

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "F" Bench, Mumbai.

Before Shri Om Prakash Kant (AM)
& Shri Raj Kumar Chauhan (JM)

ITA No. 6118/MUM/2024 (Assessment Year : 2022-23)

Schott Glass India Private Ltd. 203, 2 nd Floor, Dynasty A Wing Andheri Kurla Road, Andheri East, Mumbai-400 059. PAN : AADCS8583L	Vs.	DCIT-3(2)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.
Appellant		Respondent

Assessee by	:	Shri Vijay Mehta & Shri Tarang Mehta
Revenue by	:	Ms. Kanupriya Damor
Date of Hearing	:	22/04/2025
Date of pronouncement	:	25/04/2025

ORDER

Per Raj Kumar Chauhan (JM) :-

This appeal is directed against the order dated 4.10.2024 of Addl/CIT(A)-1, Vadodara, wherein adjustment made by the CPC under section 143(1) of the I.T. Act had been confirmed.

2. Aggrieved by the impugned order, the appellant is in appeal before Tribunal and has raised following grounds of appeal.

Ground 1: Intimation is bad in law and needs to be quashed

1. On the facts and in the circumstances of the case and in law, the total income of the Appellant determined under section 143(1) at Rs, 1,54,55,37,630 after making disallowance of Rs. 25,23,571, as against the returned income of Rs, 1,54,30,14,050 is unjustified, erroneous, untenable in Law and accordingly, the same needs to be quashed.

Ground No. 2 - Disallowance towards payment of employee's contribution to Provident Fund of Rs. 25,23,571

2. On the facts and in the circumstances of the case and in law, the Ld, AO erred in disallowing payment of employees' contribution to Provident Fund of Rs. 25,23,571 by treating the same to be beyond due date without

appreciating that delay of single day was on account of factors completely beyond Appellant's control.

The Appellant prays that disallowance made by the Ld. AO be directed to be deleted and total income of the Appellant be determined at Rs 1,54,30,14,050.

Ground No. 3 - Consequential levy of interest under section 234C of Rs. 23,886

3. On the facts and in the circumstances of the case and in law, the Ld. AO grossly erred in levying interest under section 234C of the Act on the assessed income instead of returned income.

The appellant prays that the Ld. AO be directed to delete the additional interest under section 234C of the Act.”

3. Brief facts as culled out from the proceedings of the lower authorities are that the assessee i.e., Schott Glass India Private Limited is engaged in the business of manufacturing specialized glass and glass products for pharmaceutical packaging requirement. For the A.Y. 2022-23, the assessee filed its return of income on 28.11.2022 declaring total income of Rs. 1,54,30,14,050/-. The Return of income was processed and the assessee received intimation under section 143(1) dated 19.6.2023 (Intimation), wherein tax demand of Rs. 7,42,690/- was determined by the Ld. AO. It was noticed that Rs. 25,23,571/- pertaining to payment of employees' contribution to the Provident Fund was disallowed on account of being paid beyond due date.

4. Aggrieved by the said Intimation under section 143(1) of the Act, the assessee/appellant filed appeal before the Ld. CIT(A), who has dismissed the same observing that the said amount needs to be disallowed under section 36(1)(va) read with section 2(24)(x) of the Act as the said amount which is employees' contribution towards Provident Fund has not been deposited on due date as prescribed under the relevant Act. Ld. CIT(A) has relied upon the Judgement of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. Vs. CIT-1 (Civil Appeal No. 2833 of 2016 and others judgement dated 12.10.2022) and concluded that in view of the ratio of the said judgement

the amount of Rs. 25,23,571/- was required to be deposited on 15.6.2021 but the same has been deposited on 16.6.2021 as there is a delay of one day and as such the said amount has been rightly disallowed by the Ld. AO.

5. Aggrieved by the impugned order of Ld. CIT(A), the appellant/assessee has filed the present appeal.

6. We have heard the Ld. AR and Ld. DR, carefully examined the record and relevant precedents relied upon on behalf of the appellant/assessee. The Ld. AR has filed a paper book containing 61 pages. Ld. AR has referred page No. 1 of the paper book, which is a screenshot taken on 16.6.2021 showing that on 14.6.2021 the appellant has tried to deposit this amount online with Employees' Provident Fund Organisation (EPFO) but the same could not be deposited because system was unresponsive. Ld. AR further referred page No. 3&4 of the paper book to show that the provident fund deposit site was showing error on both dates. He has also referred page No. 2 which is a letter written to the Regional Office of EPFO by the representative of the appellant/assessee intimating them that due to technical error the appellant was not able to process monthly challan for depositing the provident fund and requested them to look into the matter urgently.

