

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 676/Mum/2024 (A.Y. 2018-19)

Khandelwal Laboratories Private Limited 79/87 D Lad Path Chinchpokli Mumbai 400033 PAN AAACK4225E (Appellant)	Vs.	Addl. CIT(A) Bengaluru (Respondent)
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Assessee by	Shri Anuj Kisnadwala
Department by	Shri R.R. Makwana
Date of Hearing	13.06.2024
Date of Pronouncement	24.06.2024

ORDER

Per Prashant Maharishi Accountant Member

1. This appeal is filed by Khandelwal laboratories private limited (the assessee/appellant) against the appellate order passed by the Joint Commissioner of income tax appeal – 4, Bangalore (the learned CIT – A) for assessment year 2018 – 19 dated 6/2/2024 wherein the appeal filed by the assessee against the order passed under section 143 (1) of The Income Tax Act, 1961 [the Act] dated 8/11/2019 by the central processing Centre Bangalore wherein claim of deduction of the assessee pertaining to employees contribution of provident fund and employees State insurance scheme paid on the next date of the due date immediately, due date being holiday, was disallowed, was dismissed.
2. The assessee is a company who filed its return of income on 4/10/2018 at Rs Nil. The return was processed under section 143 (1) of the act on 8/11/2019 wherein the total income of the assessee was determined at 42,81,719/-. The adjustment was made with respect to

section 143 (1) (a) (iv) of the act of sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI act or any other fund for the welfare of the employees to the extent not credited to the employees account on or before the due date under section 36 (1) (va) of the act amounting to Rs. 7,652,704/-. It is apparent that the assessee was given an opportunity by communication dated 18/2/2019 by email but no response was received from the assessee as mentioned at page number 7 of 24 of the intimations, therefore the above adjustment was made.

3. The assessee preferred an appeal before the learned CIT – A wherein the claim was raised that if on the due date for making payment under the respective act is a national holiday or Sunday, and if such sum is deposited on the very next date immediately, such payment should be considered as payment within due dates of the respective law. The learned CIT – A dismissed the appeal of the assessee.
4. Before us, on appeal, assessee submitted that the decision of the coordinate bench in case of G D foods and manufacturing India private limited (2023) 202 ITD 116 (Delhi) has decided an issue that wherein assessee make payment towards contribution to such funds with one day delay as due date for payment of such contribution under the respective acts fell on Sunday /gazette holiday, the said payment was to be allowed. It was submitted that at least to that extent the claim of the assessee is allowable. No other grounds or issues were pressed before us.
5. The learned departmental representative vehemently submitted that if the due date happens to be a national holiday or gazette holiday, the assessee should have paid the same earlier. It was stated that the provident fund and ESIC act are beneficial and by paying late one day, the interest of the employees in whose account this is deposited late by one day loses the interest. Therefore, the intention of the law must

be seen to protect the interest of the employees where the assessee does not pay such amount within the due date. It was also submitted that when online payment facility is available, such argument does not deserve any merit. He further submitted that section 10 of the General clauses act, 1897 does not apply to payment of taxes and dues under the Provident Fund Act. Further, nothing is required to be done in the office or any court but it is an online payment which is required to be made and therefore section 10 of the General clauses act does not apply.

6. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that if the contribution of the assessee and EPF made by the assessee with one-day delay is allowable when the due date for payment of such dues prescribed under the respective act on Sunday or holiday, the coordinate bench has decided this issue in G.D Foods and Manufacturing India Private Limited (supra). It is held that no such disallowance can be made.
7. There is no doubt on the fact that if the contribution of employees in the respective act is deposited late, same is disallowable under section 36 (1) (va) of the act in view of the clear reading of the law as well as the decision of the honourable Supreme Court in 448 ITR 518. However, the issue is where such due date falls on holiday, and assessee deposits the dues on the very next day, still such disallowance can be made. The coordinate bench has held that in these circumstances the disallowance should not be made. Therefore, respectfully following the same we restore the issue back to the file of the learned assessing officer to examine the claim of the assessee and allow the deduction if due date for payment falls on a national holiday or gazetted holiday and assessee has made payment immediately on the next day as covered by the above decision of the coordinate bench. Accordingly ground number 1 of the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 24th June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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