

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.261/Bang/2024
Assessment Years : 2019-20

M/s Pricewaterhouse Coopers Service Delivery Center, Quay Building, 4 th Floor, Bagmane Tech Park, Byrasandra Village, K.R Puram Hobli, C.V Raman Nagar S.O, Bengaluru-560 093. PAN – AADCG 4454 G	Vs.	The Asst. Director of Income Tax, CPC, Bengaluru. The Dy. Commissioner of Income Tax, Circle – 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Divya Motwani, C.A
Revenue by	:	Shri Ramanathan, Addl. CIT (DR)

Date of hearing	:	12.06.2024
Date of Pronouncement	:	18.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT (A)-11, Mumbai dated 19/12/2023 in DIN No. ITBA/APL/ S/250/2023-24/1058890529(1) for the assessment year 2019-20.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the disallowance made by the AO for Rs. 1,84,57,938/- under the provisions of sec. 36(1)(v)(a) of the Act on account of delayed payment of employee's contribution towards PF/ESI.

2.1 The CPC u/s 143(1) of the Act while processing the return of income dated 12/10/2020 disallowed the sum of Rs. 3,45,30,817/- on account of delay in the payment of employee's contribution towards PF/ESI, which was added to the total income of the assessee.

3. On appeal the Id. CIT(A) was pleased to delete part of the addition by observing that the sum of Rs. 1,60,72,879/- was paid within the due date but the balance amount of Rs. 1,84,57,938/- has been deposited dated 17/10/2018, whereas the due date was 15/10/2018. Accordingly, the Id. CIT(A) confirmed the addition of Rs. 1,84,57,938/- as made by the AO.

4. Being aggrieved by the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us vide letter dated 16/05/2024 filed certain additional documents in support of the claim that the payment towards the employee's contribution for the PF/ESI was made within the due date. Such additional documents include the bank statement for the month of October demonstrating that the payment was made before 15 October 2018 and the letter from the employees PF organization dated 10/04/2024 demonstrating that there was no interest charged by the organization on account of delayed payment. As such, it was the contention of the Id. AR that the payment had been made towards the employees PF/ESI within the stipulated time and, therefore, the same should be allowed as deduction.

6. The Id. AR further submitted that the additional documents were not available at the time of passing the order by the Id. CIT(A) and, therefore, the assessee could not furnish the same. Furthermore, the revenue authorities have not doubted on the payment claimed to be

made by the assessee on 11/10/2018 and, therefore, the bank statement was not furnished. In view of the above, the Id. AR submitted to admit the additional evidence and remit the matter back to the AO for the purpose of verification and adjudication of the issue afresh as per the provisions of law.

7. On the other hand, the Id. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there is a mismatch in the date of payments pertaining to the month of October 2018 towards employees PF/ESI as reported in the tax audit reported vis-à-vis, the corresponding documents i.e. bank statement. However, the Id. AR before us has clarified that there was no delay in making the payment as alleged by the revenue. The Id. AR in support of his claim has filed additional documents with the prayer to admit the same under Rule 29 of the Income Tax Appellate Tribunal rules. It is a settled position of law that the deduction on account of employees PF/ESI can be allowed, if the same has been paid on or before the due date specified under the relevant Act. It is also important to note that the assessee cannot be blamed if there is a delay on account of payment towards the PF/ESI due to technical glitches. In holding so, we draw support and guidance from the following judgments:

1. Broadcom Communication Technologies (P.) Ltd. [ITA No. 895 and 900/Bang/2014]
2. Nokia Siemens Network (P) Ltd. [2017] 57 ITR(T) 382 (Delhi-Trib.)
3. Oil and Natural Gas Corporation Ltd. [2019] 103 taxmann.com 396 (Mumbai ITAT)

9. Coming to the present case, we note that the assessee has filed additional documents justifying that payment has been made within the stipulated date. These documents certainly are essential and go to the root of the matter to render justice. Therefore, we admit the same in terms of the provisions of Rule 29 of Income Tax Appellate Tribunal Rule 1963. Accordingly, we set aside the issue to the file of the AO for fresh adjudication after carrying out necessary verification of the additional documents filed by the assessee and as per the provisions of law. Hence, the ground of appeal raised by the assessee is hereby allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed statistical purposes.

Order pronounced in court on 18th day of June, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 18th June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore