

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 166/Srt/2024 (Assessment Year 2019-20)

(Physical hearing)

Shiva Industrial Security Agency (Gujarat) Limited, R.S. No. 71, Sameer Complex, Navsarjan Society, Pandesara, Surat-394221. <b>PAN No. AAFCS 3845 P</b>	Vs.	D.C.I.T., Circle (2)(1)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	None
Department represented by	Shri Ravi Kant Gupta, CIT-DR
Date of Institution of Appeal	15/02/2024
Date of hearing	28/08/2024
Date of pronouncement	28/08/2024

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) Addl/JCIT(A)-8 Mumbai (in short, the Id. CIT(A)) dated 29/11/2023 for the Assessment Year (AY) 2019-20, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and the circumstances of the case as well as law on the subject, the Id. AO (CPC) has erred by disallowing contribution to PF/ESIC u/s 36(1)(va) for Rs. 3,25,79,578/-.*
- 2. It is therefore prayed that above demand may please be deleted.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. None appeared on behalf of assessee despite service of notice of hearing on more than two occasions. The assessee is in habit to file adjournment application only, when appeal is adjourned. This appeal was fixed on 29.05.2024, none appeared on behalf of assessee despite service of notice

and the appeal was re-fixed for hearing on 02.02.2024. The assessee filed application on 29/05/2024 at 4.10 PM and noted the date of hearing fixed on 02/07/2024. Again on 02/07/2024, initially, none appeared on behalf of assessee, however, on filing application by the assessee, the next date of hearing on 28/08/2024 was noted by same representative, who filed application for adjournment of the case. Today i.e. on 28/08/2024, again none appeared on behalf of assessee nor any application for adjournment is filed, therefore, we left no option except to decide the appeal on the basis of material on record and hearing the submissions of learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the Revenue.

3. Perusal of record shows that the impugned order was passed by the Id. CIT(A) on 29/11/2023 but the present appeal is filed before the Tribunal on 15/02/2024, thus, there is a delay of 18 days in filing appeal before the Tribunal. The assessee has filed application for condonation of delay in the form of affidavit of Managing Director of assessee company namely Shri Sameer Sharma. The affidavit is not in the proper format. In the affidavit, the assessee contended that the impugned order was received on 29/11/2023 and the assessee was required to file appeal by 28/01/2024. The assessee further stated that they were preoccupied in the hearing fixed before the National Company Law Tribunal and was out of station and thereafter was preoccupied with prescheduled meetings with the clients situated outside the station.

4. We have heard the submissions of the Id. CIT-DR for the revenue. The Id CIT-DR of revenue opposed the prayer of condonation of delay and would submit that the assessee has filed affidavit of its Managing Director. Affidavit does not disclose any reasonable and plausible explanation. In the affidavit it is casually mentioned that he was pre-occupied in meetings. Preoccupied meeting cannot be considered a reasonable explanation when the assessee was required to file appeal within statutory period. No reasonable explanation for condoning the delay is given. In alternative submissions, the Id CIT-DR of revenue submits that in case the Bench is of the view that the matter may be decided on merit, the delay may be condoned, but subject to heavy cost. On merit of the case, the Id. CIT-DR for the revenue submits that the grounds of appeal raised by the assessee is covered against the assessee by the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs CIT in Civil Appeal No. 2833/2016 dated 12/10/2022 wherein it has been held that no deduction is allowable for delay in deposit of employees' contribution on account of ESIC and PF. Thus, the assessee has no case on merit.
5. We have considered the submissions of the Id. CIT-DR for the revenue and perused the record carefully. First, we shall consider the plea of assessee for condonation of delay in filing appeal. On perusal of affidavit of Managing Director of assessee, we find that the assessee has not disclosed reasonable and plausible cause for condoning the delay. Pre-occupation cannot be considered as reasonable explanation when the assessee is required to file appeal before the judicial forum. The approach of assessee

is casual. The assessee has not shown any reasonable explanation about non-filing appeal within statutory period of 60 days. However, keeping in view the fact that the delay is only of 18 days and keeping in view the principle of law settled by the Hon'ble Apex Court that when technical consideration and cause of justice are kept against each other, the cause of justice may be preferred. Therefore, the delay in filing appeal is condoned but subject to deposit of cost of Rs. 5,000/- with Surat District Court Legal Advice Committee/Board. Now adverting to the merit of the case.

6. We have considered the submissions of Id. CIT-DR for the revenue on merit. We find that the assessee is engaged in the business of providing security services, filed return of income for A.Y. 2019-20 declaring income of Rs. 9.17 crores. The return of income was processed by the Central Processing Centre, Bangalore (CPC) vide intimation dated 19/05/2020. While processing the return of income, the CPC, Bangalore has made prima facie adjustment by disallowing employees' contribution of PF and ESIC of Rs. 3.25 crores which was not deposited before due date prescribed in the relevant Acts. On appeal before the Id. CIT(A), the action of CPC/Assessing Officer was upheld. The Id. CIT(A) while upholding the order of Assessing officer/CPC also followed the decision of Hon'ble Apex Court in Checkmate Services Pvt. Ltd. Vs CIT (supra). We find that the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs CIT (supra) held that no deduction is allowable for delay in deposit of employees' contribution on account of ESI and PF. The decision of Hon'ble Apex Court is a binding

precedent as per Article 141 of the Constitution of India. Thus, we do not find any illegality or infirmity in the order passed by the Id. CIT(A). In the result, grounds of appeal raised by the assessee are dismissed.

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

Order announced at the time of hearing in open court on 28<sup>th</sup> August, 2024.

Sd/-  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 28/08/2024

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat