

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 59/JP/2021
निर्धारण वर्ष / Assessment Years : 2019-20

M/s Hari Oil Mills Pvt. Ltd. Industrial Area F-64, Jhotwara, Jaipur.	बनाम Vs.	The ITO, Ward-3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCM 3070 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 13/09/2021
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Delhi (NFAC) dated 23.06.2021 for the assessment year 2019-20 wherein the assessee has taken the following grounds of appeal:-

"1. The Ld. CIT(A), NFC has erred on fact and in law in confirming the addition of Rs. 1,53,270/- u/s 36(1)(va) on account of delayed payment of employees contribution towards PF & ESI. He has further erred in making the addition by not following the decision of jurisdictional High Court.

1.1 The Ld. CIT(A), NFC has erred on fact and in law in not deciding and allowing the set off of brought forward losses and depreciation against the addition confirmed by him.”

2. The Id A/R submitted that the assessee filed the return of income on 30.09.2019 at Nil income after claiming set off of brought forward business loss of Rs.10,93,019/-. It also claimed carried forward business loss of Rs.50,06,195/- and unabsorbed depreciation of Rs.16,40,021/-. The CPC, Bangalore vide intimation U/s 143(1) dt. 27.02.2020 made adjustment of Rs.1,53,270/- on account of delayed payment of employees contribution towards PF and ESI. Against the adjustment so made, an application u/s 154 was filed on 30.06.2020. The CPC, Bangalore vide order u/s 143(1)/154 dt.17.08.2020 affirmed the adjustment so made U/s 36(1)(va) of the Act.

3. It was submitted that against the said intimation, the assessee filed appeal before Ld. CIT(A) stating that employees contribution to PF & ESI has been paid before the due date of filing of return and therefore, in view of the decisions of Rajasthan High Court, the same cannot be added to income. The assessee further submitted that there is carried forward business loss of Rs.50,06,195/- & unabsorbed depreciation of Rs.16,40,021/- and after allowing the set off of the same, there would not remain any income chargeable to tax. However, Ld. CIT(A) after relying on the decision of Hon'ble Gujarat High Court & Kerala High Court and the amendment brought by Finance Act, 2021 wherein it has been stated that the definition of due dates as per section 43B is deemed never to have been applied for the purpose of

employees contribution confirmed the adjustment made by CPC, Bangalore.

4. It was submitted by the Id. AR that from the facts stated above, it can be noted that CPC, Bangalore vide order U/s 143(1)/154 dt. 17.08.2020 made addition of Rs.1,53,270/- on account of delayed payment of employees contribution towards PF and ESI, details of which are mentioned at Pg 3-4 of NFAC order. While doing so, it has relied on the tax audit report uploaded online where the actual date of deposit has been filled in 'mm/dd/yy' format instead of 'dd/mm/yy' format. This change in the format has resulted into calculation of delay in deposit of PF/ESI contribution whereas there is no such delay. For eg:-the actual date of payment of employees contribution towards PF for the month of May, 2018 is 11.06.2018 but it has been mentioned as 06.11.2018. Similarly, the actual date of payment of employees contribution towards ESI for the month of December, 2018 is 09.01.2019 but it has been mentioned as 01.09.2019. In support of the fact that there is no delay in deposit of PF/ ESI contribution, statement showing ESI and EPF contribution as per manual tax audit report and challans of payment of PF & ESI are placed on record by way of additional evidence from which it is evident that all payments are made within due date. In this regard, it was submitted that the assessee has also an application for admission of additional evidence under Rule 29 and the same may be admitted and the addition so made be deleted.

5. It was further submitted that the assessee is having carried forward business loss of Rs. 50,06,195/- & unabsorbed depreciation of

Rs.16,40,021/- and after allowing the set off of the same, there would not remain any income chargeable to tax. The Ld. CIT(A) without deciding this ground of assessee has confirmed the addition.

6. It was further submitted that even if there is delay in deposit of PF/ESI but if the same is paid before the due date of filing of return, ITAT, Jodhpur Bench in case of Mohangarh Engineers and Constructions Company vs DCIT & others (*ITA No. 5, 28 & 29 & 43/Jodh/2021 dt. 12.08.2021*) in similar situation at Para 13 to 18 of the order have deleted the addition made by CPC, Bangalore u/s 36(1)(va) where the same is deposited before the due date of filing the return by following the decision of jurisdictional High Court as the same is binding on all the appellate authorities under its jurisdiction in the state of Rajasthan. In view of above, addition of Rs.1,53,270/- made by CPC, Bangalore u/s 36(1)(va) be directed to be deleted.

7. Per contra, the Id. D/R submitted that the addition in this case involves a disallowance on account of delayed payment in respect of Employees contribution to ESI/PF as per the provisions of section 36(1)(va) of the IT Act. Regarding the contention that there is no delay in deposit of ESI/PF dues and only due to certain format issue, the date of deposit has been wrongly uploaded and captured in the IT system while filing the return of income, it was submitted that the same needs to be verified from the IT system. Further, it was submitted that whether the payment as claimed within due date needs to be verified with the challans which were submitted by way of additional evidence.

8. Regarding the alternate contention raised by the Id A/R that the contribution should be allowed as the payments were made before the due date of the filing of the ITR as evidenced from the return of income uploaded on the IT system of the department and reliance on the decision of Jodhpur Benches of the Tribunal, it was submitted that the Hon'ble Gujarat High Court in CIT vs Gujarat State Road Transport Corporation (2014) 366 ITR 170 (Guj) and the Hon'ble Kerala High Court in CIT Vs Merchant (2015) 280 CTR 381 (Ker) have held that the scope of section 43B and section 36(1)(va) are different and thus, there is no question of reading both the provisions together to consider whether the assessee is entitled to deduction in respect of the sum belatedly paid towards such contribution, especially, when such sums received by the assessee (employer) from his employee. The explanation to section 36(1)(va) of the IT Act, 1961 clearly defines that the "due date means the date by which the assessee is required as an employer to credit as employee's contribution into the employee's account." This fact has been further clarified in the amended provisions of the section 36(1)(va) in the Finance Act 2021 wherein it has been stated that the provisions of section 43B does not apply to section 36(1)(va) and is deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 of the IT Act, applies. The clarificatory amendment is, by its very definition, retrospective in nature and, therefore, the disallowance as made by the Assessing Officer is perfectly in order, and therefore, the addition has been rightly confirmed by the Id CIT(A), NFAC. The Id D/R accordingly supported the order of the Id CIT(A), NFAC.

9. In his rejoinder, the Id A/R has submitted that the Jodhpur Benches of the Tribunal in the aforesaid decision has followed the decisions of the Hon'ble Rajasthan High Court and in view of the decision of the Jurisdictional High Court, the same will prevail over the contrary decisions rendered by other High Courts. It was accordingly submitted that the assessee's reliance is on the decision of the Jodhpur Benches of the Tribunal as well as on the decisions of the Hon'ble Rajasthan High Court.

10. We have heard the rival contentions and perused the material available on record. It has been submitted by the Id A/R that there has been no delay in deposit of employees's contribution towards ESI and PF and all the contributions have been duly deposited well before the due date as prescribed under the relevant statute. It has been submitted that the delay which has been reported is on account of certain technical glitches while uploading the data at the time of filing of the return of income. In this regard, our reference was drawn to manual tax audit report signed by the tax auditors as well as the particulars of the tax audit data which has been uploaded while filing the return of income and it was submitted that while manual tax audit report contains the date of deposit in "dd/mm/yy" format, the same data while uploading on the IT system of the department was captured in "mm/dd/yy" format and which has resulted in incorrect reporting of date of deposit. On perusal of both the manual tax audit report as well as data reflected in the return of income, we find merit in the contention advanced by the Id A/R and note that except for the date of deposit, the rest all data is exactly identical in terms of period/month of contribution and amount of contribution towards ESI/PF and in respect

of date of deposit, the data in the manual tax audit report shows the actual date of deposit in "dd/mm/yy" format whereas the data as reflected in the return of income shows actual date of deposit in "mm/dd/yy" format which apparently has resulted in showing delay in deposit of employees contribution.

11. Given that these details in terms of manual tax audit report and copy of challans reflecting payment of ESI/PF contribution have been submitted before us by way of additional evidence, we hereby admit the same in the interest of substantial justice and remand the matter to the file of the AO for the limited purposes of verifying the actual date of deposit of employees contribution towards ESI/PF as so claimed and where on verification, the AO found the same to be in order, the AO is directed to allow the necessary relief to the assessee by deleting the addition so made.

12. In view of the aforesaid discussions, we don't deem it appropriate to examine the other contentions so raised as the same have become infructious.

In the result, the appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 14/09/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/09/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Hari Oil Mills Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 59/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar