

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A Nos.2340 & 2336/Del/2024

निर्धारणवर्ष/Assessment Years: 2020-21 & 2021-22

Bholeshwar Chopra EC 336, Maya Enclave, G 8 Rajouri Garden, New Delhi.	<u>बनाम</u> Vs.	ITO Ward 68(5), New Delhi.
PAN No. ADUPC7256R		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Ajit Kumar Jha, Adv.
राजस्वकीओरसे /Revenue by	Shri Sanjay Sharma, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	05.12.2024
उद्घोषणाकीतारीख/ Pronouncement on	06.12.2024

आदेश /O R D E R

These appeals are filed by the assessee against the different orders of the Ld.CIT(Appeals)-NFAC 21.12.2022 & 15.03.2024 for the assessment years 2020-21 and 2021-22 respectively. Assessee has raised the following common grounds for both the assessment years except for the figures: -

Grounds of appeal for AY 2020-21 (ITA No.2340/Del/2024):

"1. The Ld. NFAC (National Faceless Appeal Centre) / Commissioner of Income Tax (Appeals) [CIT(A)] erred both in law and on factual grounds by affirming the decision of the Ld. assessing officer (AO) at the Central Processing Center (CPC) to disallow the Employee contribution of Rs. 6,97,282/- under Section 36(1)(va) pertaining to PF/ES1,

despite the timely deposit made by the Assessee before the due date as per legal precedents made by the various Hon'ble Courts. This action by the Ld. NFAC / CIT(A) is deemed illegal, unjustified, and arbitrary, contrary to the facts presented in the case. The Assessee seeks relief by urging the deletion of the entire addition made by the AO at the CPC and upheld by the Ld. NFACE / C1T(A).

2. *The Ld. NFAC / CIT(A) failed to consider relevant legal provisions and factual circumstances in their decision-making process, resulting in an erroneous confirmation of the AO's action to disallow the Employee contribution. This oversight represents a departure from established legal principles and the duty to adjudicate impartially. Therefore, the Assessee appeals for the reversal of the decision, emphasizing the need for a fair and accurate assessment in line with the provisions of the Income Tax Act.*

3. *The Learned NFAC / CIT(A) committed legal and factual errors by upholding the decision made by the Assessing Officer at CPC Bangalore, disregarding the legitimate deductions for delayed deposits of employees' contributions towards ESI/PF, which were executed before the due date calculated from salary disbursements, in accordance with established judicial precedents and statutory provisions.*

4. *The Learned NFAC / CIT(A) made legal and factual errors in upholding the decision of the Assessing Officer at CPC Bangalore, In the case of the Assessee, it is argued that the adjustment made exceeds the scope of Section 1 - 3(1)(a)(iv) of the Income Tax Act 1961, especially regarding the addition of Rs. 6,97,282/- under Section 36(1)(va) concerning PF/ESL This adjustment is deemed to lack legal basis, as the contributions towards ESI and EPF were made in a timely manner.*

5. *The Assessee asserts that the Ld. Assessing Officer (AO) at the Central Processing Center (CPC) unlawfully issued an order under section 154 of the Income Tax Act, 1961, without adhering to the prescribed procedure, rendering the action illegal, unjustified, and arbitrary,*

thus requesting the nullification of the entire order due to its illegality and voidness ab initio.

6. *The appellant requests permission to modify, adjust, or withdraw any of the aforementioned grounds of appeal at any stage during the appellate proceedings.”*

Grounds of appeal for AY 2021-22 (ITA No.2336/Del/2024):

1. *The Ld. National Faceless Appeal Centre (NFAC)/Commissioner of Income Tax (Appeals) [CIT(A)] erred in orders passed under sections 143(1) of the Income Tax Act 1961, dated 17.12.2022, alleging a lack of opportunity to present his case, refuting the Ld. NFAC / CIT(A)'s justification based on the Assessee's perceived disinterest in prosecuting the appeal, and thereby seeking the annulment of the Ld.NFAC/CIT(A)'s order and subsequent relief.*
 - 1.1 *The Ld. NFAC/CIT(A) violated procedural fairness and principles of natural justice by dismissing the appeal without affording them a genuine opportunity to present their case, compromising their right to be heard and necessitating the deletion of the Ld.NFAC/CIT(A)'s order dated 15.03.2024.*
 - 1.2 *The Ld. NFAC/CIT(A) erred both in law and on factual grounds by affirming the decision of the Ld. AO at the Central Processing Center (CPC) to disallow the Employee contribution of Rs.11,63,284/- u/s 36(1)(va) pertaining to PF/ESI, despite the timely deposit made by the assessee before the due date as per legal precedents made by the various Hon'ble Courts. This action by the Ld. NFAC/CIT(A) is deemed illegal, unjustified, and arbitrary, contrary to the facts presented in the case. The assessee seeks relief by urging the deletion of the entire addition made by the AO at the CPC and upheld by the Ld. NFACE/CIT(A).*
2. *The Ld. NFAC/CIT(A) failed to consider relevant legal provisions and factual circumstances in their decision*

making process, resulting in an erroneous confirmation of the AO's action to disallow the Employee contribution. This oversight represents a departure from established legal principles and the duty to adjudicate impartially. Therefore, the Assessee appeals for the reversal of the decision, emphasizing the need for a fair and accurate assessment in line with the provisions of the Income Tax Act.

- 3. The Ld. NFAC/CIT(A) committed legal and factual errors by upholding the decision made by the AO at CPC Bangalore, disregarding the legitimate deductions for delayed deposits of employees' contributions towards ESI/PF, which were executed before the due date calculated from salary disbursements, in accordance with established judicial precedents and statutory provisions.*
- 4. The Ld. NFAC/CIT(A) made legal and factual errors in upholding the decision of the Assessing Officer at CPC Bangalore. In the case of the Assessee, it is argued that the adjustment made exceeds the scope of Section 143(1) of the Income Tax Act, 1961, especially regarding the addition of Rs.11,63,284/- u/s 36(1)(va) concerning PF/ESI. This adjustment is deemed to lack legal basis, as the contributions towards ESI and EPF were made in a timely manner.*
- 5. The Assessee asserts that the Ld. AO at the Central Processing Center unlawfully issued an order u/s 143(1) of the I.T. Act, 1961, without adhering to the prescribed procedure, rendering the action illegal, unjustified, and arbitrary, thus requesting the nullification of the entire order due to its illegality and voidness ab initio.*
- 6. The appellant requests permission to modify, adjust, or withdraw any of the aforementioned grounds of appeal at any stage during the appellate proceedings."*

2. Ld. Counsel for the assessee submits that for the AY 2020-21 there is a delay of 449 days in filing the appeal before the Tribunal. Ld. Counsel referring to the petition for condonation of delay and also the affidavit of the assessee submits that due to severe health condition the assessee could not coordinate with the Authorized Representative (AR) and was unable to actively participating appeal proceedings before the CIT(Appeals). Ld. Counsel submits that due to health conditions since the assessee was not in a position to coordinate with the Ld. Authorized Representative the assessee was unaware of the decision rendered by the Ld.CIT(A) necessitating filing of appeal before the Tribunal in time. Therefore, in the interest of justice, it is prayed that the delay in filing the appeal be condoned.

3. Heard rival contentions. Assessee has filed petition for condonation of delay explaining the reasons for delay in filing the appeal. The contents of the affidavit filed by the assessee are as under: -

AFFIDAVIT

I, BHOLESHWAR CHOPRA, son of AJUDHYANATH CHOPRA, aged 64, presently resident of EC-336, MAYA ENCLAVE, G-8, RAJOURI GARDEN, NEW DELHI-110064, do hereby solemnly affirm and state as under:

1. That, I am the Appellant in the captioned appeal filed on ~~13.05~~ 2024 against the order of the Commissioner of Income Tax (Appeals) communicated on 21.12.2022.
2. That, it is brought to the kind attention of this Hon'ble Tribunal that there exists a delay of 449 days in filing the appeal.
3. That, I humbly approach this esteemed tribunal seeking condonation of delay in filing the appeal in the matter of BHOLESHWAR CHOPRA. The delay ensued due to compelling circumstances beyond my control, which I respectfully submit for your kind consideration.
4. That, due to health challenges, I, the Assessee, was unable to actively participate in appeal proceedings before the CIT(A) / NFAC, impacting my engagement in legal matters.
5. That, due to my health condition, I was unaware of the decision by CIT(A) / NFAC, necessitating the appeal filing before your tribunal, exacerbating the situation and hindering my legal recourse.
6. That, due to health constraints and complexities in the legal process, I faced challenges coordinating with my legal representative, leading to a communication gap and contributing to the delay in filing the appeal before this Hon'ble Tribunal..
7. That Given the circumstances described, I respectfully request your understanding and forgiveness for the delay in filing the appeal, seeking the Hon'ble Tribunal's compassion to ensure justice.
8. Hence, I earnestly implore the esteemed Members of the Income Tax Appellate Tribunal Delhi Bench at New Delhi to kindly consider condoning the delay of 449 days in filing the appeal, attributable to the compelling circumstances elucidated above.



Rudh
Deponent

4. On a careful consideration of an affidavit filed by the assessee and the reasons explained therein for filing appeal belatedly. I am of the view that assessee has a reasonable cause in not filing the appeal in time before the Tribunal and the delay was neither willful nor a wanton. Thus, the delay in filing the appeal for the AY 2020-21 in ITA No.2340/Del/2024 is condoned and the appeal is admitted.

5. Coming to merits of both these appeals 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 03rd Aug., 2023;*
 4. *Rekha vs. ITO, Ward-1(2)(3), Uttar Pradesh ITA No.584/Del/2023 09th Aug., 2023.*
6. Ld. DR placed reliance on the orders of the authorities below.
7. Heard rival submissions and perused the decisions relied on.
8. 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.

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

Order pronounced in the open court on 06/12/2024

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

Dated: 06/12/2024

**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