

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.3528/Del/2024
(ASSESSMENT YEAR-2019-20)

The Kangra Co-operative Bank Ltd. 1916, Chuna Mandi, Pahar Ganj, New Delhi-110055 PAN:AAATT0361M	Vs.	Dy. CIT, Circle-62(1), Delhi
(Appellant)		(Respondent)

Assessee by	Shri S.L. Gupta, CA
Respondent by	Shri Amit Katoch, Sr. DR

Date of Hearing	19/11/2024
Date of Pronouncement	29/11/2024

ORDER

PER BENCH:

1. The appeal filed by Assessee is against order dated 07/06/2024 of Learned Commissioner of Income Tax (Appeals), Bhubaneswar [hereinafter referred to as 'Ld. CIT(A)'], arising out of Assessment Order dated 08/03/2024 u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') of the DDIT, CPC, Bengaluru (hereinafter referred as 'Ld. AO') for Assessment Year: 2022-23.

2. Brief facts of case are that on 29/09/2022 appellant/assessee filed return of income for the Assessment Year 2022-23 on taxable income of Rs.19,88,38,710/-. Intimation order u/s 143(1) was passed by the CPC on 08/03/2023 on the taxable income of Rs.19,96,75,900/- and additions, disallowance u/s 36(1)(va) amounting to Rs.8,37,196/- on account of late deposit of EPF for the month of May, 2021, due on 15/06/2021 and deposited by the assessee on 16/06/2021.

3. Appellant/assessee preferred appeal before Learned CIT(A) which was dismissed vide order dated 07/06/2024.

4. Being aggrieved appellant/assessee preferred present appeal.

5. Learned Authorized Representative for appellant/assessee submitted that Learned CIT(A) erred in confirming the additions of Rs.8,37,196/- made by Learned AO on account of disallowance of expenses for EPF, late deposit. The employee provident fund of Rs.8,37,196/- for the month of May,2021 could not be deposited in due time on 15/06/2021, beyond the control of the appellant bank and the same was deposited on the very next day i.e. 16/06/2021.

6. As per PF department, Circular No. BJKG-27/7/2020-G/Pt. file dated 01.06.2021 (Copy enclosed), w.e.f 1st June 2021, Aadhar Number of all the employees are required to be linked with UAN (Universal Account Number). Without linking All the employees, PF site was not permitting to create ESR, generate challan and submission of return. Due EPF can only be deposited after

generation of challan through EPF portal. There were technical glitches in PF site and was not working properly.

6.1 In the late night on 15.06.2021, the PF deptt. Vide Circular No. WSU/15(1)2019/ATR/529 dated 15.06.2021, extended the Aadhar linking date from 1 June 2021 to 1st September 2021 and permitted to file the returns without linkage.

6.2 As per PF Deptt. Circular No. C-I/Misc./Pandemic Relief/2021/Vol-I dated 31.08.2021 there was problem in site and penal damages for late deposit of EPF for the month of May 2021 be not levied, as the employers were not in default.

7. Learned Authorized Representative for appellant/assessee submitted that the Hon'ble Delhi Income Tax Appellate Tribunal ('ITAT') in case of FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax ([2023] 154 taxmann.com 251) has held that Assessee could not be penalized with addition on the account of delayed deposits when Assessee had initially deposited employee contribution before the prescribed due date but due to the glitches on the portal such amount was reversed by Bank. The relevant extracts of the judgment are provided below:

'8. We are therefore of the view that when the assessee had initially deposited the employees dues before the prescribed due dates but due to the glitches at the end of the respective authorities, the amounts were reversed by the bank, then the assessee cannot be penalized with the addition on account of delayed deposits.....'

Hon'ble High Court of Andhra Pradesh judgment in case of K Venkata Reddy v. Commissioner of Income Tax ([2001] 117

Taxman 141 (Andhra Pradesh) has held that the date of presentation of the cheque should be treated as the date of payment. The relevant extracts of the judgment are provided below:

"9... It is settled law that payment of any amount by a cheque, would be the date of the presentation of the cheque if it is not dishonoured. It is not the case of the department that the cheque presented by the petitioner was dishonoured. But their claim is only that the cheque was realized after the prescribed period of 30 days. It is not open to the department to deny the benefit to the petitioner on that ground in view of the above settled position with which we are in agreement"

Hon'ble Delhi ITAT in Assistant Commissioner of Income Tax v. Nokia Siemens Networks (P.) Ltd. ([2017] 88 taxmann.com 571) has held that where amount of TDS was debited from bank account of assessee on due date and delay in deposit of such tax by a day was on account of system and connectivity issues at bankers' end, levy of interest under section 201(1) read with section 201(1A) was to be deleted. The relevant extracts of the judgement are provided below:

"On having gone through the material available on record, we find that undisputedly the amount of TDS was debited from the bank account of the assessee on the due date ie. October 7, 2009 and the delay in deposit of such tax by a day was on account of system and connectivity issues at the bankers' end, which was beyond the control of the assessee. The learned Commissioner of Income-tax (Appeals) was thus not justified in holding the levy of interest on the alleged late deposit of tax deducted at source under section 201(1) read with section 201(1A) of the Act. He was, however, justified in deciding the issue of delay in payment of TDS in favour of the assessee questioned by the Revenue in view of the decision of the hon'ble Supreme Court in the case of CIT v. Ogale Glass Works Ltd. [1954] 25 ITR 529. "

Hon'ble ITAT, Delhi Bench in case of Natma Securities Ltd V. ACIT [2022] 145 taxmann.com 291) has observed that no interest could be levied under section 201(1A) when the cheque was deposited

within the due date in the Bank, however due to mistake of the Banker such cheque is cleared late. The relevant extracts of the judgement are provided below:

"9.....We have heard the parties perused the material on record and gave our thoughtful consideration. The question as to 'whether the payment would be deemed to have been made on the date of handing over of cheque to the banker or on the date of clearance of cheque by debiting the Assessee's account for the purpose of tendering the TDS....."

10. In the instance case, there is One day delay in debiting the amount from the Assessee's bank account which is apparently due to the mistake to the banker. Further by relying on the ratio laid down in the case of Standard Chartered Bank (supra) we are of the opinion that the payment of TDS by the assessee would relate bank to the date of presentation of the cheque i.e. on 31/07/2013 by the assessee to the banker."

8. Circular No. BKG-27/7/2020-G/pt. file dated 01 June 2021 issued by EPFO which stated that employers shall be allowed to file ECR only for those employees whose Aadhaar numbers are seeded and verified with UAN as on 01 June 2021. The relevant extracts of the circular is provided below:

'(2)... section 142 of Chapter XIV of the Social Security Code, includes the provisions related to Aadhaar, wherein the beneficiary under this Code or rules, regulations or Schemes made or framed there under, shall establish his identity or, as the case may be the identity of his family members or dependents through Aadhaar number. (3) In compliance of the above provision in EPFO, the Competent Authority has approved that the ECR shall be allowed to be filed only for those members, whose Aadhaar numbers are seeded and verified with the UANs, w.e.f. 01.06.2021' (4) Accordingly, the employers shall be allowed to file the ECR only for the UANs seeded with Aadhaar, w.e.f. 01. 06.2021...

The EPFO vide Circular No. WSU/15(1)2019/ATR/529 (enclosed as Annexure 3) had extended the due date for mandatory seeding of

Aadhar by Individuals till 01 September 2021. The relevant extract of the circular is:-

In partial modification of the Circular under Reference, it is informed that the dates in Para 3 and 4 (of the referred Circular) mentioned as 01.06.2021 may be read as 01.09.2021'

Pursuant to the above extension, the Appellant was able to generate the ECR and remit the contribution on 16 June 2021. Considering the challenges faced by the employers, the EPFO subsequently issued Circular No. C-I/MISC/Pandemic Relief/2021/Vol-1 dated 31 August 2021 clarifying that delay in deposit of contribution for the month of May 2021 in case non-seeding of Aadhar in the UANs should not be considered as default by the employer. The relevant extract of the circular is reproduced below for your reference:

The Field Offices are advised that delay in the filing of ECRs for wage month of May 2021 statutorily due on or before 15.06.2021 only in respect of EPF members due to non-seeding of Aadhaar in the UANs should not be presumed as employer's default and to appreciate each case in its own facts under Section 14B of the EPF & MP Act'

As per above circular and challan evidencing the payment made towards PF contribution for employees whose Aadhar is not linked to their UAN, and due to persistent technical issues on the EPFO portal which were beyond the control of the Appellant on the due date had prevented the Appellant from generating the challans pertaining to employees whose Aadhar is not seeded with their UAN account. Hence considering the circumstances were beyond the control of the Appellant, the Ld. CIT(A) ought to have granted relief from the aforementioned disallowance.

9. Learned Authorized Representative for the Department relied on the order of Learned CIT(A).

10. From examination of record in light of aforesaid contention, it is crystal clear that Learned CIT(A) confirmed addition of Rs.8,37,196/- made by Learned AO on account of disallowance of expenses for EPF, late deposit. It is material fact that employee's provident fund of Rs.8,37,196/- for the month of May, 2021 could not be deposited in due time on 15/06/2021 and was deposited on the very next day i.e 16/06/2021 by the assessee due to technical glitches in EPF portal. As per ratio of Judgment in FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax, it is well settled that when the assessee had deposited the employees dues before the prescribed due dates but due to the glitches at the end of the respective authorities, the amounts were reversed by the bank, then the assessee cannot be penalized with the addition on account of delayed deposits. Therefore, impugned orders are set aside.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this day 29th November, 2024.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 29/11/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI