

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3441/MUM/2024
Assessment Year: 2017-18**

Mott MacDonald Pvt. Ltd.,
Unit No. 101, 1st floor, 'Nomura',
Hiranandani Gardens Pawai,
Mumbai-400076.

PAN NO. AAACD 2029 F
Appellant

Vs. Dy. CIT Circle-15(1)(1),
Aayakar Bhavan,
Mumbai-400020.

Respondent

Assessee by : Mr. Anish Thacker
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 15/10/2024
Date of pronouncement : 22/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 09.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

On the facts and in circumstances of the case and in law, the learned CIT (A):



1. erred in upholding the adjustment made by CPC-ITR in respect of employees' contribution to provident fund under section 36(1)(va) of the Act without appreciating the facts of the case;

2. erred in upholding disallowance of Rs. 48,66,144 for the month of April without appreciating the fact that the employees contribution was deposited to provident fund (viz. 16 May 2016) within time limit provided under section 10 of General Clauses Act, 1897, as the due date for payment of contributions under the Employees' Provident Fund Scheme, 1952 was a public holiday (viz. 15 May 2016); and

3. erred in upholding disallowance of Rs. 47,87,779 for the month of July without appreciating the fact that the employees contribution was deposited to provident fund within the due date for payment of contributions under the Employees' Provident Fund Scheme, 1952 (viz. 15 August 2016); and

4. erred in upholding disallowance of Rs. 50,42,268 without appreciating the fact that delay in payment to provident fund was on account of technical issue in the Unified Portal of the Employee Provident Fund Organisation.

2. Briefly stated facts of the case are that intimation under order u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') was issued in respect of return of income filed by the assessee. Further, the assessee preferred rectification against the said intimation order. In said rectification order, the grievance of the assessee for considering deposit of employees contribution of ESIC after due date prescribed under the relevant law was not considered by the Assessing Officer.

3. On further appeal, the Ld. CIT(A) also rejected the contention of the assessee in view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT 448 ITR 518. The assessee submitted that the employees contribution to the provident fund for the month of April, 2016 amounting to



Rs.48,66,144/- and for the month of July, 2016 amounting to Rs.47,87,779/- was due on 15.05.2016 and 15.08.2016 respectively. But the due date was falling on public holiday and therefore, same was deposited on the next working day and therefore, in view of section 10 of the General Clauses Act compliance on the next working day should be considered as good compliance. Regarding the payment of Rs.50,42,268/- the Ld. counsel submitted that due to technical glitch on the system of the EPFO, the assessee could not deposit the amount on time. The Ld. CIT(A) however rejected the contention of the assessee observing as under:

“The submission w.r.t. allowance of expenses on merit:

The appellant has also prayed for allowances of expenses u/s 36(1)(va) on account of payment being made within the extended period or within the period as per general clause act. The detailed submission has been reproduced above.

The appellant submitted that payment of employees contribution to PF for the month of April, 2016 amounting Rs. 48,66,144/- and July, 2016 amounting Rs. 47,87,779/- was due on

15.05.2016 and 15.08.2016 respectively. It was submitted by appellant that the due date falls on public holiday. The appellant quoted the section 10 of general clause act that if due date falls on public holiday, compliance on the next working date should be considered as good compliance.

The submission of appellant is considered but not found tenable. The section 10 of general clause act provides that if any act is to be done in any court or office on certain day and the said court or office is closed on that day the compliance on next day on which court or office is open is considered good compliance. The payments to ESI/PF are to be made through bank challan. The online payment system of all banks is opened on public holidays also.



Therefore, there was no hinderance on the part of appellant to make payment on due date even if that is a public holiday. The income tax act refers the due date as per the due date in the relevant provident fund/ESI act. The relevant acts do not provide any extension of due date as per the general clause act on account of public holiday. Considering the fact and also that online payment and submission of challan is available on public holiday therefore, nothing prevented the appellant to submit the challan on the due date. The contention of appellant on the above issue is rejected.

The next contention of appellant is that the payment for PF contribution for the month of December, 2016 amounting Rs. 46,87,535 was due on 15 Jan, 2017 but the date was extended and grace of 5 days was allowed hence, the payment actually made on 18.01.2017 should be considered to have been made in time.

The submission is considered. The notification dated 12.01.2017 issued by EPFO perused.

The notification allowed grace period of 5 days to deposit contribution of the month of December, 2016 by 20.01.2017 owing to system related issues in the unified portal of EPFO.

Considering the fact the payment of Rs. 46,87,535/- for the month of December, 2016 made on 18.01.2017 is held to be in time and accordingly, the relief of the said amount is allowed to appellant.

The appellant further prayed that payment of Rs. 50,42,268/- as mentioned in the submission was delayed due to technical issue in the portal of EPFO.

The submission is not acceptable as EPFO as an organization is keeping watch on its portal and even the grace period was allowed as and when technical issues in the portal are reported. Had there been technical issues in the portal, all payments would have failed by other concerns also. Therefore, the submission is not accepted.

Considering the above discussion the addition of Rs. 46,87,535/- is deleted and remaining addition of Rs.1,47,24,180/-.”

4. We have heard rival submission of the parties and perused the relevant material on record. The ground No. 1 raised by the



assessee is being general in nature and therefore, same is dismissed as infructuous. In ground No. 2 and 3, the assessee has submitted that employees contribution to provident fund (PF) of Rs.48,66,144/- and Rs.47,87,779/- pertaining to the month of April and July respectively was paid on the next working day of the due date being the due date was falling on the public holiday. In support of contention that in view of general clauses Act compliance of the provisions should be considered, the Ld. counsel relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Sanik Intelligence & Security Pvt. Ltd. in ITA No. 255/Mum/2023 wherein the Tribunal has restored the matter back to the file of the Assessing Officer for verifying facts of the case of the assessee and allow the claim in accordance with law. Since facts in the instant case also are identical, therefore following finding of the Tribunal in the case of Sanik Intelligence & Security Pvt. Ltd. (supra), the ground Nos. 2 and 3 of the appeal are restored back to the file of the Assessing Officer for verification of the claim of the assessee and decide the issue in accordance with law. As far as ground No. 4 of the appeal relating to employees contribution of Rs.50,42,268/- for the month of January, 2017, the Ld. counsel for the assessee has submitted that delay was on account of technical glitches in the system of the EPFO and therefore, the challan could be deposited after the delay of five days. In our opinion, law does not permit for claim of deduction beyond the prescribed date and therefore, the



contention of the assessee is rejected. The ground No. 4 of the appeal is accordingly dismissed.

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

Order pronounced in the open Court on 22/10/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/10/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai