

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1519/Ahd/2024
(Assessment Year: 2018-19)

Tandem Data Processing Pvt. Ltd. 203, Akashganga Complex, Nr. Vanijya Bhavan, Race Course Circle, Vadodara-390007	Vs.	ADIT, CPC, Bangalore Present Jurisdiction Deputy Commissioner of Income Tax, Circle-2(1)(1), Vadodara
[PAN No.AAFCT0939H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Kaushal Fofaria, A.R.
Respondent by:	Ms. Ketaki Desai, Sr. DR

Date of Hearing	07.01.2025
Date of Pronouncement	15.01.2025

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT (A), Mysore vide order dated 19.06.2024 passed for A.Y. 2018-19.

2. The assessee has taken the following grounds of appeal:-

“1.00 Order passed u/s 143(1) of the Act is bad-in-law :

1.01 On the facts and in the circumstances of the case and in law, ld. AO has erred in making additions to the total income of your appellant based on adjustments made while passing an Order u/s 143(1) of the Act by CPC, Bengaluru which the ld. CIT(A) failed to appreciate. Your appellant submits that Order was passed u/s 143(1) of the Act after issuing Notice u/s 143(2) of the Act which is in gross violation of scope of Intimation proceedings provided u/s 143(1) of the Act.

1.02 Your appellant prays your Honour to hold so now and quash the Order passed u/s 143(1) of the Act.

2.00 Addition of Rs. 4,32,177/- u/s 36(1)(va) of the Act:

2.01 On the facts and circumstances of appellant's case as well as in law, the ld. CIT(A) has erred in confirming erroneous action of ld. AO of making total additions of Rs.4,32,177/- on account of late deposit of employees' contribution towards PF & ESIC without appreciating fact that contributions were deposited on due date only but due to server error date of credit on Challan is 16th. Further CIT(A) had failed to appreciate fact that amendment brought in section 36 & 43B by Finance Act, 2021 is prospective and not retrospective.

2.02 Your appellant prays Your Honour to hold so now and delete additions made.

Your appellant craves leave to add, alter and / or amend the grounds herein above raised.”

3. At the outset, we observe that the appeal is time barred by 03 days. The delay of 03 days is condoned on due consideration of facts and owing to smallness of delay causing no perceptible prejudice to other side.

4. The brief issue for consideration is the disallowance of a sum of Rs. 4,32,177/- under Section 36(1)(va) of the Act, being the sum received from employees' contribution towards any Provident Fund or superannuation fund. The said disallowance was made under Section 36(1)(va) of the Act by the AO, CPC.

5. In appeal before Ld. CIT(A), the assessee submitted that there was a delay of only one day in depositing Provident Fund and ESIC and the assessee had deposited this amount on 15th of the month i.e. on the due date. However, the date of credit on the challan was for the next date i.e. 16th of the month, due to server issues and technical glitches. However, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

“8.9.1 The submission of the appellant and case laws relied upon by the appellant have been examined but the same are found to be tenable since the facts of the case laws are

different from the facts of the present case under appeal. The argument of appellant cannot be considered as the issue under appeal is now well settled in the view of amendments made to the section and Hon'ble Supreme Court decision in the case of M/s. Checkmate Services Pvt. Ltd. Vs. CIT.

9. *In view of detailed discussion made at paras 8.3 to 8.9.1 above, I am of the considered view that the disallowance made u/s. 36(1)(va) of the Act and consequent addition and adjustment made u/s 143(1)(a) by the Ld. AO-CPC does not require any interference. Accordingly, **Ground of appeal No. 2 is hereby dismissed.**"*

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

7. Before us, the Counsel for the assessee drew our attention to Page 23 and Page 310 of the Paper Book and submitted that the assessee had made the payments to EPF within the due date i.e. on 15.08.2017, but owing to technical glitches and for reasons beyond the control of the assessee, the date of credit to the account of ESIC/EPF was on 16.08.2017 i.e. there was a one day delay in the date of credit, which was owing to technical glitches and for reasons beyond the control of the assessee. Accordingly, the Counsel for the assessee submitted that this is a fit case where no addition is called for under Section 36(1)(va) of the Act.

8. On going through the facts of the instant case, on perusal of the challans of payment produced by the Counsel for the assessee, we observe that though the assessee had made payment within the due date, however, there was a one day delay in the date in which this amount was credited to the account of EPF/ESIC. Apparently, this seems to be on account of certain server issues / technical glitches in the system, causing a one day delay in the date of credit of this amount to the account of EPF/ESIC. As per the challans produced before us, the assessee had made the payment on / within the due

date prescribed under the respective Act. In our view, looking into the instant facts, this is not a fit case for making disallowance under Section 36(1)(va) of the Act, since on his part the assessee had made payment within the due date prescribed under the respective Act and it was only on account of a technical glitches, there was a one day delay in credit of such amount to the respective account of the PF/ESIC authorities.

9. In the case of **FIL India Business & Research Services (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 154 taxmann.com 251 (Delhi - Trib.)/[2023] 105 ITR(T) 82 (Delhi - Trib.)[17-01-2023]**, the ITAT held that since assessee had initially deposited employees dues before prescribed due dates but due to glitches at end of respective authorities, the amounts were reversed by bank, assessee could not be penalized with addition on account of delayed deposits.

10. Accordingly, looking into the instant facts and the judicial precedent cited above, we are of the considered view that the addition / disallowance of Rs. 4,32,177/- on account of delay in contribution to the Provident Fund / ESIC is liable to be deleted.

11. In the result, the appeal of the assessee is allowed.

This Order is pronounced in the Open Court on	15/01/2025
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Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 15/01/2025
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad