

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A No.1610/Mum/2025
(Assessment Yea: 2021-22)

Haribhakti & Co. LLP 701, Leela Business Park, Andheri Kurla Road, Andheri (East), Mumbai-400059 PAN : AAAFH2010F	vs	DCIT, Central Circle-2(3), Mumbai Room No. 803, 8 th Floor, Prathishta Bhavan, Maharashtra-400020
APPELLANT		RESPONDENT

Assessee by : Shri Alpesh Dharod
Respondent by : Shri Hemanshu Joshi (SR DR)

Date of hearing : 07/01/2026
Date of pronouncement : 13/01/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee was filed against the order of the Ld. Commissioner of Income-tax (Appeals) Addl./JCIT(A), Jodhpur [for brevity, 'Ld.CIT(A)'] order passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act) for the Assessment Year 2021-22, date of order 08/01/2025. The impugned order was emanated from the order of the CPC, Income-tax

Department (in short, 'the Ld.AO'), order passed u/s 143(1)of the Act, date of order 28/12/2022.

2. The brief facts of the case are that the assessee claimed deduction under section 36(1)(va) of the Act in respect of employees' contribution to Provident Fund (PF). The assessee deposited the said employees' contribution with a delay. During the processing of the return, the Ld. AO rejected the assessee's claim for deduction under section 36(1)(va) of the Act and made an addition amounting to Rs.15,72,131/-. Aggrieved by the said adjustment, the assessee preferred an appeal before the Ld. CIT(A). The assessee contended that the delay in depositing the employees' PF contribution occurred due to the extraordinary circumstances prevailing during the COVID-19 pandemic in the relevant financial year, and that the delay was only of a few days beyond the due dates prescribed under the PF Act. However, the Ld. CIT(A) rejected the assessee's appeal. Being aggrieved, the assessee has filed the present appeal before us.

3. The Ld. AR argued the matter and filed a **paper book** comprising **pages 1 to 59**, which has been placed on record. The Ld. AR submitted that the delay in depositing the employees' contribution arose during the COVID-19 period. The month-wise details of payment of employees' PF contribution have been furnished in a tabulated statement by the Ld. AR, which is reproduced below:

Haribhakti & Co. LLP Assessment Year 2021-22 Details of Salary Payment vis-à-vis Employees Contribution to Provident Fund					
Month of Salary	Month of payment of Salary/Adhoc Payment	Amount of Employee Contribution	Due Date as per PF Act	Revised Date of Payment	Actual Date of Payment
April' 20	June' 20	1,90,927	15-05-2020	15-07-2020	19-08-2020
May' 20	July' 20	1,89,776	15-06-2020	15-08-2020	19-08-2020
June' 20		1,80,840	15-07-2020	15-08-2020	21-08-2020
July' 20	Aug' 20	1,74,302	15-08-2020	15-08-2020	26-09-2020
Aug' 20	Sept' 20	1,69,283	15-09-2020	15-10-2020	09-10-2020
Sept' 20	Oct' 20	1,66,888	15-10-2020	15-11-2020	28-10-2020
Oct' 20	Nov' 20	1,60,430	15-11-2020	15-12-2020	01-12-2020
Nov' 20	Dec' 20	1,65,189	15-12-2020	15-12-2020	23-12-2020
		694	15-12-2020	15-12-2020	15-01-2021
Mar' 21	Apr' 21	1,73,802	15-04-2021	15-04-2021	16-04-2021
Total		15,72,131			

4. The Ld. AR argued that the COVID-19 period last for two years and accordingly the delay for payment of PF related employees' contribution should be considered. The Ld. AR further stated that the same issue was duly adjudicated by the Coordinate Bench of ITAT Mumbai in the case of **Diamour Jeweller Pvt. Ltd. vs. CPC** reported in **(2024) 165 taxmann.com 112 [Mumbai-Trib]**. The relevant paragraph 8.4 to 9 of the said order is reproduced as below:

"8.4. In the present case before us, in the given peculiar fact pattern and circumstance, when the EPF Organisation itself has waived off the levy of penal damages for delayed payment during the period of lockdown by Issuing the aforesaid circular, there is no question of treating the delay which occurred during the period of lockdown detrimental to the assessee under the Act, more specifically under the explanation to section 36(1)(va) of the Act. The delay in deposit of PF and ESI of the employees' share is for the month of April 2020 and May 2020. These months fell in the period of lockdown when pandemic of COVID-19 was at its peak. Due dates to deposit for these two months were 15.05.2020 and 15.06.2020 as per the relevant enactments. Assessee deposited the delayed amount in the month of June 2020 when there was relaxation in the lockdown and banking was permitted. There is no mischief on the part of the assessee in holding the employees' contribution for long periods as contemplated in the memorandum

explaining the provisions introduced in the Finance Bill, 1987 and CBDT circular and dealt by the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra), In fact, assessee demonstrated its vigilance in depositing the impugned amounts at the first opportunity it got when the relaxation was given in the lockdown. Also, for all the subsequent months, the deposits have been on or before the prescribed due dates under the relevant enactments. Thus, in the present case under its peculiar set of facts, there cannot be any adverse effect on the assessee of not depositing the employees' contribution of EPF and ESI within the meaning of section 36(1)(va) of the Act when the relevant enactment itself had given a waiver from levy of penal damages for the delay in deposit 'during the lockdown period'. We delete the addition so made. Grounds taken by the assessee in this respect are allowed.

8.5. Before parting, we make it abundantly clear that our above observations and findings are specific to the peculiar set of facts in the present case, elaborately narrated above, which cannot be taken as laying down a precedence on the issue addressed.

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

5. The Ld. DR argued that the assessee had deposited the employees' Provident Fund contribution with a delay. Placing reliance on the judgment of the Hon'ble Supreme Court in **Checkmate Services Pvt. Ltd. v. CIT** reported in **(2022) 143 taxmann.com 178**, the Ld. DR contended that the due date for claiming deduction of employees' contribution to PF under section 36(1)(va) of the Act is the statutory due date prescribed under the PF Act, and not the due date for filing the return of income under the Income-tax Act. Accordingly, the Ld. DR supported the orders of the revenue authorities.

6. We have heard the rival submissions and perused the material available on record. We find that, during the impugned assessment year, the assessee claimed deduction under section 36(1)(va) of the Act in respect of employees' PF contribution amounting to Rs.15,72,131/-. On perusal of the details, it is evident

that the delay in depositing the employees' PF contribution occurred only for a few months during the COVID-19 period. The delay pertains to the months from April 2020 to March 2021, which coincided with the nationwide lockdown when the COVID-19 pandemic was at its peak. Further, there is no mala fide intention on the part of the assessee in retaining the employees' contribution for prolonged periods, as contemplated in the memorandum explaining the provisions introduced by the Finance Act, 1987, and the corresponding CBDT Circular. We also take note of the circular issued by the PF Commissioner, whereby penal provisions for delayed compliance during this period were relaxed. Respectfully following the decision of the Coordinate Bench of the ITAT in the case of **Diamour Jewellers Pvt. Ltd.** (supra), we set aside the impugned appellate order. Consequently, the addition made by the Ld. AO amounting to Rs.15,72,131/- is deleted

7. In the result, appeal filed by the assessee bearing **ITA No.1610/Mum/2025** is allowed.

Order pronounced in the open court on 13th day of January, 2026.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 13/01/2026

Saumya

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai

5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, MUMBAI**