

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.4283/Mum/2023
Assessment Year: 2019-20**

M/s. Guruji Infrastructure Private Limited		ADIT, CPC, Bangalore 560500
33, Plot 1088 Suraj Plaza, 'A' Wing, Chandulal Park, Station Road, Bhayandar (West), Thane-401101, Maharashtra.	Vs.	
PAN: AAECG 3499 G		
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Shruti Kalyanikar
Revenue by : Shri Prashant Mahajan, Sr. DR

Date of Hearing : 01.07.2024
Date of Pronouncement : 29.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2019-20 is directed against the order dated 27.09.2023 passed by the ADDL/JCIT(A)-3, Chennai. The assessee has raised the following grounds of appeal:

"1. NATURAL JUSTICE

1.1 It is submitted that in the facts and the circumstances of the case and in law the appellate order so framed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [Ld. CIT(A)] be held as bad and illegal, as:

- i. The same is framed in breach of the principles of natural justice and*
- ii. The same is perverse, passed without application of mind to the facts on record.*

1.2 Without prejudice to the generality to the above, in the facts and the circumstances of the case and in law, the order is bad in law as:

i. The same is passed without granting proper, sufficient and adequate opportunity of being heard to the appellant;

ii. The order is passed without application of mind to the facts and the submissions brought on record.

2. NO ADJUSTMENT CAN BE MADE UNDER INTIMATION U/S 143(1) OF THE ACT

2.1. In the facts and circumstances of the case and in law, the ld. CIT(A) erred in confirming the action of the Central Processing Centre, Income Tax Department, [‘the AO’] in passing the intimation u/s 143(1) by disallowing Rs. 1,13,01,230/- claimed towards employees contribution towards the provident fund and ESIC.

2.2 While doing so, the ld. CIT(A) failed to appreciate that the adjustment was not made in accordance with the provisions of section 143(1) of the Act.

2.3 It is submitted that in the

2. Fact in brief is that assessee filed return of income on 04.11.2019 declaring total income of Rs. 2,29,64,635/-. The CPC has made adjustment in the intimation passed u/s 143(1) of the Act by way of disallowance of delayed remittance of employee’s contribution to PF/ESIC to the amount of Rs. 1,13,01,230/- for the assessment year 2019-20 on the ground that same was paid beyond the due date.

3. The assessee filed appeal before the ld. CIT(A). The ld. First Appellate Authority following the decision of Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT-I, Civil Appeal No. 2833 of 2016 dated 12.10.2022 dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. At the outset, it is brought to our information that similar issue on identical fact in the case of assessee itself has been adjudicated by the co-ordinate bench of the ITAT, Mumbai vide ITA 1377/Mum/2023 dated

24.07.2023 and the issue was decided against the assessee. With the assistance of Id. Representative, we have gone through the decision of the ITAT, Mumbai in the case of assessee itself on the similar issue as referred above. The relevant extract of the decision is reproduced as under:

“5. Heard both the sides and perused the material on record. We consider that vide the decision of Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016 dated 12.10.2023 the entire controversy is set at rest wherein it is held that employer have to deposit the employees contribution towards EPF/ESIC on or before the due date prescribed under the respective acts. The hon’ble Supreme Court held that it is essential condition for allowing the impugned deduction u/s 36(1)(va) that such amounts are deposited within the due date as prescribed in the specified Act. The Id. Counsel referred ITAT’s decision in the case of the assessee itself vide ITA No.343/Mum/2013 for A.Y. 2020-21. We find that case was pertained to the circumstances when the due date was falling on Saturday/Sunday, however, the facts in the case of the assessee are distinguishable from those facts. Regarding the contention of the assessee that whether it is the month for the salary/wages due or month of the payment of the salary to be taken for the purpose of deposit of the PF/ESI contribution of the employee’s contribution in this regard, we find that the cases referred by the Id. Counsel are of no help in view of the decision of Hon’ble Madras High Court in the case of Radiators & Pressing Ltd. 263 ITR 620 wherein it is held that the term ‘every month’ in clause 38 of the provident fund scheme should be read as month in which the wages were actually earned i.e. salary payable. We find that coordinate bench of the ITAT in the case of Creative Textiles Mills Pvt. Ltd. Vs. DCIT CPC vide ITA No. 409/Mum/2022 A.Y. 2018-19 dated 31.05.2023 after following the decision of Hon’ble Madras High Court as referred above has dismissed the appeal of the assessee. The relevant part of the decision is reproduced as under:

“3.1 However, we find that the Hon’ble Madras High Court in the case of the Commissioner of Income-tax v. Madras Radiators & Pressing Ltd. 264 ITR 620 Madras has held that the term “every month” in clause 58 of the Provident Fund Scheme should be read as month in which the wages were actually earned i.e. salary payable. The relevant finding of the Hon’ble Madras High Court is reproduced as under:

“4. In our considered opinion, we are of the view that the Tribunal is not correct in coming to the conclusion that there was some ambiguity in construing the expression "month" used in para 38 of the Scheme under the Provident Fund Act on the premise that the assessee used to pay the salary to its employees only on the 7th day of succeeding month under section 5 of the Payment of Wages Act. It is true that section 5 of the Payment of Wages Act provided for payment of wages in respect of certain categories of industries on or before the 7th day of succeeding month. However section 4 of the Act provided for fixation of wage period and also provided that no wage period shall extend one month.

5. Para 29 of the Scheme under the Provident Fund Act provided that the contribution payable should be calculated on the basis of the basic wages and other allowances actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis. The expression "basic wages" is defined as all emoluments, which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him.

6. Para 30 of the Scheme of the Provident Fund Act imposed an obligation on the employer to remit both the shares of contributions in the first instance and para 32 empowered the employer to recover the employees' contributions from the wages of the employees. As per para 38 of the Scheme, the employer is required to remit both the contributions together with the administrative charges thereon within 15 days before the close of every month.

7. Thus as seen from the above provisions, it is clear that it is the responsibility of the employer to make payment of the contributions at the first instance irrespective of the fact, whether the wages are paid in time or not. Hence the actual payment of wages on the 7th day of succeeding month would not any way alter the situation and give room for interpreting that the "close of 15th day" has to be calculated from the end of the month in which the wages were actually paid. The payment of wages on the 7th day of succeeding month would not in any way alter the initial responsibility of the employer for making payment of contributions, which he is statutorily authorised to recover from the employees salary, whether the salary is paid in time or not. Hence the one and only reasonable conclusion is that the employer has to remit both the contributions to the Provident Fund within 15 days from the close of the month for which the employees earned their salary i.e., Salary payable. Our view has been fortified by the Division Bench of this court in *Presidency Kid Leather (P) Ltd. v. Regional Provident Fund CIT (1997) 91 F.J.R. 661*, wherein the Division Bench of this court held as follows :

“As per para 38 of the Employees' Provident Funds Scheme, the employer is required to remit both the employees' as well as the employer's share of contributions together with administrative charges thereon before the close of the 15th of every month. Para 30 of the Scheme imposes an obligation on the employer to remit both the shares of contributions in the first instance and para 32 of the Scheme enables the employer to recover the employees contributions from the wages of the employees. The initial responsibility for making payment of the contributions lies on the employer irrespective of the fact whether the wages are paid in time or not. As such, the Provident Fund payments made after the due date will attract the penal damages under section 14B of the Act.”

The Tribunal committed serious error in coming to the contrary conclusion. Hence the first two questions of law referred to us are answered in the negative against the assessee and in favour of the revenue.”

(emphasis supplied externally)

3.2 The Hon'ble High Court being higher in hierarchy of judiciary than the Tribunal, therefore, following the decision of the Hon'ble Madras High Court (supra), we reject the prayer of the Ld. Counsel of the assessee for restoring the matter back to the Assessing Officer. The grounds of appeal of the assessee are accordingly dismissed.

4. In the result, the appeal of the assessee is dismissed.

5. Following the decision of the ITAT in the case of assessee itself as referred above, we don't find any reason to interfere in the decision of ld. CIT(A). Therefore, all the grounds of appeal of the assessee also dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 29.07.2024.

Sd/-
(PAWAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.07.2024
Biswajit, Sr. P.S.

Copy to:

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

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai