

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री रakesh मिश्रा, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1112/KOL/2024
Assessment Year: 2020-21**

Shyamal Kundu	Vs.	DCIT, (CPC)/DCIT, Circle - 32(1), Kolkata
(Appellant)		(Respondent)
PAN: AFTPK0421P		

Appearances:

Assessee represented by : B.K. Agarwal, AR.

Department represented by : Arun Kumar Meena, JCIT, Sr. DR.

Date of concluding the hearing : January 8th, 2025

Date of pronouncing the order : January 21st, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. ADDL/JCIT(A)-Panchkula [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21 dated 18.03.2024, which has been passed against the intimation order u/s 143(1) of the Act, dated 30.11.2021.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. Ld. CIT(A)[NFAC] has erred in confirming the addition on account of late deposit of employees’ contribution to respective fund despite of the facts that these were deposited before the due date of filing of return u/s 139(1).

2. The appellant craves leave to add, amend ground of appeal either during or before the hearing of the appeal.”

3. The brief facts of the case are that the assessee filed the return of income showing total income of Rs. 7,32,150/- on 09.02.2021 for AY 2021-22. An intimation u/s 143(1) of the Act was issued on 30.11.2021 at a total income of Rs. 63,45,620/-. Aggrieved with the intimation, the assessee filed an appeal before the Ld. CIT(A) which was transferred to the Addl/JCIT (Appeals), Panchkula on 13.08.2023. The only ground of appeal before the Ld. CIT(A) was in respect of addition of Rs. 56,13,470/- relating to employees’ contribution for ESI & PF which was claimed to be deposited within the due date of filing the return u/s 139(1) of the Act. The Ld. CIT(A) dismissed the appeal after considering the submissions of the assessee uploaded on the portal and the finding is extracted as under:

“6.1 The appellant has challenged that the AO, CPC was wholly unjustified in making the addition of Rs. 56,13,470/- on account of delayed payment of Employees Contribution towards PF/ ESI, and such action of the AO, CPC in adding such sum is bad and illegal and is liable to be deleted as the sums have been deposited within the prescribed due date u/s 139(1)

6.2 The main contention of the department is that a sum of Rs.56,13,470/- is being disallowed since these contributions to EPF & ESI were made beyond the due dates prescribed in the relevant statutes. The matter has now been put to rest with the judgement of Hon’ble Supreme Court in the case of Checkmate Services (P) Ltd. Vs Commissioner of Income Tax-1, [2022] 143 taxmann.com 178 (SC)/448 ITR 518 (SC) wherein the Hon’ble Apex Court has held that Section 43B(b) of the I.T. Act does not cover employees’ contributions to PF, ESI etc. deducted by the employer from salaries of employees and that employees’ contribution has to be deposited



within the due date u/s 36(1)(va) of the I.T. Act, i.e. due dates under the relevant employees welfare legislation like PF Act, ESI Act etc. failing which the same would be treated as income in the hands of the employer u/s 2(24)(x) of the I.T. Act. Therefore, vide this judgement the issue of deposit of employees contribution towards PF/ESIC late beyond the due date stipulated under the Relevant Statute concerning PF/ESIC but deposited before the due date prescribed u/s 139(1) for filing of return of income has been decided squarely in favour of revenue.

6.3 Therefore, after careful consideration of the above narrated facts, circumstances of the case and the facts of the Appellant, this ground of appeal is dismissed and the addition of Rs.56,13,470/- on account of delay in deposit of sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI act or any other fund for the welfare of employees is accordingly confirmed.

7. In the result, the appeal is dismissed.”

4. Aggrieved with the appeal order, the assessee has filed the present appeal before the Tribunal.

5. Rival contentions were heard and the submissions made were examined. In respect of the disallowance made, the assessee has furnished submission as below:

“Detailed Submission

1. Following payments were deposited one day after the due date as due date happened to be Sunday:

Any Fund set up under the provisions of ESI Act, 1948	6518	15/09/2019	6518	16/09/2019	15/09/2019 was Sunday
Any Fund set up under the provisions of ESI Act, 1948	5108	15/09/2019	5108	16/09/2019	15/09/2019 was Sunday
Any Fund set up under the provisions of ESI Act, 1948	3228	15/09/2019	3228	16/09/2019	15/09/2019 was Sunday
Provident Fund	250913	15/12/2019	250913	16/12/2019	15/12/2019 was Sunday

As per Honourable ITAT Delhi "F" Bench in the matter of Radial International Vs DCIT appeal No. ITA/ 340/Del/2023 if the due date for payment of funds is holiday and the same has been paid on next day the same should be allowed.



Copy of order is enclosed for your reference.

2. Following payment was deposited next day as online payment system was not working properly

Provident Fund	192205	15/05/2019	192205	16/05/2019
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The appellant pray your honour to kindly grant relief from addition of this amount as this could not be deposited on due date due to malfunctioning of online payment system. Adding back of employees contribution to income is to prevent employers to not to play with employees money. In this case there was no intention to use employees money. Hence we request you to grant relief from addition of this amount.

3. Due to covid 19 Provident Fund Department had extended the due date for the month or April from 15th April 2020 to 15th May, 2020. (A copy of notification is enclosed herewith.) Therefore, following payments though made after 15th April 2020 were well within extended period of 15th May, 2020. As such these payments should be considered as deposited within due date and should not be added back.

Provident Fund	74201	15/04/2020	74201	13/04/2020
Provident Fund	284003	15/04/2020	284003	30/04/2020
Provident Fund	248014	15/04/2020	248014	12/05/2020
Provident Fund	118711	15/04/2020	118711	12/05/2020

6. The assessee has contended that the payments amounting to Rs. 2,65,767/- relating to ESI and PF were deposited on 16.09.2019 as 15.09.2019 was a Sunday and has relied upon the decision of the ITAT Delhi "F" Bench in the matter of **Radial International Vs DCIT in ITA No. 340/Del/2023** order dated 18.07.2023 that if the due date for payment of funds is a holiday and the payment is made on the next date, the same should be allowed as a deduction.

7. We have perused the order of the Coordinate Bench. In view of the decision of the Hon'ble Supreme Court in the case of **M/s. Checkmate Services Pvt. Ltd. [2022] 143 taxmann.com 178 (SC)**, the employees' contribution which is deposited beyond the due date under the relevant Act viz. PF & ESI Act etc. would be treated as income in the hands of



the employer u/s 2(24)(x) of the Act and the provisions of section 43B(b) of the Act would not cover the employees' contribution to PF & ESI etc. However, it was contended that if the due date is a holiday or a Sunday and the deposit is made on the next working day, the same should be treated as deposited within the due date. In this context, it is relevant to refer to Section 10 of the General Clauses Act, 1897, which reads as under:

“(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.”

8. Hence, in view of the provisions of section 10 of the General Clauses Act, 1897 and since 15.09.2019 was a Sunday and the assessee claims that the amount was deposited on the next working day i.e. 16.09.2019, the Ld. AO is directed to verify and allow the claim of deduction for the amount of Rs. 2,65,767/- deposited on 16.09.2019.

9. As regards payment of Rs. 1,92,205/- relating to provident fund, the assessee contends that the same was deposited on the next day as the online payment system was not working properly. The Ld. AO is directed to verify whether any extension of the due date for this technical issue has been allowed by the concerned authority as unless there is an extension of the due date, the Ld. AO would not be justified in accepting that the delayed payment was made within the due date,



on account of any technical glitch and in case any such circular or instruction has been issued, the assessee is directed to bring it to the notice of the Ld. AO who shall allow the required relief.

10. As regards the payment of Rs. 7,24,929/- on account of PF, the assessee contends that the Provident Fund Department had extended the due date for the month from 15th April, 2020 to 15th May, 2020. The assessee is required to file a copy of the notification issued along with the evidence of payment before the Ld. AO who shall examine the same and verify the due date and if the due date has been extended and the payment has been made within the extended due date, allow the deduction for the same. As the assessee has claimed relief for Rs. 56,13,470/- confirmed by the Ld. CIT(A) and the Ld. AO has been directed to verify the payment relating to Rs. 11,82,901/- only and delete the addition after verification if the same is found to be paid within the due date, Ground No. 1 is partly allowed.

11. Ground No. 2 is general in nature and does not require any separate adjudication.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 21st January, 2025.

Sd/-

[Sanjay Garg]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 21.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Shyamal Kundu, 100/72A, Jessore Road, Motijheel, Dum Dum, Kolkata, West Bengal, 700074.**
2. **DCIT, (CPC)/DCIT, Circle - 32(1), Kolkata.**
3. ADDL/JCIT(A)-Panchkula.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata