

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.3617/Del/2024
निर्धारणवर्ष/Assessment Year:2018-19

EASTMAN CAST AND FORGE LIMITED Flat No.101, First Floor-1, Community Centre, Narayan Industrial Area, Phase-1, New Delhi. PAN No.AAACE0574E	<u>बनाम</u> Vs.	DCIT Circle 7(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Anirudh Bajaj
Revenue by	Shri Rajesh Kumar Dhanesta, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	17.12.2024
उद्घोषणाकीतारीख/ Pronouncement on	20.12.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC dated 26.06.2024 for the AY 2018-19.

Assessee has raised the following grounds in his appeal:

1. "That the order dated 26.06.2024 passed u/s 250 of the Income Tax Act, 1961 (hereinafter called the "Act") by the National Faceless Appeal Centre (NFAC) is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer, CPC Bangalore in making the disallowance of

Rs.43,37,362/- on account of delayed deposit of Provident Fund and added the same to the taxable income of the Appellant Company.

2. That the Appellant craves to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.”

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 Coordinate Bench in the case of Sentinel Consultants (P) Ltd. vs. ACIT on 12 June, 2023 [2023] 153 taxmann.com 151.

3. Ld. DR placed reliance on the orders of the authorities below.

4. Heard rival submissions and perused the decisions relied on. 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). The Tribunal observed as under:

9.3 We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanoi Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT(A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity.”

5. Respectfully following the above said decision we restore 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 and Sentinel Consultants (P) 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, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20.12.2024

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

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

Dated: 20.12.2024

**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