

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'SMC' BENCH : Hyderabad**

**(Through Video Conference)**

**Before Smt. P. Madhavi Devi, Judicial Member**

**ITA No. 157/Hyd./2021  
Assessment Year: 2018-19**

M/s Suryauday Spinning Mills Pvt. Ltd. vs. Dy.CIT  
Secunderabad Circle 3(2)  
Hyderabad  
[PAN: AAICS5765K]

**(Appellant)**

**(Respondent)**

**For Assessee:** Sri Sidharth Toshnival, Adv.  
**For Revenue:** Sri Sunil Kumar Pandey, D.R.

**Date of Hearing** : 12/04/2021  
**Date of Pronouncement** 03 /05/2021

**ORDER**

This is assessee's appeal for AY 2018-19 against the order of the CIT(A)-3, Hyderabad dated 24.09.2020.

**2.** Brief facts of the case are that the assessee company, filed its return of income for the A.Y. 2018-19 on 01.10.2018 admitting total income of Rs.32,90,560/-. The return was initially processed u/s 143 (1) of the Income Tax Act, 1961 [for short 'the Act'] by the Assessing Officer at CPC, Bengaluru by making disallowance of Rs. 9,88,983/- being the delayed payment of PF and ESI. Against the same, assessee filed an appeal before the CIT(Appeals), stating that the employees contribution to PF and ESI was deposited beyond the due date, but before filing of return of income. Assessee relied upon the judgment of hon'ble Supreme Court in the case CIT vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC) in support of its claim of deduction.

**2.1.** The CIT(A), however, held that in the case of Alom Extrusions (supra), the hon'ble Supreme Court has not laid down any proposition of law with regard to allowability of deduction in respect of belated payment of employee's contribution to PF and ESI and therefore, it is not applicable to assessee's case. The CIT(A), accordingly confirmed the order of the Assessing officer.

**2.2.** Assessee is in second appeal before the tribunal by raising the following grounds of appeal.

*Pertaining to disallowance u/s 36(1)(va) : Tax effect5: Rs.3,05,595/-*

- 1. The LdCIT(A) erred in confirming addition of Rs. 9,88,983/- made by the Assessing Officer u/s 36(1)(va) of the Act by disallowing deduction of employees contribution to PF and ESI but not credited to employees account before due date*
- 2. That the ldCIT(A) erred in not considering the fact in view of the decision of Jurisdictional ITAT on the same issue, disallowance cannot be made when the amount is credited in the relevant account before due date of filing of return of income.*

**3.** Ld.counsel for assessee submitted that similar issue has come up before this tribunal in a number of cases where in the coordinate benches of this tribunal have followed the decision of the hon'ble Supreme Court in the case of Alom Extrusions (supra) to allow the deduction in the case of the employee's contribution to PF and ESI also if the same was remitted to relevant account before the date of filing of the return of income. He submitted that the Department has brought in the amendment to section 43B with effect from assessment year 2020-21 and thereafter, employees contribution to PF and ESI will not be allowed if it is not paid before the due date of relevant Act. He has filed before the tribunal a copy of the note on Clauses explaining clause (viii) of the Act which seeks to amend section 36(1)(va) of the Act and it has been mentioned that the amendment will be effective from 01<sup>st</sup> April 2021 i.e. for assessment year 2021-22 onwards.

4. Ld.DR however relied upon the order of the authorities below.
5. Having regard to rival contentions and the material placed on record, I notice that the issue is covered in favour of the assessee by various decisions of the tribunal which have in turn followed the decision of hon'ble Supreme Court in the case of Alom Extrusions.

Therefore, I deem it fit and proper to direct the Assessing officer to allow the deduction in case employee's contribution to PF and ESI also if it has been paid on or before the date of filing of the return of income.

**6. In the result, the appeal of the assessee is allowed.**

Order pronounced in Open Court on 03/05/2021.

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Dated: 03<sup>rd</sup> April, 2021

- *gmv*

Copy of Order forwarded to:

1. M/s Suryaoday Spinning Mills Pvt.Ltd. C/o Sidharth Toshnival, Advocate, 3-5-144/5, Eden Garden, Hyderabad 500 001, Telangana.
2. Dy.CIT, Circle 3(2), Hyderabad.
3. Dy.CIT, CPC, Bengaluru
4. ACIT, Range 3, Hyderabad.
5. CIT(A)-3, Hyderabad.
6. Pr.CIT -1, Hyderabad
- 7 D.R. ITAT Hyderabad
8. Guard File