

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.3315/Del/2023  
निर्धारणवर्ष/Assessment Year: 2017-18**

<b>Gaurav International</b> B-34, Mayapuri Industrial Area, Phase-1, West, New Delhi.	<b>बनाम</b> <b>Vs.</b>	<b>ACIT</b> Circle-49(1), Civic Centre, Minto Road, New Delhi.
<b>PAN No.AAAF5920D</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>Assessee by</b>	<b>Sh. K.V.S.R. Krishna, CA</b>
<b>Revenue by</b>	<b>Sh. Sanjay Tripathi, Sr. DR</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>07.05.2024</b>
<b>उद्घोषणाकीतारीख/ Pronouncement on</b>	<b>21.06.2024</b>

**आदेश / O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 23.10.2023 for the AY 2017-18 in sustaining the disallowance made in respect of employees contribution to PF & ESI u/s 36(1)(va) read with section 2(24)(x) of the Act.

2. Ld. Counsel for the assessee referring to the written submissions contends that the contributions for the month of April, 2016 were deposited on 16.05.2016 with one day delay. Ld. Counsel submits that since the due date i.e. 15.05.2016 happened to be Sunday the contributions were deposited on 16.05.2016. Similarly, it is submitted that the contributions for the month of July, 2016 were deposited on 16.08.2016 with one day delay. Ld. Counsel submits that the due date i.e. 15.08.2016 happened to be Independence Day and closed holiday the contributions were deposited on 16.08.2016. Ld. Counsel placing reliance on the decision of the Tribunal in assessee's group cases in ITA No.2354/Del/2022 dated 14.09.2023 submitted that the Tribunal held that in the circumstances there is no delay in deposit of the contributions. Copy of the order is placed on record.

3. Ld. Counsel for the assessee further submits that in so far as the contributions for the month of January, 2017 is concerned submits that the assessee has deposited the contributions on various dates as under:

S.No.	Employee Share PF Cont.	Month/Year	Due Date	Date of Deposit	Delay	Remarks
1.	6,13,009	Jan, 2017	15.02.2017	15.02.2017	No delay	CA Certificate
	1,94,088		15.02.2017	01.03.2017	14 days	Delay
	14,93,404		15.02.2017	15.02.2017	No delay	CA

						Certificate
	15,79,849		15.02.2017	15.02.2017	No delay	CA Certificate
	37,372		15.02.2017	01.03.2017	14 days	Delay
	<b>39,17,722</b>					

Referring to the above table, the Ld. Counsel submits that out of total contributions of Rs.39,17,722/-, contributions to the extent of Rs.36,86,262/- were in fact paid within the due date i.e. 15.02.2017 and the balance contributions of Rs.2,31,460/- were remitted with a delay of 14 days. Therefore, it is the submission of the Ld. Counsel for the assessee that in so far as the contributions of Rs.36,86,262/- which were paid within the due date the same shall not be subject matter of disallowance u/s 36(1)(va) r.w.s. 43B of the Act.

4. Ld. DR submits that the matter may be restored to the file of the AO for verification.

5. Heard rival submission. In so far as the contributions for the month of April, 2016 and July, 2016 where there is a delay of one day are concerned, we find that the Tribunal in ITA No.2354/Del/2022 dated 14.09.2023 held that the contributions paid with a delay of one day on account of the due date being Sunday the same is to be allowed. Therefore, following the order of the Tribunal, we direct the AO to verify the contention of the

assessee that the contributions for the months of April, 2016 and July, 2016 were made with a delay of one day as the due date fell on Sunday and Independence Day being closed holiday. If the contention of the assessee is proved true the same shall be allowed as deduction subject to verification.

6. Ld. Counsel for the assessee further submits that in so far as the contributions which were deposited beyond 15<sup>th</sup> of next month, the due date for deposit of PF & ESI shall be reckoned from the month in which disbursement of salary was made. In other words, the Ld. Counsel submits that for computing the period of delay “month” to be taken should be the month in which salary/wages are disbursed by the assessee as held by the Kolkata Bench of the Tribunal in the case of Kanoi Paper Industries Ltd. vs. ACIT (75 TTJ 448).

7. Ld. Counsel submits that Delhi Bench of the Tribunal following the decision of the Kolkata Bench restored the appeals in the following cases to examine the contentions of the assessee:

1. *“IN ITA No. 164/Del/2023 in the ITAT [DELHI BENCH “H” NEW DELHI] for A.Y. 2018-19 in the case of ACIT vs. M/s. VVDN technologies Pvt. Ltd.*
2. *In ITAs No. 7 & 8/DEL/2023 Jun 12,2023 (2023) 68 CCH 0520 Del Trib, (2023) 201 ITD 0154 (Delhi-Trib) in the case*

*of SENTINEL CONSULTANTS P. LTD. vs. ACIT IN THE ITAT DELHI BENCH "G"*

3. *ITA Nos. 116 & 117/Del/2023 Sep 26, 2023 (2023) 69 CCH 0040 Del Trib in the case of DIGNUS SERVICES vs. INCOME TAX OFFICER IN THE ITAT DELHI BENCH 'B'"*

8. Ld. DR fairly submitted that Delhi Bench of the Tribunal in various decisions restored the issue to the file of the AO to examine the contentions of the assessee.

9. Heard rival submissions, perused the orders of the authorities below. We find identical issue came up for adjudication in the case of ACIT Vs. M/s VVDN Technologies Pvt. Ltd. in ITA No.164/Del/2023 and the Tribunal by order dated 04.07.2023 restored the issue to the file of the AO to decide the issue keeping in view the directions of the Mumbai Tribunal in the case of Master Polishers Vs. ACIT in ITA No.252/Mum/2023 dated 26.04.2023. We also observe that similar view has been taken by the Mumbai Bench in the case of Sentinel Consultants P. Ltd. Vs. ACIT (201 ITD 154). Considering the rival submissions, this issue is restored to the file of the AO with a direction to examine the contentions of the assessee as stated above and to decide in accordance with law after providing adequate opportunity to the assessee.

10. With these observations, we restore this appeal to the file of the AO to decide the issues keeping in view our above observations and the contentions of the assessee and pass order accordingly.

11. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 21/06/2024

Sd/-  
(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 21/06/2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi