

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI  
BEFORE  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2903/Del/2025  
(Assessment Year 2016-17)

ITA No.2904/Del/2025  
(Assessment Year 2017-18)

Intertek India Private Limited, E-20, Block B-1, Mathura Road, Mohan Cooperative Industrial Area, New Delhi-110044. PAN-AAACI6890F	Vs.	Asst. Commissioner of Income Tax, Circle-10(1), Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Ananya Kapoor, Adv. and Shri Shivam Yadav, Adv.
Respondent by	Shri Rajesh Kumar Dhaneshta, Sr. DR

Date of Hearing	04.12.2025
Date of Pronouncement	07.01.2026

**ORDER**

**PER M. BALAGANESH, AM:**

Both the appeals of the Asessee arises out of the common order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Ld.

CIT(A)'] in Appeal No. CIT(A), Delhi-4/10538/2019-20 dated 11.02.2025 against the order passed by Assistant Commissioner of Income Tax, Circle-12(2), Delhi (hereinafter referred to as the 'Ld. AO') u/s 143 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 13.12.2019.

2. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. Let us take up the appeal for the assessment year 2016-17 first.

4. The Ground Nos. 1 and 3 raised by the assessee are general in nature and does not require any specific adjudication.

5. The Ground No. 2 raised by the assessee is challenging the disallowance of Rs. 33,38,899 on account of delayed payment of employees contribution to Provident Fund, which could not be remitted by the assessee due to technical glitches faced by the assessee.

5.1. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the Learned AO noticed that Provident Fund contribution for the month of January 2016 amounting to Rs. 33,38,899 being the employees share was remitted by the assessee on 16-02-2016 as against the due date of 15-02-2016. The assessee submitted that the delay of one day was caused due to technical glitches faced by the assessee. The assessee submitted that even though it attempted to make payment of the PF

amount through net banking facility on 15-02-2016, however while making the payment of the PF contribution on the PF site on 15-02-2016, certain technical snags were encountered by the assessee on the payment gateway interface wherein it displayed an error message stating that- "We are experiencing network delays. Apologies for the inconvenience." Accordingly, the assessee was prevented from not able to make the payment on 15-02-2016. When the network issues were sorted out by the payment gateway interface, then immediately the assessee was able to remit the PF amount on 16-02-2016. This explanation however did not find favour with the Learned AO and Learned AO proceeded to make disallowance of Rs. 33,38,899 on account of employees contribution to PF by placing reliance on the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT reported in 143 taxmann.com 178 (SC). This action of the Learned AO was upheld by the Learned NFAC.

5.2. We find that the fact of assessee facing the technical glitches in the payment gateway interface for remittance of PF for the month of January 2016 is not disputed by the revenue. Further, the assessee had furnished sufficient evidence to prove that there was indeed technical glitches faced by the assessee in the payment gateway interface. In fact, the appellate order had duly reproduced the screenshot reflecting the technical glitches faced by the assessee. Hence, it could be safely concluded that the assessee was prevented from sufficient cause from not able to make the remittance of PF in time on the due date. Further, it only resulted in impossibility of performance on the part of the assessee to make the payment. The legal maxim 'lex

non cogut ad impossibilia' – meaning thereby - the law cannot compel a person to perform an act which he could not possibly perform, would certainly come to the rescue of the would certainly come to the rescue of the SSE in this regard. We also find that the bona fide intention of assessee is established beyond reasonable doubt from the fact that the cheque for remittance of PF was issued on 15-2-2016 for Rs. 69,87,335 being the employee's share and the employer's contribution vide cheque number 392718 dated 15-2-2016 drawn on State Bank of India, Mathura Road branch from the account of the assessee. Further, the assessee had also sent an email to the grievance cell duly mentioning the fact that the assessee was not able to remit the PF on 15-2-2016. The evidence of email sent to the grievance cell of PF department is also placed on record and the said grievance has been duly registered thereon. In these circumstances, we hold that the decision of Hon'ble Supreme Court relied upon by the Learned DR before us would become factually distinguishable. Accordingly, we direct the Learned AO to grant deduction of Rs 33,38,899 on account of employees contribution to PF for Jan 2016 by treating the same to have been remitted within the due date prescribed under the PF Act. Accordingly, the Ground No. 2 raised by the assessee is allowed.

