return of income.*

*1.1. The CIT(A) erred in not following the decision of the Hon'ble ITAT, Jaipur in the case of Paris Elysees India Pvt. Ltd. vs. DCIT-7, Jaipur (ITA No.357/JPR/2022) wherein the ITAT has deleted such identical disallowances made by way of adjustments in the intimation processed u/s 143(1) of the Act holding them to be impermissible adjustments u/s 143(1) of the Act after considering the latest judgment of the Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT (448 ITR 518) which has upheld such disallowances made during regular assessment proceedings u/s 143(3) of the Act.*

*2. On the facts and in the circumstances of the case, the CIT(A) legally erred in not disposing off and thereby upholding the action of the AO CPC in making an addition of Rs.70,87,786/-being alleged deduction claimed (not actually claimed) of a liability of contingent nature u/s 37 of the Act as per clause 21 sub-clause(g) of the tax audit report(TAR) whereas in fact the impugned amount was never claimed as a deduction or debited to the profit and loss account and therefore was not subject to any disallowance/addition in the return of income. It's merely a contingent liability being bank guarantee given to bankers.*

*2.1. On the facts and circumstances of the case, without prejudice without admitting and strictly in the alternative, only for the sake argument that no addition/disallowance of such contingent liability (being the bank guarantees) could have been made in this AY 2020- 21 as the preceding previous year amount as on (i.e, as on 31.03.2019) of this same bank guarantee was Rs. 76,28,778/- thereby exceeding the previous year amount (i.e, as on 31.3.2020) of Rs. 70,87,786/-.*

*2.2. On the facts and in the circumstances of the case, the CIT(A) legally erred in not disposing off, not dealing with and not passing any judgment on the above ground of appeal raised before him vide Ground No.2 in the Form 35 filed.”*

*3. The appellant craves leave to add, to alter or amend the Grounds of Appeal on or before the hearing of this appeal.”*

3. The first ground of appeal has been raised against the order of the Ld. CIT Appeal who has upheld the action of the CPC which disallowed a sum of Rs.33,01,889/- u/s. 143(1) of the Act on account of employee's contribution to Provident Fund and ESIC (Employees State Insurance Corporation) on the ground that these contributions were paid after the due date of filing of return of income.
4. The facts of the case, in brief, are that the returns of income filed by the assessee was processed by the Centralized Processing Center (hereinafter "CPC") and order u/s. 143(1) of the Act dated 18/12/2021 was passed for the assessment year 2020-21 wherein a sum of Rs.33,01,889/- was disallowed on account of late payment of employee's contribution to PF & ESIC.
5. The assessee filed appeal before the Ld. CIT Appeal who decided the issues against the assessee vide its order no. ITBA/APL/S/250/2023-24/1060570585(1) dated 06.02.2024 for the assessment year 2020-21 on the ground that the assessee has remitted these sums after the due date.
6. Aggrieved by the order of the Ld. CIT (Appeals) the present appeal has been filed. During the course of appeal the appellant has submitted before us "*that the delay in EPF & ESIC is of only one day in certain instances, wherein, the due date is Sunday and payment is made the very next day (e.g. 15/12/2019)*". Further, the payments due on 15/05/2022 were delayed due to the country-wide lockdown due to Covid-19 Pandemic. In

any case, payments were made within due date for filing of return and, therefore, allowable as per the decision of Hon'ble Bombay High Court in Hindustan Organics Chemicals Ltd. (366 ITR 1) and Ghatge Patil (368 ITR 749). The appellant also submitted a Circular No. C-1/Misc./2020-21/Vol.1/1112 dated 15/05/2020 issued by the EPFO (Employees Provident Fund Organization) which states that for any delay in payment of any contribution or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases in view of the Hon'ble Apex Court decision in McLeod Russel India private limited vs. RPFC (214) 15 SCC 263.

7. The appellant has also submitted the decision of the Hon'ble Supreme Court of India in Miscellaneous Application No. 21 of 2022, in Miscellaneous Application No. 665 of 2021, in Suo Motu Writ Petition (C) No. 3 of 2020, in Re: Cognizance For Extension Of Limitation with Miscellaneous Application No. 29 of 2022, in Miscellaneous Application No. 665 of 2021, in Suo Motu Writ Petition (C) No. 3 of 2020 by which the Hon'ble Supreme Court has relaxed the period of limitation for instituting proceedings before the court of law. Otherwise also, it was submitted by the appellant that there was a delay of only one day in making the payments towards employee's contribution towards EPF & ESIC and that too due to the fact that the due date for deposit of the same fell on Sunday and in some cases due to lockdown on account of

Covid-19 Pandemic. The appellant also submitted the decision of ITAT Delhi Bench "B" in GD Foods and Manufacturing (India) (P) limited Vs. Assistance Director of Income Tax in ITA no. 221 of 2023 for the assessment year 2019-20 dated 10<sup>th</sup> July, 2023 in support of its contention. The D.R. on the other hand, placed reliance on the order of the Ld. CIT Appeal.

8. We have considered the rival submissions and found that though there is a delay in some cases but that was due to the circumstances beyond the control of the appellant and therefore, in view of the Hon'ble Supreme Court decision (supra.) a lenient view should be taken. Accordingly, the ground of appeal raised by the appellant, on this very issue, is allowed.
9. The second ground of appeal raised by the appellant is that the Ld. CIT Appeal upheld the action of CPC in making addition of Rs. 70,87,786/- being alleged deduction claimed as a liability which was contingent in nature, whereas, the fact is that this amount was never claimed as a deduction or debited to the profit & loss account and, thus, it was not subjected to any disallowance/addition in the return of income. It was merely a contingent liability being bank guarantee given to the bankers. Further, the addition, if at all, should not have been made in the current assessment year.
10. The Ld. CIT Appeal, however, in the impugned order dated 06/02/2024 has stated that this ground was not pressed before him at the time of

adjudication of appeal before him. Since, the appellant has not pressed this ground before us; there is no reason to decide the same.

11. The ground of appeal raised by the appellant is thus, partly allowed.

12. In the result, the appeal is partly allowed.

**Order pronounced in the open court on 30.05.2024.**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 30.05.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.