

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,  
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4192/MUM/2024  
(A.Y. 2022-23)**

Bofa Securities India Limited Ground Floor, A wing, One BKC, G Block, BKC, Bandra(E), Mumbai-400051	v/s. बनाम	ACIT-Circle-(4)(1)(1), Mumbai Aaykar Bhavan, M. K. Road, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACD0535G</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Anish Thacker & Shri Nishit Shah
Respondent by :	Shri Anurag Tripathi

Date of Hearing	17.10.2024
Date of Pronouncement	29.11.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Additional Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “Addl. CIT(A)”] dated 29.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2022-23.

2. The assessee has raised following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not allowing the deduction of INR 48,25,365 under section 36(1)(va) of the Act towards alleged delay in depositing the employee's contribution towards provident fund (PF) as per the time limit mentioned under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 ('PF Act') for the month of May 2021 by not taking cognizance of the relief granted by the Employees' Provident Fund Organization (EPFO) in delay in depositing the PF contribution/ filing Electronic Challan cum Return for the month of May 2021 on account of non-seeding of Aadhaar in the Universal Account Number (UAN). by relying on the decision of Hon'ble Supreme Court (SC) in the case of Checkmate Services Pvt Ltd vs Commissioner Of Income Tax-1 [448 ITR 518] without appreciating that the facts in case of Appellant are different than the above case.*

*2. On the facts and circumstances of the case and in law, while disposing of ground no. 1 and 2 raised before the learned CIT(A), the learned CIT(A) erred in not adjudicating ground no. 2 as an independent ground and thereby, erred in not explicitly granting relief to the Appellant of INR 48,25,365 towards employees' contribution to PF since the said adjustment does not fall within the ambit of adjustments provided under section 143(1)(a)(iv) of the Act while processing the return of income.*

*3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not providing an opportunity of being heard by way of a formal hearing through video conferencing as requested by the Appellant vide its submission dated 26 June 2024.”*

3. Brief facts of the case are that the assessee filed return declaring income of Rs. 448,96,11,439/- for AY 2022-23. It was processed u/s 143(1) of the Act vide which disallowance u/s 36(va) of Rs. 48,25,365/- was made on account of delay in depositing employees' contribution towards provident fund.

4. The assessee filed an appeal before Ld. Addl. CIT(A). However, Ld. Addl. CIT(A) vide order dated 29.06.2024 dismissed the appeal of the assessee on this issue.

Aggrieved with order of the Ld. Addl. CIT(A), the assessee is in appeal before us.

5. We have heard the rival submissions. Ld. AR has submitted that the assessee tried to deposit the amount in question by the due date which was



15.06.2021. However, due to non-functioning of the portal, the same could not be deposited on 15.06.2021 but was instead deposited in 16.06.2021. The assessee has filed a copy of circular issued by the EPFO dated 15.06.2021 vide which the due date of seeding Aadhar in UAN was extended till 01.09.2021 to mitigate the difficulty/practical problems in filing of ECR. Further, a copy of TRRN details taken from EPFO website has been submitted from which it is seen that the challan was generated on 15.06.2021. However, due to the technical glitch, the same was presented and realized on 16.06.2021. As such, the date of credit was shown as 16.06.2021, resulting in the delay of just one day.

6. In this regard, the Ld. AR has also relied on the decision of the co-ordinate bench in the case of **Magic Software Pvt. Ltd. v/s DCIT 654/Del/2024** in which under similar circumstances, the matter has been decided in favour of the assessee vide order 29.07.2024 of the co-ordinate bench, Delhi. On the other hand, Ld. DR has relied on the orders of the lower authorities.

7. We have carefully considered the submissions as well as material placed before us. Admittedly, there is a delay of only one day in depositing the employees' contribution. The existence of technical difficulty has been sufficiently brought out by the Ld. AR. Further, we find that in exactly similar situation, co-ordinate bench has already decided the issue in favour of the



assessee. Relevant portion of the order of the Delhi Bench in **Magic Software Pvt. Ltd. v/s DCIT (supra)** is reproduced below:

“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. In view of the facts and circumstances of the case, respectfully following the decision of the co-ordinate bench, we direct the AO to direct to allow the claim of deduction with regard to the deposit of employees' contribution of Rs. 48,25,365/-.

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

Order pronounced in the open court on 29.11.2024.

Sd/-

**BEENA PILLAI**

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

**RENU JAUHRI**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024



अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

