

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos.3550 & 3551/Del/2023  
निर्धारणवर्ष/Assessment Years:2018-19 & 2019-20**

<b>EFS Facilities Services (India) Pvt. Ltd.</b> Unit No.425, DLF Prime Towers, Okhla Phase-1, Okhla Industries Estate, S/O Tehkhand, Delhi. PAN No.AACCD8364M	<b>बनाम Vs.</b>	<b>ITO Circle(1), C.R. Building, Delhi.</b>
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

<b>Assessee by</b>	<b>Shri Abhishek Jain, CA</b>
<b>Revenue by</b>	<b>Shri Krishana Ramavat, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	11.09.2024
उद्घोषणाकीतारीख/ Pronouncement on	26.11.2024

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

These appeals are filed by the assessee against the different orders of the Ld.CIT(Appeals)-NFAC 28.11.2019 & 09.03.2020 for the assessment years 2018-19 and 2019-20 respectively. Assessee has raised the following common grounds for both the assessment years except for the figures: -

Grounds of appeal for AY 2018-19 (ITA No.3550/Del/2023):

1. *That having regard to the facts and circumstances of the case, the learned CIT(A) has grossly erred both in law and on facts, in confirming the disallowance of Rs.3,65,35,270/- made by CPC, U/s 36(1)(va) of the Income Tax Act, 1961.*
2. *That having regard to the facts and circumstances of the case, the learned CIT(A) has grossly erred both in law and on facts, in confirming the disallowance of Rs.3,65,35,270/- made by CPC, U/s 36(1)(va) of the Income Tax Act,1961, despite verifying the facts that the due date for depositing employee's contribution of PF/ESI should have to be reckoned from the date of actual payment of salary, the alleged delay in payment of ESIC/PF would be substantially ironed out, since they have computed the delay with reference to the month in which the liability to pay salary has arisen to the employer rather than the month in which such salary has been actually paid resulting in alleged delay giving rise to impugned disallowance.*
3. *That in any case and any view of the matter, action of Ld. CIT (A) in not reversing the action of CPC in making the impugned addition/disallowance/penalty and framing the impugned order which is contrary to law and facts, void-ab-initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

Grounds of appeal for AY 2019-20 (ITA No.3551/Del/2023):

1. *That having regard to the facts and circumstances of the case, the learned CIT(A) has grossly erred both in law and on facts, in confirming the disallowance of*

*Rs.1,98,63,052/- made by CPC, U/s 36(1)(va) of the Income Tax Act, 1961.*

*2. That having regard to the facts and circumstances of the case, the learned CIT(A) has grossly erred both in law and on facts, in confirming the disallowance of Rs.1,98,63,052/- made by CPC, U/s 36(1)(va) of the Income Tax Act,1961, despite verifying the facts that the due date for depositing employee's contribution of PF/ESI should have to be reckoned from the date of actual payment of salary, the alleged delay in payment of ESIC/PF would be substantially ironed out, since they have computed the delay with reference to the month in which the liability to pay salary has arisen to the employer rather than the month in which such salary has been actually paid resulting in alleged delay giving rise to impugned disallowance.*

*3. That in any case and any view of the matter, action of Ld. CIT (A) in not reversing the action of CPC in making the impugned addition/disallowance/penalty and framing the impugned order which is contrary to law and facts, void-ab-initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.*

*4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

2. Ld. Counsel for the assessee submits that in so far as employees contribution to PF & ESI is concerned that due date for deposit of PF & ESI shall be reckoned from the month in which disbursement of salary was made. In other words, the Ld. Counsel submits that for computing the period of delay "months" to be taken is the month to be considered is the month in which

salary/wages are disbursed by the assessee. For this proposition reliance was placed on the decision of the Kolkata Bench of the Tribunal in the case of Kanoi Paper & Industries Ltd. s. ACIT (75 TTJ 448). Reliance was also placed on the following decisions and submitted that on identical facts the Delhi Bench of Tribunal restored the issue to the file of the Ld. Assessing Officer for examining the due date in the light of the above decisions: -

1. *Sentinel Consultants (P) Ltd. vs. ACIT on 12 June, 2023 [2023] 153 taxmann.com 151;*
2. *Sai Computers Ltd. vs. ACIT, CPC on 18 October, 2023 IT Appeal Nos. 2862 to 2865 (Delhi) of 2022;*
3. *Intelligent Communication System India Ltd. vs. ITO, Ward-12(2), Delhi ITA No.129/Del/2023 03<sup>rd</sup> Aug., 2023;*
4. *Rekha vs. ITO, Ward-1(2)(3), Uttar Pradesh ITA No.584/Del/2023 09<sup>th</sup> Aug., 2023.*

3. Ld. DR placed reliance on the orders of the authorities below.
4. Heard rival submissions and perused the decisions relied on.
5. The only contention raised in these appeals is that the due date of deposit of PF & ESI contributions shall be reckoned from the month in which disbursement of salary was made. Reliance was placed on various decisions to support the above contention. We observe that identical issue came up before the coordinate bench in the case of Sentinel Consultants (P) Ltd. vs. ACIT (153 taxamnn.com

151), wherein the Tribunal restored the appeal to the file of the Assessing Officer on identical issue and to examine the contention raised by the assessee and in the light of the observations of the Kolkata Bench of the Tribunal in the case of Kanoi Paper & Industries Ltd. vs. ACIT (supra). Similar view has been taken by the coordinate benches referred to above. Thus, respectfully following the said decisions we restored this issue to the file of the Assessing Officer to decide the issue in the light of the observations made by the Tribunal in the case of Kanoi Paper & Industries Ltd. vs. ACIT (supra). Needless to say the Assessing Officer shall provide adequate opportunity of being heard to the assessee, the assessee is at liberty to provide all the necessary information in support of its contention.

6. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 26.11.2024

**Sd/-**  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 26.11.2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**