

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2240/Del/2024
(Assessment Year: 2022-23)**

Orient Fashion Exports (India) Pvt. Ltd, E-45/14, Okhla Industrial Area, Phase-II, New Delhi (Appellant)	Vs.	Addl/ JCIT(A), Udaipur (Respondent)
PAN: AAACO4581F		

Assessee by :	Ms. Gargi Sethi, Adv
Revenue by:	Shri Akhilesh Kumar Yadav, Sr. DR

Date of Hearing	04/12/2024
Date of pronouncement	10/12/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2240/Del/2024 for AY 2022-23, arises out of the order of the Id. Commissioner of Income Tax (Appeals), Udaipur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2023-24/1062436031(1) dated 12.03.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.04.2023 by the Assessing Officer, DDIT/ ADIT, CPC, Bengaluru (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. That on the facts and circumstances of the case and in law, the Come of tas (Appeals) National Faceless Appeal Centre, Udaipur the CITIA) FAC erred in upholding the disallowance of Ra61,87,277 vide Order de 17.01.2004 on account of delayed deposit of employee'a contribution of PF under assHOB 20244) Section 30(1)(va) of the Income tax Act, 1961 ("the Act)

1.1 That on facts and circumstances of the case and in law, the CFTCA NIAC ber sredin appreciating that the delayed deposit of employees contributione towerde PF for the moth of May, 2021 was on account of non-functioning of the PP webente, ineemuch as the same was deposited on 18.06.2021 after a delay of 3 days only.

1.2 That on facts and circumstances of the case and in law, the CIT(A) NEAC bus erred in t appreciating that the Appellant generated the PP chadan on 07.06.2021 to depost the employee's contributions on 14th June, 2021 as is evident from smail dated 15, 16 17.06.2021 and as such, it cannot be said that Appellant has not taken way steps to depont the employees contributions within permissible time.

2. That on facts and circumstances of the case and in law, the disallowance made under section 2(24)(x) r/w Section 36(1)(va) is outside the scope of section 143(1)(8)(0) of the Act and as such the order dated 16.03.2023 passed U/s 143(1) is bad in law and without jurisdiction."

3. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee company had remitted the employees contribution to PF beyond the due date prescribed under the PF Act with a delay of 3 days for the month of May 2021. All other months, the assessee had duly deposited the same within the prescribed due date. As far as the month of May 2021, the due date prescribed under the PF Act was 15.6.2021 to remit the Employees Contribution to PF. But the assessee had deposited the same on 18.6.2021. This was due to the fact that there was some technical problem in the PF Authorities website for giving the payment confirmation to the assessee. The relevant evidences in this regard by way of screen shots and email correspondences are enclosed in Pages 8 to 10 of the Paper Book. Further we find that the very same issue for the month of May 2021 was subject matter of consideration by the Co-ordinate Bench of Delhi Tribunal in the case of Magic Software Pvt Ltd vs DCIT in ITA No. 654/Del/2024 for Asst Year 2022-23 dated 29.7.2024 wherein it was held as under:-

"5. We have carefully considered the rival submissions and perused the material available on record.

6. The salutary issue involves disallowance of the employees' contribution to PF relatable to wages for May, 2021 on the contours of Section 36(1)(va) r.w. Section 2(24)(x) of the Act owing to one day delay in deposit of Employees' Contribution. As amply demonstrated on behalf of the assessee, the assessee has made every possible attempt to adhere to the stipulated payments timeline provided under the Provident Fund Act towards employers as well as employees' contribution. However, the payment could not be made due to website failure and glitches which fact is also manifestly discernible from material available on record. The payment was ultimately made with one day delay as soon as the assessee could make the payment through the online platform provided under the PF Laws.

7. In the light of the material available on record, we have no iota of doubt that the attempt to make timely payment of contribution towards PF contribution by assessee stands vindicated. Thus, where the assessee was prevented to make online payment owing to technical glitches in the Provident Fund online payment platform, we see no reason to penalize the assessee for the unresponsive platform of the Provident Fund Department. It is trite that an assessee cannot be asked to do what is impossible for him to do. The provisions of Section 36(1)(va) thus requires to be read down appropriately in tune with doctrine of impossibility.

8. We thus set aside the order of the CIT(A) and direct the AO to cancel the disallowance of Rs. 16,59,659/- made on this score."

4. In our considered opinion, the legal maxim LEX NON COGUT AD IMPOSSIBLIA – the law does not compel a man to do an act what he cannot possibly perform, is squarely applicable to the facts of the instant case. This legal maxim has been approved by the Hon'ble Supreme Court in the case of Krishnaswamy S. Pd vs Union of India reported in 281 ITR 305 (SC).

5. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the grounds raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10/12/2024.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/12/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi