

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.654/Del/2024
Assessment Year 2022-23

Magic Software Pvt. Ltd. 1005, Akashdeep Building, Barakhamba Road, Delhi.	Vs.	Deputy Commissioner of Income Tax Central Circle-16(1) New Delhi
TAN/PAN: AACCM8579M		
(Appellant)		(Respondent)

Applicant by:	Shri Mukesh Singhal, Advocate		
Respondent by:	Shri Jatender Kumar Kale, CIT-DR		
Date of hearing:	29	07	2024
Date of pronouncement:	29	07	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Additional / Joint Commissioner of Income Tax (Appeals)-3, Hyderabad ('CIT(A)' in short) dated 10.01.2024 arising from the assessment order dated 16.03.2023 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2022-23.

2. As per the Grounds of Appeal, the salutary ground raised by the assessee concerns disallowance of employees' contribution to Provident Fund on the contours of Section 36(1)(va) of the Act r.w. Section 2(24)(x) of the Act.

3. When the matter was called for hearing, the Id. counsel for the assessee submitted at the outset that the assessee has done everything

within its means to comply with the provisions of the Provident Fund Act for making timely payment towards PF contribution. The Id. counsel referred to page no.43 of the paper book containing screen shot on the portal of PF Department showing that the payment attempted to be made to the Provident Fund Department could not be completed and the screen shot clearly shows that the system provided for online payment marks the system unresponsive for acceptance of payment. The Id. counsel thereafter referred to page no.44 which yet again depicts that status of the payment is shown to have failed or awaiting payment against such Employees' Contribution which further supports that the payment although attempted to be made was not accepted due to glitches in the online system provided by the Provident Fund Authority. The Id. counsel thereafter referred to page no.45 of the paper book wherein the assessee company has addressed the e-mail dated 15th June, 2021 to Provident Fund Authorities expressing his helplessness for making payment of provident fund contribution dues for last 2-3 days. Similarly pages 46 and 47 also shows the internal e-mail correspondence wherein the employee, Mr. Gautam Lath has e-mailed a communication to Mr. Sumit Bansal – the Director of the company along with screen shot of the attempted payment to Employees' Provident Fund Organization and expresses his inability to make Provident Fund payment due to website glitches. The Id. counsel thereafter referred to the challan showing payment towards employees' contribution and employer's contribution with one day delay on 16th June, 2021 attributable to wages for May, 2021. The Id. counsel thereafter adverted to page no.53 of the paper book wherein a letter dated 23rd June, 2021 is annexed which seeks inform the Regional Provident Fund Commissioner that due to heavy load in the server of the Provident Fund Website, the assessee failed to deposit provident fund in relation to wages for May, 2021 within the stipulated time available upto 15th June, 2021 and sought relief on account of

interest payments etc. for one day delay due to website failure. The Id. counsel thus submitted that the assessee was prevented from making online payment within stipulated time due to website glitches and therefore, the disallowance under Section 36(1)(va) is not justified in the peculiar circumstances owing to doctrine of impossibility.

3.1 It was contended that the assessee cannot accepted to do impossible things and therefore, in the absence of any violation of spirit of Section 36(1)(va), no fault can be found with the action of the assessee. The assessee has made payments as soon as the facility was found workable.

3.2 The Id. counsel thereafter referred to some decisions of the Co-ordinate Bench to contend that in the similar circumstances, a benign view has been taken by the Co-ordinate Benches and relief from the clutches of Section 36(1)(va) has been duly provided. For this purpose, the Id. counsel *inter alia* referred to the decision rendered in the case of *Protiviti India Member Pvt. Ltd. vs. ACIT, ITAs No.2958 & 2959/Del/2022 order dated 14.02.2024* wherein the issue was decided in favour of the assessee in identical facts.

4. The Id. DR for the Revenue, on the other hand, relied upon the orders of the lower authorities and submitted that the law is explicitly clear that the employees' contribution to PF must be paid within stipulated time under the relevant Act and there is no scope for any concession in the matter.

5. We have carefully considered the rival submissions and perused the material available on record.

6. The salutary issue involves disallowance of the employees' contribution to PF relatable to wages for May, 2021 on the contours of Section 36(1)(va) r.w. Section 2(24)(x) of the Act owing to one day delay in deposit of Employees' Contribution. As amply demonstrated

on behalf of the assessee, the assessee has made every possible attempt to adhere to the stipulated payments timeline provided under the Provident Fund Act towards employers as well as employees' contribution. However, the payment could not be made due to website failure and glitches which fact is also manifestly discernible from material available on record. The payment was ultimately made with one day delay as soon as the assessee could make the payment through the online platform provided under the PF Laws.

7. In the light of the material available on record, we have no iota of doubt that the attempt to make timely payment of contribution towards PF contribution by assessee stands vindicated. Thus, where the assessee was prevented to make online payment owing to technical glitches in the Provident Fund online payment platform, we see no reason to penalize the assessee for the unresponsive platform of the Provident Fund Department. It is trite that an assessee cannot be asked to do what is impossible for him to do. The provisions of Section 36(1)(va) thus requires to be read down appropriately in tune with doctrine of impossibility.

8. We thus set aside the order of the CIT(A) and direct the AO to cancel the disallowance of Rs.16,59,659/- made on this score.

9. In the result, the appeal of the assessee is allowed.

Order dictated and pronounced in the open Court on 29 July, 2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: July, 2024
Prabhat