6. The Ground Nos. 4 to 8 raised by the assessee are challenging the action of the Learned NFAC in confirming the action of the Learned AO by rejecting the refund claim of excess dividend distribution tax paid by the assessee by not adhering to the lesser rate of tax on dividend provided in accordance with Article 11 of India- United Kingdom (UK) Double Taxation Avoidance Agreement (DTAA).

6.1. We have heard the rival submissions and perused the materials available on record. The short issue in dispute is assessee company had paid dividend to its non-resident shareholder. The assessee company had suffered dividend distribution tax at the rate of 20.36 percent in terms of section 115O of the Act. For the dividends paid to non-resident shareholder, the assessee wanted to claim the benefit of reduced rate of tax of 10 percent as provided in Article 11 of India UK DTAA on the pretext that treaty provisions would override the domestic law. Accordingly, the plea of the assessee was that dividend distribution tax is liable only at the rate of 10 percent in respect of non-resident shareholder as against 20.36% remitted by the assessee. Hence the assessee is seeking refund of excess dividend distribution tax paid which was denied to the assessee by placing reliance on the decision of Special Bench of Mumbai Tribunal in the case of DCIT vs Total Oil India Private Limited reported in 104 ITR (T) 1 (Mumbai-Trib) (SB). The Learned AR before us submitted that this Special Bench of Tribunal decision has been reversed by the Hon'ble Bombay High Court in Tax Appeal No. 6 of 2024 dated 28-11-2025 reported in 181 taxmann.com 301 (Bom HC). We find that the Hon'ble Bombay High Court had held that where a resident company paid dividend to its UK parent company, since such payment was in nature of dividend covered under definition of 'dividend' under Article 11 of India-UK DTAA and section 115-O, assessee was entitled to restrict tax rate on dividends distributed by it to its UK parent company to 10 per cent under Article 11. Respectfully following the said decision of Hon'ble Bombay High Court, we direct the Learned AO to refund the excess dividend distribution tax paid by the

assessee company. Accordingly, the Ground Nos. 4 to 8 raised by the assessee are allowed.

7. The Ground No. 9 raised by the assessee is seeking TDS credit as per the revised return of income. This matter requires factual verification and hence we direct the Learned AO to grant the TDS credit in accordance with law. Accordingly, the Ground No. 9 raised by the assessee is allowed for statistical purposes.

8. The Ground No. 10 raised by the assessee is challenging the chargeability of interest under section 234B of the Act which is consequential in nature.

9. In view of our decision given in Ground Nos. 4 to 8, the Ground No. 11 raised by the assessee becomes academic in nature.

10. The Ground No. 12 raised by the assessee is challenging the action of the Learned AO in computing the book profits under section 115JB of the Act. Since no arguments were advanced by the Learned AO at the time of hearing qua this ground, the same is hereby treated as not pressed and hence dismissed.

11. The Ground No. 13 raised by the assessee is challenging the initiation of penalty proceedings under section 271(1)(c ) of the Act which would have no legs to stand in view of the aforesaid decision on grounds raised on merits.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

**ITA No. 2904 / Del / 2025 - Assessment Year 2017-18.**

13. The grounds raised by the assessee for assessment year 2017-18 are identical to those grounds raised in assessment year 2016-17, save that in assessment year 2017-18, there is no ground raised for addition made on account of employees contribution to provident fund. Accordingly the decision rendered by us for assessment year 2016-17 ( other than the decision rendered for employees contribution to PF issue) shall apply mutatis mutandis for grounds raised for assessment year 2017-18 also except with variance in figures.

14. To sum up, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in open Court on 07.01.2026.

Sd/-

**(CHALLA NAGENDRA PRASAD)  
JUDICIAL MEMBER**

Dated: 07.01.2026

*Pk/Sr. PS.*

Copy forwarded to:

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

Sd/-

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI