

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2565/Mum/2024
(Assessment Year :2022-23)**

Shah Manufacturers 114-C, Mittal Court Nariman Point Mumbai – 400 021	Vs.	DCIT-CC-2(3) Old CGO Building (Annex) Maharshi Karve Road Mumbai – 400 020
PAN/GIR No.AAZFS2398Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Suchek Anchaliya
Revenue by	Ms. Rajeshwari Menon
Date of Hearing	25/07/2024
Date of Pronouncement	06/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 15/04/2024 passed by CIT(A)-48, Mumbai in relation to adjustment made u/s.143(1) for the A.Y.2022-23.

2. The assessee is mainly aggrieved by disallowance of amount deposited towards employees' contribution to the employee provident fund of Rs.10,88,030/- made u/s.36(1)(va) on the ground that same has been filed beyond the due date specified in


the respective Act. The ld. CIT(A) has confirmed the disallowance following the judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178.

3. We have heard both the parties and also gone through the material placed referred to us. Before us ld. Counsel for assessee submitted that here in this case the delay in depositing the employees' contribution for the month of May 2021 which was to be deposited on or before 15/06/2021 was deposited on 16/06/2021. The reason for delay of one day was that, there were technical glitches in the EPFO portal and challans could not be uploaded. In support, he has filed screen shots where assessee had tried to upload the payment challan, but the portal could not upload the payment challans and it stated that "**page is unresponsive**" and mentioned the following narration "**you can wait for it to become responsive or exit the page**". It has been pointed out that Assessee thereafter kept on trying on but same message appeared and for every attempt made by the assessee, screen shots have been filed in support of this contention. Finally, on that day assessee could not file the challan. The assessee filed the challan on the next date, i.e., on 16/06/2021 for which he also filed payment confirmation receipt.

4. On the other hand Ld. DR submitted that, the law provides the due date and there is nothing in record that time can be for due date for payment. Law has to be strictly adhered or assessee

should have got the certificate to this affect from EPFO Department.

5. From the aforesaid facts and material brought on record, there can be no dispute that, here in this case there was no fault on the part of the assessee to deposit employees' contribution to the EPF within due date of 15/06/2021, because when assessee tried to upload the payment challan for employees' contribution on the due date, same could not be uploaded due to some technical fault on the portal of EPFO for which assessee has filed sufficient evidences in the form of screen shots. Once there was a technical glitch and non-functioning of EPFO site for generating ECR required for making online payment, then it cannot be held that assessee failed to deposit the employees' contribution to EPF within due date. In such a case where circumstances are beyond the control of the assessee and no fault on part of the assessee despite all diligent efforts, stringent view cannot be taken to make disallowance of payment and treating it as income of the assessee. Technical glitches and portal failure of the Government site cannot be attributed to the citizens' failure. Once the glitch was ruled out, very next day assessee has filed challan on 16/06/2021. The screen shot of the same is reproduced hereunder:-




कर्मचारी भविष्य निधि संगठन
Employees' Provident Fund Organization
भविष्य निधि भवन, १४, भीकजी कामा प्लेस, नई दिल्ली - ११००६६
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110066

Generated On 19/06/2021 17:28:

Payment Confirmation Receipt

TRRN No :	1812106007066
Challan Status :	Payment Confirmed
Challan Generated On :	16-JUN-2021 12:13:00
Establishment ID :	SRSRT0033589000
Establishment Name :	SHAH MANUFACTURERS
Challan Type :	Monthly Contribution Challan
Total Members :	701
Wage Month :	MAY-2021
Total Amount (Rs) :	22,67,623
Account-1 Amount (Rs) :	14,23,504
Account-2 Amount (Rs) :	45,334
Account-10 Amount (Rs) :	7,52,544
Account-21 Amount (Rs) :	45,334
Account-22 Amount (Rs) :	907
Payment Confirmation Bank :	HDFC Bank
CRN :	240160621007196
Payment Date :	16-JUN-2021
Payment Confirmation Date :	16-JUN-2021
Total PMRPY Benefit :	0



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6. Thus, under these facts we hold that no disallowance of amount of employees' provident fund can be made u/s.36(1)(va)

and there was no fault on the part of the assessee as the delay was fully attributable to the technical glitches of EPFO site / portal and assessee has duly discharged the payment as required on very next date. Accordingly, appeal of the assessee is allowed.

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

Order pronounced on 6th August, 2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 06/08/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)

ITA No.2565/Mum/2024
M/s. Shah Manufacturers

ITAT, Mumbai