

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'F': NEW DELHI)  
(Through Video Conference)  
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5191/Del/2018  
(Assessment Year: 2015-16)**

M/s Pearey Lal & Sons (E.P.) Pvt. Ltd., New Delhi.	Vs.	ACIT, Rohtak.
<b>PAN No: AAACP7410L</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee By** : Shri R.K. Kapoor, CA  
**Revenue By** : Shri Jagdish Singh, Sr. DR

**Per Anadee Nath Misshra, AM**

**(A)** This appeal by the Assessee is filed against the impugned order of Learned Commissioner of Income Tax (Appeals)-, Rohtak, ["Ld. CIT(A)", for short], dated 21.06.2018 for Assessment Year 2015-16. The Grounds taken in this appeal of Assessee are as under:

- "1. That the learned CIT(A) has erred in law and on the facts and circumstances of the assessee's case in upholding a disallowance of Rs.5,76,522/- on account of delayed deposit of Employees' Contribution to PF and ESI.*
- 2. That the Order passed by the learned CIT(A) upholding the action of the Assessing Officer is bad in law.*

*3. That the learned CIT(A) failed to appreciate that the delay in such deposit was attributable to the technical reasons of delay in clearance of cheque although such cheques had been issued by the assessee on due dates as per the respective Acts of ESI and PF.*

*4. That each ground is independent of and without prejudice to the other grounds raised herein."*

**(B)** Both the grounds of appeal pertain to additions totaling Rs. 5,76,522/- made by the Assessing Officer under section 36(1)(va) of Income Tax Act, 1961 ("I.T. Act", for short). The disallowances were made by the Assessing Officer holding that the corresponding deposits in ESI and PF towards Employees' Contribution amounting to a total of aforesaid Rs. 5,76,522/- were made after the due date specified in section 36(1)(va) of IT Act. It was explained by the assessee before the Assessing Officer that the payments were made by cheque well in time with regard to the due date prescribed under section 36(1)(va) of IT Act. However, the clearance of the cheques took a few days. In substance, the Assessee explained to the Assessing Officer that the assessee had deposited the payments by cheque in time and the delay on account of the clearance of the cheque should be ignored. The Assessee's contention before the Assessing Officer was that the date of deposit of cheque in the bank should be considered as date of payment for the purpose of section 36(1)(va) of I.T. Act. However, the Assessing Officer was of the view that the date of clearance of the cheque should be considered as the date of payment. As the date of clearance was after the due date prescribed under section 36(1)(va) of I.T. Act, the Assessing Officer made the aforesaid addition totalling Rs. 5,76,522/-.

**(C)** Aggrieved, the Assessee filed an appeal before the Ld. CIT(A). However, vide the impugned appellate order dated 21.06.2018, the Ld. CIT(A) confirmed the aforesaid addition of Rs. 5,76,522/-. Aggrieved again, the Assessee has filed the present appeal in Income Tax Appellate Tribunal ("ITAT", for short). In the course of the Appellate Proceedings in ITAT, the following documents were filed from the assessee's side:

- Copy of Employee Provident Fund Organisation Challans
- Copy of judgement of Repco Home Finance Ltd. (2014-TIOL-2044-HC-MAD-IT)
- Copy of judgemnt of Ogale Glass Works Ltd. (2002-TIOL-631-SC-IT-LB)
- Copy of judgement of Crescent Roadways Private Limited [TS-510-ITAT-2021 (HYD)]
- Synopsis dated 27<sup>th</sup> August, 2021.

**(D)** At the time of hearing before us, the Ld. Authorized Representative ("Ld. AR", for short) for the assessee once again submitted that the cheques were deposited in bank with the relevant challans well before the due dates prescribed under section 36(1) (va) of I.T. Act, but in some cases the clearance of cheques took 4-8 days, as a result of which date of clearance of cheques in some instances was after the due date. The Ld. AR contended that the additions should be deleted as the cheques were already deposited within due date in the bank alongwith relevant challans. The Ld. Senior Departmental Representative ("Ld. Sr. DR", for short) relied on the orders of the Assessing Officer and the Ld. CIT(A).

**(E)** We have heard both sides and perused the materials available on record. The facts were not in dispute. There is no dispute that the cheques alongwith relevant challans in respect of the aforesaid amount totalling Rs. 5,76,522/- were already deposited by the assessee in bank well before the due date prescribed under section 36(1)(va) of I.T. Act. It is also not in dispute that the date of clearance of corresponding cheque in respect of aforesaid amount of Rs. 5,76,522/- is after the due date prescribed under section 36(1)(va) of I.T. Act. The issue before us is whether, for the purpose of section 36(1)(va) of I.T. Act, date of deposit of cheque in the bank is relevant or the date of clearance of the cheque is relevant. We take guidance from the order of Hon'ble Madras High Court in the case of Commissioner of Income Tax, Chennai vs. Repco Home Finance Ltd. as reported in 2014-TIOL-2044-HC-MAD-IT. This order was passed by Hon'ble Madras High Court in the context of interest under section 234C of I.T. Act. However, the ratio of the order of Hon'ble Madras High Court is applicable to the issue before us as well. The Hon'ble Madras High Court held in this case that even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques. The Hon'ble High Court further held that once the cheque issued by the assessee is encashed, the payment relates back to the date of receipt of the cheque. The following portion of the order of Hon'ble Madras High Court in the case of Commissioner of Income Tax, Chennai vs. Repco Home Finance Ltd. (supra) is reproduced below for ease of reference:-

"2.1 The brief facts of the case are as under: The respondent/assessee is a company engaged in the business of home finance. The assessee filed return of income for the assessment year 2009-2010 admitting Rs.29,44,58,482/- as its total income. The Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act and disallowed a sum of Rs.13,85,199/- applying the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules. The Assessing Officer also charged a sum of Rs.28,80,680/- as interest under Section 234C of the Act.

2.2 Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), who partly allowed the appeal. With regard to the plea of the assessee regarding charging of interest under Section 234C of the Act, the Commissioner of Income Tax (Appeals) held that the date of presentation of cheque should be treated as date of payment of tax and held no interest under Section 234C of the Act is to be charged. The other plea raised by the assessee were rejected.

2.3 Assailing the said order, the assessee and the Department preferred appeals before the Tribunal. The Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) and dismissed the appeals.

2.4 Calling in question the said order passed by the Tribunal, the Revenue has filed this appeal on the substantial question of law, referred supra.

3. We have heard Mr. T.R. Senthil Kumar, learned Standing Counsel for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. The core issue to be considered in this case is whether interest under Section 234C of the Act is to be calculated based on date of clearing of the cheque or date of presentation of the cheque.

"5. The issue raised in this appeal is no longer res integra in view of the decision of the Supreme Court in **Commissioner of Income Tax v. Ogale Glass Works Ltd., [1954] 25 ITR 529 = 2002-TIOL-631-SC-IT-LB**, wherein it is held as under:

**"11. .... When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand: (Stedman v. Gooch, ((1791) 1 Esp 5). It is said in Benjamin on Sale, 8th Edn. p. 788:**

**'The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition i.e. nonpayment at maturity.'**

**In Byles on Bills, 20th Edn., p. 23 the position is summarised pithily as follows:**

**'A cheque, unless dishonoured, is payment.'**

**To the same effect are the passages to be found in Hart on Banking, 4th Edn. Vol. I, p. 342. In Felix Hadley & Co. v. Hadley, (1892) 2 Ch D 680 Byrne, J. expressed the same idea in the following passage in his judgment at p. 682:**

**'In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or**

***honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question.'***

***The following observations of Lord Maugham in Rhokana Corporation v. Inland Revenue Commissioners, 1938 AC 380 are also opposite:***

***'Apart from the express terms of Section 33 sub-section 1, a similar conclusion might be founded on the well-known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted.'***

***In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely, dishonour by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques."***

***(emphasis supplied)***

6. *The above said view of the Supreme Court was reiterated by a recent decision of the Supreme Court in Director of Income Tax v. Raunaq Education Foundation, (2013) 2 SCC 62 = 2013-TIOL-01-SC-IT.*

7. *It is not the case of the department that the cheque issued by the assessee was dishonoured. Once the cheque issued by the assessee is encashed, in the light of the decisions referred supra, the payment relates back to the date of receipt of the cheque."*

**(E.1)** In view of the foregoing, we are of the view that the relevant date to be considered for the purpose of section 36(1)(va) of I.T. Act is the date of deposit of cheque in the bank, and not the date of clearance of the cheque. Consequently, we hold that the aforesaid amount of Rs. 5,76,522/- is allowable under section 36(1)(va) of I.T. Act. Accordingly, we direct the Assessing Officer to allow the aforesaid amount of

Rs. 5,76,522/-. The grounds of appeal are allowed. In the result, the appeal is allowed.

Our order was orally pronounced in Open Court on 02-09-2021, after conclusion of the hearing, in the presence of representatives of both parties. Now this order in writing is signed today on 07/09/2021.

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 07/09/2021  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	