7. It is further argued that the said amount was deposited on 16.6.2021, wherein Employees' Provident Fund Organisation has accepted employees' contribution for the month of May 2021 without any objection and no late charges/penalty has been imposed while accepting the deposit one day beyond prescribed date which shows that the said amount has been legally deposited within time prescribed as there was a technical glitch and system was not working properly due to which appellant could not deposit the said amount despite having made best efforts on 14.6.2021 and 15.6.2021 respectively. In support of this argument Ld. AR has referred various precedents of the ITAT Tribunals as under :-

- 1) ITA No. 2958 & 2959/Del/2022 A.Y. 2017-18 & 2018-19 dated 14.2.2024 in the case of Protiviti India Member Pvt. Ltd. Vs. ACIT. Hon'ble Delhi Tribunal in similar situation where there was delay of 3 to 7 days due to technical defect in depositing contribution to the Provident Fund and ESI because EPFO website was not working properly and reached to the conclusion that on account of failure of the appellant, due to failure of the system of website as it was out of order and challans cannot be uploaded, then it could not be held that the appellant should be fastened with such a liability and accordingly disallowance confirmed by Ld. CIT(A) was deleted. Relevant portion of the order is extracted below :-

“3. Before us, learned counsel for the assessee submitted that most of the employees' contributions to PF and ESI account have been paid within the due date, however, in some cases the delay is only marginal of 3 to 7 days. The delay is not attributable to the assessee because the EPFO website was not working properly due to which EPF challan could not be generated. In support, he has also filed copy of email written to SRO, Noida, EPFO, stating that EPFO site was not working on these dates. He has also filed copy of screenshots of the site showing that it was out of order. This has also been explained before the CIT(A) also. Once the delay is not attributable to the assessee because of the EPFO website was not working and was out of order, then the assessee cannot be said to have violated any deadline of the provisions of the respective Act. Thus, it cannot be said that there is a delay in depositing of PF and ESI within the prescribed due date. Here it is not a case of whether the decision of Hon'ble Supreme Court in case of Checkmate (supra) has to be applied because the Hon'ble Supreme Court has held that if there is a delay in the payment beyond the prescribed due date provided in the respective Act, the same shall be treated as the income of the assessee. Once the delay in depositing the PF and ESI is not on account of failure of the assessee, but the failure of the system of website itself as it was out of order and challans cannot be uploaded, then it cannot be held that the assessee should be fastened with such a liability. Accordingly, the disallowance confirmed by the CIT(A) is deleted.

4. In the result, both the appeals of the assessee are allowed.”

- 2) Hon'ble Delhi Tribunal in ITA No. 654/Del/2024 A.Y. 2022-23 dated 29.7.2024 in the case of Magic Software Pvt. Ltd. Vs. DCIT, wherein the Tribunal has dealt with a case where PF amount deposit

was delayed due to technical glitch and the date was same on which the said technical glitch prevented the present appellant from making the payment on due date. Relevant portion of said Judgement are extracted below :-

“3. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that the assessee has done everything within its means to comply with the provisions of the [Provident Fund Act](#) for making timely payment towards PF contribution. The ld. counsel referred to page no.43 of the paper book containing screen shot on the portal of PF Department showing that the payment attempted to be made to the Provident Fund Department could not be completed and the screen shot clearly shows that the system provided for online payment marks the system unresponsive for acceptance of payment. The ld. counsel thereafter referred to page no.44 which yet again depicts that status of the payment is shown to have failed or awaiting payment against such Employees' Contribution which further supports that the payment although attempted to be made was not accepted due to glitches in the online system provided by the Provident Fund Authority. The ld. counsel thereafter referred to page no.45 of the paper book wherein the assessee company has addressed the e-mail dated 15 t h June, 2021 to Provident Fund Authorities expressing his helplessness for making payment of provident fund contribution dues for last 2-3 days. Similarly pages 46 and 47 also shows the internal e-mail correspondence wherein the employee, Mr. Gautam Lath has e-mailed a communication to Mr. Sumit Bansal - the Director of the company along with screen shot of the attempted payment to Employees' Provident Fund Organization and expresses his inability to make Provident Fund payment due to website glitches. The ld. counsel thereafter referred to the challan showing payment towards employees' contribution and employer's contribution with one day delay on 16 t h June, 2021 attributable to wages for May, 2021. The ld. counsel thereafter adverted to page no.53 of the paper book wherein a letter dated 23 r d June, 2021 is annexed which seeks inform the Regional Provident Fund Commissioner that due to heavy load in the server of the Provident Fund Website, the assessee failed to deposit provident fund in relation to wages for May, 2021 within the stipulated time available upto 15th June, 2021 and sought relief on account of interest payments etc. for one day delay due to website failure. The ld. counsel thus submitted that the assessee was prevented from making online payment within stipulated time due to website glitches and therefore, the disallowance under [Section 36\(1\)\(va\)](#) is not justified in the peculiar circumstances owing to doctrine of impossibility.

3.1 It was contended that the assessee cannot be accepted to do impossible things and therefore, in the absence of any violation of spirit of [Section 36\(1\)\(va\)](#), no fault can be found with the action of the assessee. The assessee has made payments as soon as the facility was found workable.

3.2 The ld. counsel thereafter referred to some decisions of the Co-ordinate Bench to contend that in the similar circumstances, a benign view has been taken by the Co-ordinate Benches and relief from the clutches of [Section 36\(1\)\(va\)](#) has been duly provided. For this purpose, the ld. counsel inter alia referred to the decision rendered in the case of Protiviti India Member Pvt. Ltd. vs. ACIT, ITAs No.2958 & 2959/Del/2022 order dated 14.02.2024 wherein the issue was decided in favour of the assessee in identical facts.

4. The ld. DR for the Revenue, on the other hand, relied upon the orders of the lower authorities and submitted that the law is explicitly clear that the employees' contribution to PF must be paid within stipulated time under the relevant Act and there is no scope for any concession in the matter.

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 relating 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 require 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.”

8. Ld AR of the appellant/assessee further referred before us the Judgement of Hon'ble Apex Court in the case of Narmanda Hydro Electric Development Corporation Ltd. Vs. Narmada Bachao Andolan and Another (Civil Appeal No. 2116 of 2011 dated 11.5.2011) in support of his arguments that it was beyond control of appellant/assessee to deposit the said amount on 14th and 15th June, 2021 within prescribed period and doctrine of impossibility propounded by Hon'ble Court in Narmada Hydro Electric Development Corporation Ltd. case (supra) is applicable in the case of present appellant also and it has been vehemently argued that the appellant/assessee is entitled to deletion of the amount so deposited after delay of one day which was due to technical impossibility beyond control of appellant/assessee. Relevant portion of the Hon'ble Apex Court's judgement is extracted below :-

"DOCTRINE OF IMPOSSIBILITY:

38. The Court has to consider and understand the scope of application of the doctrines of "lex non cogit ad impossibilia" (the law does not compel a man to do what he cannot possibly perform);

"impossibilium nulla obligatio est" (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law Nemo Tenetur ad Impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: [Chandra Kishore Jha v. Mahavir Prasad & Ors.](#), AIR 1999 SC 3558; [Hira Tikoo v. Union Territory, Chandigarh & Ors.](#), AIR 2004 SC 3648; and [Haryana Urban Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr.](#), AIR 2005 SC 1491).

39. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein."

9. On the basis of the above cited legal proposition and facts and circumstances, it has been strongly submitted by Ld. AR on behalf of the appellant/assessee that the impugned order of Ld. CIT(A) is not legally sustainable and needs to be set aside and disallowance made by the Ld. AO of Rs. 25,23,571/- be deleted.

10. Ld. DR on the other hand supported the Judgement of Ld. CIT(A) and argued that proof of non-function of the EPFO portal as mentioned in page No. 1 to 4 by the Ld. AR are not supported by complete details/documents because it is not clear as to when snapshot was taken as date mentioned is June 16 and further argued that the facts and circumstances case relied upon by Ld. AR were distinguishable from the facts of the present case.

11. We have considered the rival submissions. We respectfully follow the Judgments of Hon'ble Delhi Tribunal in the case of Magic Software Pvt. Ltd. (supra) and in the case of Protiviti India Members Pvt. Ltd. (supra). Similarly in case in hand facts are totally covered by the facts of Magic Software Pvt. Ltd. (supra). We have no hesitation in concluding that the appellant has made all best efforts on 14th and 15th June 2021, which were prescribed date for depositing employees' contribution of PF and ESI but due to technical glitch and non-functioning of EPFO website, the said amount could not be deposited and when site functioned properly on 16th June, the said amount was duly deposited. We have also noticed that there is force in the argument of Ld. AR that the said amount has been accepted by the EPFO on 16th June without any reservation and no penalty an interest for delayed payment has been charged. This fact shows that EPFO was aware of the technical glitch on 14th and 15th June because of which amount could not be deposited. For this reason the impugned order of Ld. CIT(A) is not legally sustainable in the eyes of law and accordingly set aside. We accordingly direct the deletion of the addition made against the appellant. Accordingly the grounds No. 2 of appeal is allowed. In view of decision on ground No. 2, the ground No. 1&3 are rendered academic.

12. Appeal of the appellant is allowed on above terms.

Order pronounced in the open Court on 25/04/2025.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Mumbai; Dated: 25/04/2025

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai