



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 43/RJT/2025

(निर्धारण वर्ष/Assessment Year: (2018-19)

Babu Bhura Varchand 124, Ram Krishna Nagar, Bhuj H.O. Bhuj, Kachchh – 370 001	Vs.	Income Tax Officer, Ward-3, Gandhidham (Bhuj-1), Income Tax Officer, Bhuj, Nr. Leva Patel Hospital, Mundra Road, Bhuj – 370 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIXPV 1911 G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Apurva Shah, AR

प्रत्यर्थी ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 01/05/2025

घोषणाकीतारीख/Date of Pronouncement : 30 /06/2025

आदेश / ORDER

Per, Dr. A. L. Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2018-19, is directed against the order passed by the National Faceless Appal Centre (NFAC), Delhi /Commissioner of Income Tax(Appeals) under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), [in short “the Ld. CIT(A)/NFAC”], dated 14/09/2022, which in turn arises out an assessment order passed by Assessing Officer (in short ‘the AO”) u/s 154 r.w.s. 143(1) of the Act, dated 30.12.2021.



2. The appeal filed by the assessee for Assessment Year 2018-19, is barred by limitation by 784 days. The assessee has moved a petition requesting the Bench to condone the delay. The learned Counsel for the assessee submitted the reasons for delay, stating that the email -ID provided in Form 35 at the time of filing the appeal before the CIT(A) belonged to his consultant. However, subsequently, EMail-id was updated on the Income Tax Portal to shreekrishnaenterprise711@gmail.com, hence assessee believed that all future communications from the Department would be sent to the updated email- ID. However, the Department, continued to issue notices and the appellate order to the email- ID mentioned in Farm 35, that is, apu 2005in@rediffmail.com. Therefore, the assessee, could not participate in the appellate proceedings and *Ex- Parte* order was passed by Ld CIT(A) on 14.09.2022. Thereafter when the assessee received communication from department on 06.12.2024 that the refund for assessment year (AY) 2024-25 has been adjusted against outstanding demand for AY 2018-19, then assessee took up matter with the Tax Consultant and assessee came to know, the lapse in filing the appeal before the Tribunal. Hence, the delay in filing the appeal is neither deliberate nor intentional but occurred due to circumstances beyond the control of the assessee.

3. On the other hand, Ld. Sr. DR for the Revenue has raised objection about condonation of delay and would submit that such huge delay should not be condoned on such flimsy grounds. The assessee does not deserve any leniency at this stage. Hence, the appeals of the assessee may be dismissed.

4. We have heard the submissions of both the parties on this preliminary issue. We note that the provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of



Collector, Land Acquisition vs Mst. Katiji and others, reported in 167 ITR 471, (1988) SC 897) (7) observed as follows:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.....”

5. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We note that the reasons given in the affidavit for condonation of delay, was convincing, and the reason would constitute reasonable and sufficient cause for the delay in filing this appeal. Considering the above facts and circumstances of the case, as narrated above, We are of the considered opinion that in the interest of justice, the delay deserves to be condoned and appeal of the assessee should be decided on merits in accordance with law. Accordingly, we condone the delay and admit the appeal of the assessee for adjudication on merit.

6. On merit, the short issue, which falls for consideration is that Employees` Contribution to PF, which is paid by the assessee, within the grace period allowed by the PF Act, should be allowed to the assessee. The Ld. Counsel for the assessee argued that no doubt, late payment of the Employees contribution to PF, is covered against the assessee, by the judgement of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I, in Civil Appeal No. 2833 of 2016, dated 12/10/2022. However, some of the payments of Employees contribution to PF, were paid by the assessee under consideration, within grace period, which were not examined by the Assessing Officer. The Ld. Counsel for the assessee submitted challan of the PF contribution and stated that out of total addition of Rs.14,86,251/-, the employees contribution to PF was paid within grace period to the tune of Rs.8,29,346/-, therefore, no disallowance should be made to the extent of Rs.8,29,346/-, in the hands of the assessee.



Therefore, if addition is to be made on account of employees contribution to PF then such addition comes to Rs.6,56,905/- (Rs.14,86,251- Rs.8,29,346), which can be made in the hands of the assessee.

7. On the other hand, Ld. Sr-DR for the Revenue submitted that late payment of employees PF is covered against the assessee by the judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I, in Civil Appeal No. 2833 of 2016, dated 12/10/2022. However, since the assessee has submitted additional evidences, before the Tribunal, showing that some of the employees PF were paid within grace period, therefore benefit is to be given to the assessee in respect of employees contribution to PF, which is paid within grace period. The assessee submitted first time, before the Tribunal, the challan showing deposits of employees contribution to PF, through banking channel which is required to be examined by the Assessing Officer. Hence for the interest of justice, matter may be remitted back to the file of Assessing Officer for examination of these evidences.

8. We have heard the submissions of both the parties and have perused the material on record. We note that Ld. Counsel for the assessee furnished a chart showing employees' contribution to PF, paid within grace period, and submitted additional evidence by way of challan, showing payment of PF within grace period, which were not examined by the assessing officer. The assessee submitted, before the Bench, for the first time, showing payment made within grace period and payment which is not made in grace period, which is to be disallowed, the summary is reproduced below:

EMPLOYEE CONTRIBUTION PAID WITHIN GRACE PERIOD

Sr.No.	Month	Employee contribution	Paid date	Remarks
1	May-17	171150	19.06.2017	Challan attached
2	June-17	204500	18.07.2017	Challan attached
3	Sept-17	171600	18.10.2017	Challan attached
4	Feb-18	144733	19.03.2018	Challan attached
5	Mar-18	137363	18.04.2018	Challan attached
	Total	829346		



Total addition made in assessment	1486251
Less: PF paid within grace period	829346
Net addition to be considered after grace period payment	656905

Since the assessee submitted additional evidence, therefore, the matter may be remitted back to the file of Assessing Officer to examine whether payment was made by the assessee, within the grace period in respect of employees' contribution to provident fund. Hence, in the interest of justice and fair play we set aside the order of Id. CIT(A) and remit the matter back to the file of Assessing Officer, to examine, the amount paid within grace period on account of Employees' contribution to Provident Fund and ESIC. If the assessing officer finds that assessee has paid amount within grace period, on account of Employees contribution to Provident Fund and ESIC, the addition should be deleted to that extent and the amount which is not paid within the grace period is covered against the assessee by the judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I, in Civil Appeal No. 2833 of 2016, dated 12/10/2022, which should be disallowed by the Assessing Officer.

9. In the result, the appeal of the assessee is allowed for statistical purposes, in above terms.

Order is pronounced on 30/06/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**
राजकोट /Rajkot

दिनांक/ Date:30/06/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अत्रेणित/ Copy of the order forwarded to :

Sd/-
(DR.ARJUNLAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT



- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट