

ITA No.244/Kol/2021(AKS Power Equipments (P) Ltd. A.Y. 2019-20,
246/Kol/2021 (Rohan Gloves Manufacturing P. Ltd. A.Y. 2019-20,
247/Kol/2021 (Electromech Company) A.Y. 2019-20,
253/Kol/2021 (Classic Tannery P. Ltd. A.Y. 2019-20 &
254/Kol/2021 (S. Chatterjee & sons (India)(P) Ltd. A.Ys. 2018-19

आयकर अपीलिय अधीकरण, न्यायपीठ –“B” कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri P. M .Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

I.T.A. No. 244/Kol/2021
Assessment Year: 2019-20

AKS Power Equipments (P) Ltd. (PAN: AAGCA4040B)	Vs.	DCIT, (CPC), Bangalore
Appellant		Respondent

&

I.T.A. No. 246/Kol/2021
Assessment Year: 2019-20

Rohan Gloves Manufacturing Pvt. Ltd. (PAN: AAGCR9053D)	Vs.	ADIT, (CPC), Bangalore
Appellant		Respondent

&

I.T.A. No. 247/Kol/2021
Assessment Year: 2019-20

Electromech Company (PAN: AACFE6715G)	Vs.	ADIT, (CPC), Bangalore
Appellant		Respondent

&

I.T.A. No. 253/Kol/2021
Assessment Year: 2019-20

Classic Tannery (P) Ltd. (PAN: AABCC2803R)	Vs.	DCIT, (CPC), Bangalore
Appellant		Respondent

&

I.T.A. No. 254/Kol/2021
Assessment Year: 2018-19

S.Chatterjee & Sons (India) (P) Ltd. (PAN: AAHCS2755C)	Vs.	ADIT, (CPC), Bangalore
Appellant		Respondent

Date of Hearing (Virtual)	27.08.2021
Date of Pronouncement	01.09.2021
For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

Per Bench:

All these captioned appeals filed by different Assessee's are against the separate orders of Ld. CIT(A)- [National Faceless Appeal Centre (NFAC)], Delhi dated 27.07.2021, 28.04.2021, 28.07.2021, 31.07.2021 and 30.07.2021 respectively for Assessment years 2019-20 and except for ITA No. 254/Kol/2021 which is AY 2018-19.

2. At the outset, the Ld. AR Shri Subash Agarwal, Advocate submitted that the sole issue permeating in all the five captioned appeals are regarding the impugned action of the Ld. CIT(A) (NFAC) in confirming the addition made by AO on account of delay in payment of employees' contribution towards PF & ESI, even though the assessee has remitted the employees' contribution towards PF & ESI before filing of return u/s. 139(1) of the Income-tax Act, 1961 [*herein after the Act*] According to Ld. AR, the amendment made by the Finance Act, 2021 is not applicable in this case, and the Ld CIT(A) erred in applying the explanation brought in by Finance Act, 2021, since this Tribunal has already held that the amendment/explanation brought in by Finance Act, 2021 is prospective in nature and not applicable to these assessment year before us and cited the decision of this Tribunal in ITA No. 186/Kol/2021 Harendra Nath Biswas Vs. DCIT, AY 2019-20 dated 16.07.2021; And therefore, according to Ld. AR, the issues in all the appeals are *res-integra* and the assessee is also relying on the decision of the Hon'ble jurisdictional High court in the case of CIT vs. M/s Vijayshree Ltd. reported in [2014] 43 taxman.com 396(Cal) and the Tribunal's order cited supra. Per contra, the Ld. DR supports the action of the Ld. CIT(A) (NFAC) and does not want us to interfere with the order of Ld. CIT(A) (NFAC).

3. We have heard both the parties and perused the record. We note that the sole issue permeating in all these appeals are relating to confirmation of addition of Rs.5,21,166/- in the appeal of M/s. AKS Power Equipments; and Rs.2,99,752/- in the appeal of M/s. Rohan Gloves Manufacturing P. Ltd.; and Rs.71,50,281/- in the

appeal of M/s. Electromech Company; and Rs.5,64,186/- in the appeal of M/s. Classic Tannery P. Ltd. and Rs.8,61,565/- in the appeal of M/s. S. Chatterjee & Son (India) (P) Ltd. by the Ld. CIT(A) (NFAC) on account of assessee's' making delayed payment of employees' contribution towards PF & ESI. It is an admitted fact which has not been disputed by either by the AO or the Ld. CIT(A) that the assessee has remitted the employees' contribution towards PF & ESI before filing of return u/s. 139(1) of the Act. Having taken note of this fact and also the fact that this Tribunal has already taken a view that the amendment brought in by Finance Act, 2021 on this issue has been held to be prospective in nature in the case of Shri Harendra Nath Biswas (supra), therefore, we reiterate the same view that the amendment/explanation brought in by Finance Act, 2021 with effect from 01.04.2021 on this issue is prospective; and taking note that the relevant assessment years are 2019-20 and 2018-19, the ibid explanation brought in by Finance Act, 2021, cannot be used/applied to unsettle the settled position of law passed by the Hon'ble jurisdictional High Court in the case of Vijayshree Ltd. (supra), since there is no retrospective legislative over-ruling. Therefore, we are inclined to allow the appeals of the assessee by following our own decision in Harendra Nath Biswas (supra). In the light of the aforesaid decision of the coordinate Bench of this Tribunal, we respectfully follow the same which is in consonance with the decision of the Hon'ble Calcutta High Court in Vijayshree Ltd. (supra) and allow the appeals of the assessee and direct the AO to delete the addition made in this regard in all the above five appeals.

4. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 1st September, 2021.

Sd/-
(P. M. Jagtap)
Vice-President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 01.09.2021

JD, Sr. PS

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Copy of the order forwarded to:

Appellant- i) M/s. AKS Power Equipments (P) Ltd.

ii) M/s. Rohan Gloves Manufacturing Pvt. Ltd.

iii) M/s. Rohan Gloves Manufacturing Pvt. Ltd.

iv) M/s. Electromech Company

v) M/s. Classic Tannery (P) Ltd.

vi) M/s. S.Chatterjee & Sons (India) (P) Ltd.

C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson
Lane, Suite 213, 2nd floor, Kolkata-700069.

2.Respondent – DCIT/ADIT, (CPC), Bangalore

3. The CIT(A)- National Faceless Appeal Centre (NFAC), Delhi

4. CIT-

5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
