

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1203/KOL/2024
Assessment Year: 2021-22**

Payal Enterprise, AS/53, Sree Nagar Pally, Near 54 Feet Road, Durgapur, Benachity 713213, West Bengal	Vs	Dy. Commissioner of Income Tax, Central Circle, Aaykar Bhavan Poorva, 110, Shantipally, E.M. Bypass, Kolkata-700107
(Assessee)		(Respondent)
PAN: AAKFP2307H		

Present for:

Assessee by : Shri Suvo Chakraborty, AR
Respondent by : Shri Mahare Yogesh Prabhakar, DR

Date of Hearing : 07.11.2024
Date of Pronouncement : 25.11.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (hereinafter referred to as “[the Ld. CIT (A)]”) passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2021-22 dated 29.04.2024, which has been filed against the intimation u/s 143(1) of the Act.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1. For that confirmation of ESI and EPF expenses disallowance by the Ld. NFAC claimed by the assessee on employees contribution u/s 36(1)(va) in its return of income 139(1) and disallowed by the Ld. ADIT, CPC u/s 154 for belated payments is bad in law and unjust.



2. For that assessee has nothing to dispute regarding the disallowances of belated payments of ESI and EPF in view of settled legal position by the Hon'ble Apex court except about the two particulars payments on dt. 17.11.2020 in the tabulated list recorded at the appellate order which are within the due date as per settled law of the Hon'ble jurisdictional ITAT and Hon'ble Mumbai ITAT and this issue being pure question of law is fit to be taken before the Hon'ble ITAT for the first time in view of Hon'ble Apex court settled law in NTPC VS CIT decision.

3. For that the said two payments are allowable on the strength of section 38 of PF Scheme, 1952 whereby the employer is required to deposit the PF/ESI contribution of the assessee within 15 days of the close of every month. That 'every month' is the month of payment of salary or wages due to the employee and not the month for which salary or wages are due to the employees. If the month is taken as the month of payment of the wages to the employees then the aforesaid two payments are within the due dates. Hence allowable deduction.

4. For that assessee may modify the grounds.”.

3. Brief facts of the case are that the assessee had filed its return of income on 14.03.2023 declaring total income of Rs. 2,94,69,120/-. The return was processed by the CPC making an addition of Rs. 6,69,068/- and an intimation was sent to the assessee. On going through the intimation u/s 143(1), it was seen by the assessee that the employees' contribution to Provident Fund/fund set up under ESI Act/any fund for the welfare of employees was belatedly paid and was disallowed as an expenditure. The contribution of Rs. 6,69,068/- was deposited after the due date under the relevant Act but the payment was made before the due date of filing the return of income u/s 139(1). Against the said order, the assessee filed a rectification application u/s 154 of the Act. However, the same was not allowed/considered vide order dated 10.02.2023, which was contested before the Ld. CIT(A) but the assessee could not succeed. Hence, the assessee is in appeal before the Tribunal.



4. We have heard the rival contentions and perused the documents available on record. The ld. DR relied upon the order of the lower authorities.

5. During the course of the appeal before us, the ld. AR stated that the payments in respect of the employees' contribution to Provident Fund and ESI payments were made as under which details also appear at page 9 of the appellate order of the Ld. CIT(A):

EPFO	MONTH	DUE DATE	AMOUNT	PAYMENT DATE
1	Apr 20	15.05.2020	3620	04.08.2020
2	Apr 20	15.05.2020	270	17.10.2020
3	May 20	15.06.2020	8208	04.08.2020
4	Oct 20	15.11.2020	609233	17.11.2020

ESIC	MONTH	DUE DATE	AMOUNT	PAYMENT DATE
1	Apr 20	15.05.2020	252	04.08.2020
2	Apr 20	15.05.2020	516	04.08.2020
3	May 20	15.11.2020	46787	17.11.2020
4	Oct 20 (incorrectly mentioned as May 20 in the order of the Ld. CIT(A))	15.02.201	182	03.03.2021

5.1. The ld. CIT(A) confirmed the disallowance and the relevant extract from page 10 of the order of the Ld. CIT(A) in this regard is as under:

"I have carefully examined the contentions of the appellant. The appellant has contended that once an assessee raises objections to the proposed adjustment u/s 143(1), the AO has to dispose off such objections before proceeding into this matter. In this regard it is observed from Page 26 of the Rectification order u/s 154 dated 10.02.2023 that it has been mentioned by CPC that as there had been no response/the response(s) provided is not acceptable the adjustments with regard to inconsistency in any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of the employees to the extent not credited to the employees account on or before the due date [36(1)(va)] claimed in return in schedule Ol and audit report. The appellant has not adduced any evidence as to whether at all any objections



were raised by them towards such communication by CPC prior to making such adjustment. When the appellant himself has failed to substantiate the grounds raised by them, the action of the CPC in making such adjustments therefore cannot be disputed on this account.

Nevertheless, the admitted position therefore is that the said amounts were not remitted before the due date as prescribed in the concerned Act. As per the appellant's submission, the ambit of section 143(1) is very limited. In this regard, since the assessee has pointed out questions about the status and significance of tax audit report it is pertinent to state that Part B of the Tax Audit Report contains the particulars of various compliances under income tax laws. Hence, the objective of the Audit Report sheds light on the various compliance issues as to what compliances were not met by the assessee.

As per clause (iv) of Section 143(1)(a) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return will be taken into consideration by CPC. In the absence of any evidence to the contrary, submitted by the appellant, the Audit Report becomes an integral part of the material on record, which points to a prima facie disallowance to be made.”

5.2. The Ld. CIT(A) further relied upon the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd vs Commissioner of Income Tax-1, Civil Appeal No. 28 of 2016 dated 12.10.2022 and further held that the expenditure was not allowable u/s 37(1) of the Act as the appellant had made statutory violation and committed an offence. The appeal of the assessee was accordingly dismissed.

6. The ld. AR stated that he was not disputing the payments in respect of Sl. Nos. 1, 2 & 3 for EPFO which was admittedly belated and therefore, not allowable u/s 36(1)(va) r.w.s. 2(24)(x) of the Act and also in respect of ESIC at Sl. Nos. 1, 2 & 4 but requested that as the dues for the month of October 2020 relating to EPFO at Sl. No. 4 and that relating to ESIC at Sl. No. 3 for the month of October, 2020 [which is erroneously mentioned as May, 20 in the order of the Ld. CIT(A)] were paid in time, therefore, the same were allowable as a deduction as



according to Section 38 of the PF Act, 1952, the due date is to be reckoned from the month in which salary is paid and not from the month for which the salary is due. Since the salary for October, 20 was paid in the month of November, the payment made on 17.11.2020 for amounts of Rs. 6,09,233/- and Rs. 46,787/- respectively was allowable as a deduction. He placed reliance on the decision of the Coordinate Benches in the case of *Kanoi Paper & Industries Ltd. vs. ACIT* reported in (2022) 75 TTJ (CAL) 448 as well as the in the case of *The Master Polishers vs. ADIT* in ITA No. 252/MUM/2023 order dated 26.04.2023 and our attention was drawn to para 2 on Page 2 of the order placed at page 48 of the paper book in support of the claim.

6.1. We have considered the submission made In this respect, Section 38 of The Employees' Provident Funds Scheme, 1952 is reproduced as under:

“38. Mode of payment of contributions

*(1) The employer shall, **before paying the member his wages in respect of any period or part of period for which contributions are payable**, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage [of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall **within fifteen days of the close of every month pay the same to the fund** [electronic through internet banking of the State Bank of India or any other Nationalized Bank] [or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge:*

Provided that the Central Provident Fund Commissioner may for reasons to be recorded in writing, allow any employer or class of employer to deposit the contributions by any other mode other than internet banking.”

{Emphasis supplied}

6.2. Thus, as per the Scheme of EPF, the liability of deposit of EPF arises on payment of salary/wages to the employee and as the



disbursement is made in the next month and was made in the month of November, 2020, the due date of deposit was 15th December, 2020 and therefore, the payment made on 17.11.2020 was within time and, therefore, allowable u/s 36(1)(va) of the Act. Similar finding was also made by the Coordinate Benches in the case of *Kanoi Paper & Industries Ltd. (supra)* and *The Master Polishers (supra)*. Hence, Ground nos. 2 & 3 of the appeal are allowed and the Ld. AO is directed to allow deduction of Rs. 6,09,233/- and 46,787/- for EPFO and ESIC respectively relating to the payment of salary/wages for the month of October, 2020 after receipt and verification of required documents from the assessee in support of the claim that the payment of wages/salary was made in the month of November for the salary/wages due for the month of October, 2020 and delete the addition made to this extent.

6.3. Ground no. 1 is rejected as the disallowance in respect of other three payments of ESI and EPF expenses was rightly made by the NFAC in view of the decision of Hon'ble Supreme Court in the case of *Checkmate Services Pvt. Ltd. (supra)*.

6.4. Ground No. 4 is general in nature and does not require any separate adjudication.

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

Order pronounced in the open Court on 25th November, 2024.

Sd/-
[Anikesh Banerjee]
Judicial Member

Sd/-
[Rakesh Mishra]
Accountant Member

Dated: 25.11.2024

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Payal Enterprise.**
2. **Dy. Commissioner of Income Tax.**
3. CIT(A)-21, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata