

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 661/Bang/2025
Assessment Year : 2019-20

M/s. Navaneetha Enterprises, No. 38/1, Narayanappa Building, Electronics City Post, Konappana Agrahara, Bengaluru – 560 100. PAN: AAJFN0086C	Vs.	The Income Tax Officer, Ward – 2(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravikiran, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	06-06-2025
Date of Pronouncement	:	02-09-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of NFAC, Delhi dated 21/01/2025 in respect of the A.Y. 2019-20 and raised the following grounds.

“1. Delay in remittance of PF / ESI ranging from 1 to 4 days was attributed to appellant's bank not being able to remit contributions to PF/ESI directly through its own Internet banking facility; your appellant was prevented from sufficient cause for the delay in remittance of contributions.

1.1. The learned first appellate authority has failed to appreciate the facts of the case and practical difficulty

faced by your appellant in remittance of PF / ESI contributions on the due date. The appellant has bank account in the United Bank of India which was not associated with EPFO and ESIC during 2018. Due to this reason, the appellant had to rely on another bank for remittance of PF and ESIC amounts. It was the delay due to the technical process that took for transfer of funds between two bank accounts. However, the appellant was penalized for the delay that is caused beyond the control of your appellant.

1.2. Your appellant wishes to place reliance on the decision of ITAT Delhi in the case of Rai Bahadur Narain Singh, Sugar Mills Ltd. Vs ACIT, Delhi ITA No. 1645/De1/2022; where in delay in remittance of PF/ESI on account of reasons beyond the control of the assessee was noted and disallowance u/s 36(1)(va) was deleted. Enclosed the order copy for your kind consideration.

1.3. There are no significant delays in remitting the contributions in the case of your appellant. Delay in remittance has only ranged between 1 to 4 days of which pertains to the technical process for the transfer of funds between the bank accounts that is beyond the control of the appellant.

2. Due date of remittance of contributions shall be counted taking into account - 5 grace days:

2.1. Manual of Accounting procedures, Part - I, General lays down the processes to be followed by the PF department, including receipt of contributions from employers. This is a document which has been duly adopted by the Central Board of Trustees, in their meeting held on 2.12.1997. Central Board of Trustees is the apex body which governs the Provident Fund Organisation.

2.2. Grace period of 5 days in remittance of contributions after the prescribed due date being 15th day of subsequent month is allowed under Clause 5.1.3 of Manual of Accounting procedures.

2.3. A circular issued under the approval of Central Provident Fund Commissioner dated 8th January 2016, has done away with the grace period of 5 days, without specifically amending the clause 5.1.3 of Manual of Accounting procedures. The reason quoted in the circular for removal of grace days is - employers

compute the wages and EPF liabilities electronically and file Electronic Challan cum Return (ECR); the remittances are also being deposited through Internet Banking.

2.4. Section 36(1)(va) of the Income Tax Act, 1961 requires your appellant to remit the contributions before the due date. Explanation 1 to the said section states - 'for the purposes of this clause "due date" means the date by which the assessee is required as an employer to credit employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise.'

2.5. The circular issued under the approval of Central Provident Fund Commissioner which does away with the grace period, cannot be construed to determine the "due date" for the purposes of Section 36(1)(va) of the Income Tax Act, 1961, as the due date would need to be determined in accordance with the Act, Rule, Order or Notification as per the explanation below Sec. 36(1)(va) and not based on a Circular which issued under the approval of Central PF Commissioner.

2.6. Removal of grace period is not justified as only a few banks were integrated with EPFO and ESIC. The appellant had no other choice but to rely on the integrated banks for remittance of contributions to the concerned fund accounts.

3. The appellant craves for leave, to add to, to delete from or to amend the grounds of appeal

PRAYER

For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the disallowance made u/ s 36(1)(va) of the Income Tax Act, 1961, amounting to Rs. 35,77,364/-, on account of delay in remittance of contributions be set aside, in the interest of law, equity and justice."

2. The assessee filed this appeal with a delay of 5 days and filed an application to condone the said delay. We have perused the reasons stated in the delay condonation application and also considering the said delay is only a minimal one, we condone the delay in filing the appeal and proceed to decide the appeal on merits.

3. The assessee is a man-power supplier and filed their return of income u/s. 139(1) of the Act. Thereafter the said return was processed u/s. 143(1) of the Act and the CPC had added back an amount of Rs. 35,77,364/- as disallowance u/s. 36 of the Act. The CPC had made this addition for the reason that the assessee had remitted the employees contribution of PF and ESI after the due dates prescribed under the respective Statutes. Before communicating the intimation, the CPC had issued a notice but the assessee had not responded to the said notice.

4. As against the said intimation, the assessee filed a rectification application u/s. 154 of the Act. The assessee submitted in the said application that the employees contribution of PF & ESI were paid before the due date of filing of income tax returns and further contended that during the said period, this issue was not settled and later on by way of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC) this issue was settled and therefore the assessee cannot be denied the benefit. Subsequently, the rectification application was dismissed by the Ld.CPC on 12/03/2021. The assessee challenged the said rectification order before the Ld.CIT(A). In the appeal, the assessee submitted that the adjustment made by the CPC in the intimation u/s. 143(1) of the Act as against the late payment of the employees contribution of PF and ESI is not correct. The assessee also submitted that the said payments were paid before the due date for filing the return of income u/s. 139(1) of the Act and therefore the said payments are an allowable deduction. The assessee also relied on the decision of the Hon'ble Supreme Court in the case of PCIT vs. Rajasthan State Beverages Corporation Ltd. The Ld.CIT(A) by following the judgment of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC), had dismissed the appeal filed by the assessee.

5. As against the said order, the assessee is in appeal before this Tribunal.

6. At the time of hearing, the Ld.AR filed an additional ground and also furnished the judgment of the Hon'ble Supreme Court as well as the judgment of the Hon'ble High Court of Chattisgarh and the orders of the Hon'ble Raipur Tribunal and submitted that the delayed deposit of employees contribution of PF & ESI could not be summarily disallowed u/s. 143(1)(a) of the Act. The Ld.AR further submitted that the delayed payment of the said contribution were not voluntary but because of the fact that the assessee's bank, United Bank of India was not associated with PF and ESI Corporations and therefore the assessee was forced to make the payments through the State Bank of India and therefore the said delay has occurred and prayed to condoned the said delay and allow the deduction. The Ld.AR further submitted that the challans issued by the State Bank of India would indicate that the contributions were paid to the State Bank of India well before the due date and thereafter the State Bank of India processed the said payments into the account of ESI & PF and therefore the disallowance for this practical difficulties faced by the assessee would not be a reason to disallow the said claim. The Ld.AR further submitted that both the PF & ESI Corporations had granted facilities for e-payment for a few banks and therefore submitted that even though sufficient amount was available with the assessee, the said payment could not be processed through their bankers and hence the delay has been occurred which could not be taken as a reason for disallowing the deduction. The Ld.AR further submitted that at the time of filing the returns as well as processing the payments through the State Bank of India, the law was not settled and only after the judgement of the Hon'ble Supreme Court, this issue was settled and therefore for the period prior to the judgment of the Hon'ble Supreme Court, the benefit should not be denied by relying on the later judgment of the Hon'ble Supreme Court.

7. The Ld.DR submitted that the section 36(1)(va) and 43B of the Act would made it clear that if the employees contribution was not deposited within the period prescribed under the respective Statues, the deduction of the same u/s. 36(1)(va) would not be available to the assessees. The Ld.DR

further submitted that the Ld.CIT(A) had considered the issue in detail and also the principles laid down by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC) and held that the assessee is not entitled for deduction on the delayed payment of the PF & ESI contributions of the employees.

8. We have heard the arguments of both sides and perused the materials available on record.

9. We have considered the facts of the present case in which the assessee submitted that the bank of the assessee was not in the list of approved banks by the said two Corporations and therefore, even though sufficient credit was available, the employees contribution could not be remitted to the ESI & PF funds and therefore the said delay has occurred. We have also perused the section 36(1)(va) and 43B of the Act and we found that there is a clear cut provision u/s. 36(1)(va) which mandates that the employees contribution towards the PF & ESI should be credited to the employees account on or before the due date. Similarly, section 43B(b) also specifies that the employees contribution to the PF & ESI are eligible for deduction only on actual payments. We have also perused the explanation inserted by way of Finance Act, 2021 w.e.f. 01/04/2021 through which the due date has been explained. When we read the provisions simultaneously, the Act mandates that the sum paid by the assessee towards the employees contribution of PF & ESI are eligible for deductions provided the said amounts were paid before the due dates. In order to understand the provision and also to avoid confusion, later on the Explanation to section 36(1)(va) was added on 01/04/2021. Therefore the Act was very specific that the dues should be paid by the assessee within the due dates prescribed under the relevant Statues and if not, the said payments would not be eligible for deduction u/s. 36(1)(va) of the Act.

10. The above said provision was considered by the Hon'ble Supreme Court and the Hon'ble Supreme Court had clarified that if the employees

contributions were not paid by the assesseees within the due dates prescribed under the respective Statues, then the assesseees are not entitled for deduction u/s. 36(1)(va) of the Act. It is not the case of the assessee that the new provision has been introduced and therefore for the earlier periods, the assesseees were in confusion and therefore the amounts were remitted with a little delay of 1 to 5 days. In the present facts of the case, there is a provision for availing the deduction u/s. 36(1)(va) and if the condition laid down in the said provision was not complied with, automatically, the assessee is not entitled for deduction u/s. 36 of the Act. Whatever may be the reasons for the delayed payment of the employees contributions, the assesseees are not entitled for getting the deduction u/s. 36 of the Act.

11. We have also gone through the judgment of the Hon'ble Supreme Court, Hon'ble High Court of Chattisgarh and the other Tribunal orders relied on by the assessee to the effect that this kind of adjustments could not be done in the intimation communicated u/s. 143(1) of the Act. In all the judgements and the orders, the respective Courts had held that the CPC could not summarily rejected the claim while processing the return u/s. 143(1) of the Act. But in the present case, as admitted by the assessee, the CPC had issued a notice u/s. 143(1)(a) of the Act before making the adjustment u/s. 143(1) of the Act and therefore the said judgments and the orders would not support the case of the assessee.

12. In any event, the issue was settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC) in which the Hon'ble Supreme Court had clarified that the assesseees were not eligible for deduction u/s. 36(1)(va) of the Act if the employees contributions were remitted to the said funds after the due dates prescribed under the respective Statues. The Hon'ble Supreme Court had not laid down a new law but only interpreted the existing provision and gave a finding that the remittance should be before the due date prescribed under the respective Statues for claiming the deduction. The Ld.CIT(A) had rightly followed the said judgment of the Hon'ble Supreme Court and dismissed the

appeal filed by the assessee since the payments were made after the due dates prescribed under the respective Statues.

13. We, therefore find no reason to interfere with the order of the Ld.CIT(A) and dismiss the appeal filed by the assessee.

14. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 02nd September, 2025.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 02nd September, 2025.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore