

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1616/DEL/2023 [A.Y. 2017-18]

The Dy. CI.T.
Circle - 7 (1)
New Delhi

Vs.

Delhi Financial Corporation
37-38, D-Block, Pankha Road
Institutional Area, New Delhi

PAN - AAACD 4425 F

(Applicant)

(Respondent)

Assessee By : Shri G.K. Agrawal, CA

Department By : Shri R.K. Doi, Sr. DR

Date of Hearing : 04.06.2024

Date of Pronouncement : 13.06.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the NFAC, Delhi dated 27.03.2023 pertaining to A.Y. 2017-18.

2. The solitary grievance raised vide three grounds of appeal by the Revenue relates to the deletion of the addition of Rs. 7,00,01,649/- made by the Assessing Officer on account of delayed deposit of Employees Contribution to ESI/PF and deleted by the Id. CIT(A).

3. Briefly stated, the facts of the case are that the assessee (DFC) is engaged in financing activity and is owned jointly by the Delhi Government and Chandigarh Administration established under the Act of Parliament. The Assessing Officer noticed that the employee's contribution towards provident fund of Rs. 7,00,01,649/- has been utilized by the assessee and therefore, should be the income of the assessee u/s 2(24)(x) of the Act. Since the assessee has not deposited the employees' contribution in the relevant fund and has used it for its business purposes, the Assessing Officer treated Rs. 7,00,01,649/- as income of the assessee u/s 2(24)(x) of the Act.

4. Aggrieved, the assessee went in appeal before the Id. CIT(A) who deleted the addition made by the Assessing Officer holding the Assessing Officer in error.

5. Aggrieved, the Revenue is in appeal before us.

6. The Id. DR relied upon the order of the Assessing Officer.

7. Per contra, the ld counsel of the assessee submitted that the provisions of Provident Funds Act 1925 are applicable to Delhi Financial Corporation (ie. the assessee-company) for Provident Fund established for the benefits of employees of Delhi Financial Corporation in terms of Gazette Notification dated 27 November 1967 bearing No. F.7 (28)/67-Ind(1) & No. F.7 (28)/67-Ind(ii). The Fund is administered by the 'Administrators of the Fund' as provided in the Delhi Financial Corporation Employees Provident Fund Regulations.

8. The ld. counsel for the assessee continued by saying that the Assessing Officer failed to appreciate the fact that Rs. 7,00,01,649/- was not employees' contribution to Provident Fund for the AY. 2017-18 but it was accumulated amount of Provident Fund established for the benefits of the employees of Delhi Financial Corporation as on 31.3.2017 and was a definitive liability of the assessee - company.

9. The ld. counsel for the assessee further stated that during the AY. 2017-18, corporation had deducted only an amount of Rs. 35,31,056/- towards employees' contribution to Provident Fund from their respective salaries of the employees and paid such amounts on time to the Provident Fund established for the benefits of the employees of Delhi Financial Corporation.

10. The ld. counsel for the assessee further contended the fact of timely payment of such amounts to the Provident Fund established for the benefits of the employees of Delhi Financial Corporation, can be verified from the clause 20(b) of the Tax Audit Report, where factual dates are mentioned. From the tax audit report it is clear that there were no delays in deposit of such Provident Fund and provisions of section 36(1)(va) of the Act has been fully complied with.

11. It was also submitted that the judgement of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd Vs. CIT in CA No 8233 of 2016 dated 12.10.22 is rather in favour of the assessee -company.

12. The ld AR finally concluded that the Ld. AO illegally overstepped his jurisdiction to earlier previous years by making addition of Rs.7,00,01,649/- which represents accumulated amount of Provident Fund established for the benefits of the employees of Delhi Financial Corporation as at 31.3.2017 and was a liability in spite of the fact on record that during the A. Y. 17-18. In fact, the Respondent-Company received only Rs. 35,31,056/- as employees' contribution to Provident Fund and therefore, due to default in compliance of provisions of section 2(24)(x) read with section 36(1)(va), there could have been maximum addition of the same amount i.e. Rs. 35,31,056/-

13. We have heard the rival submissions and have perused the relevant material on record. We find that DFC is authorized to maintain its own provident fund and collect Provident Fund from its employees vide Gazette Notification dated 27 November 1967 bearing No. F.7 (28)/67-Ind(1) & No. F.7 (28)/67-Ind(ii). We note that the amount of Rs.7,00,01,649/- was not employees' contribution to Provident Fund for the AY. 2017-18 but represented the accumulated amount of Provident Fund established for the benefits of the employees of Delhi Financial Corporation as on 31.3.2017 and was definite liability of the assessee.

14. The amount of provident fund collected during the year towards employees' contribution to Provident Fund from the salaries of the employees was only Rs. 35,31,056/-. This amount of Rs. 35,31,056/- was paid on time to the Provident Fund established for the benefits of the employees of Delhi Financial Corporation as is evident from clause 20(b) of the Tax Audit Report. We also find from the tax audit report that there were no delays in deposit of such PF and the assessee is in complete compliance with the provisions of section 36(1)(va) of the Act. We find force in the submission of the ld. AR for the assessee that the judgement of the Hon'ble SC in the case of Checkmate Services [supra] is rather in favour of the assessee -Company.

15. In view of our above discussion and arguments before us, we are in agreement with the submissions of the ld. counsel for the assessee and find no reason to interfere with the order of the CIT(A).

16. In the result, the appeal of the Revenue in ITA No. 1616/DEL/2023 is dismissed.

The order is pronounced in the open court on 13.06.2024.

Sd/-

Sd/-

[SAKTIJIT DEY]
VICE PRESIDENT

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 13th JUNE, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	