

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाईं, 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. 76/JP/2021
Assessment Year: 2018-19

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| M/s Bhivaram Pannalal Kumawat, 602, Elements Mall, DCM, Ajmer Road, Jaipur. | बनाम Vs. | D.C.I.T., CPC, Bengaluru. |
| PAN No.: AABFB 3002 C | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (PCIT)

सुनवाई की तारीख / Date of Hearing : 05/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 12/10/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 29/06/2021 for the A.Y. 2018-19.

Following grounds have been taken by the assessee:

- "1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 12,50,413/- U/s 36(1)(va) on account of delayed payment of employees contribution towards PF and ESI. She has further erred in making the addition by not following the decision of Jurisdictional High court.*
- 2. The appellant craves to alter, amend and modify any ground of appeal.*
- 3. Necessary cost be awarded to the assessee."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Briefly the facts of the case are that the assessee filed its return of income on 24.10.2018 declaring total income of Rs. 6,35,76,680/- which was processed U/s 143(1) and in terms of intimation dated 28/10/2019 issued by CPC, it made disallowance of Rs. 12,05,413/- towards employee's contribution towards ESI and PF. On appeal, the Id. CIT(A), has confirmed the disallowance made U/s 143(1) on account of assessee's failure to pay the employee's contribution of PF/ESI within the prescribed due dates as per Section 36(1)(va) of the Act. Against the said order, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that the assessee-company deposited employee's contribution of PF/ESI though with a delay of few days from the due dates mentioned in the respective Acts, however the same was deposited well before the due date of filing of return of income. It was submitted that the said fact is not under dispute and where such contribution has been deposited before the due date of filing of the return of income, no disallowance U/s 36(1)(va) of the Act can be made and in support, reliance was placed on the Hon'ble Rajasthan High Court decision in case of CIT vs. Rajasthan State

Beverages Corporation Ltd. (2017) 392 ITR 2 and CIT vs. State Bank of Bikaner and Jaipur (2014) 43 taxmann.com 411. It was further submitted that the recently Jaipur Benches of the Tribunal has also taken a similar view in case of Sohan Lal Tambi vs. ITO (*in ITA No. 40/JP/2021 dated 16.08.2021*) and K.P. Airtech vs. DCIT (*in ITA No. 41 &42/JP/2021 dated 16.08.2021*). It was further submitted that the explanation added to Section 36(1)(va) of the Act by the Finance Act, 2021 will take effect from 1st April, 2021 and will apply from the assessment year 2021-22 and subsequent assessment years and not to the impugned assessment year. It was further submitted that the adjustment is beyond the scope of Section 143(1) of the Act. It was accordingly submitted that the adjustment so made by the CPC and confirmed by the Id. CIT(A) NFAC may be directed to be deleted.

5. Per contra, the Id. DR submitted that as per details furnished in the tax audit report, the payment of employee's contribution of PF/ESI amounting to Rs. 12,05,413/- was not made within the prescribed due date U/s 36(1)(va) of the Act and since these amount were not disallowed in the return of income filed by the assessee, the variance between the tax audit report and ITR has been duly flagged by the CPC in the computerized processing and disallowance U/s 143(1)(a)(iv) on the basis of fact furnished by the assessee was made which clearly fails

within ambit of prima facie adjustment to be carried out U/s 143(1)(a)(iv) of the Act. Further, reliance was placed on the amendment brought in by the Finance Act, 2021 wherein the explanation to Section 36(1)(va) has been introduced. It was submitted from the said amendment, it is evident that the law is and has always very clear i.e. employee's contribution to specified fund will not be allowed as deduction U/s 36(1)(va) if there is delay in deposit even by a single day as per the due dates mentioned in the respective legislation. It is also clear that the amendments are only declaratory/clarificatory in nature and are therefore, applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The Id. DR accordingly submitted that in view of the unambiguous wording of the now amended provisions of Section 36(1) and 43B, it is clear that the employee's contribution can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant welfare funds and this position of law is and has always been the case and the clarification brought about by the amendment clearly apply retrospectively. It was therefore rightly held by the Id CIT(A) that the disallowance made U/s 143(1) of the Act by CPC on account of assessee's failure to pay the employees' contribution of PF/ESI within the prescribed due dates as per Section 36(1)(va) is strictly in accordance

with law and clearly comes under the prima facie adjustments as envisaged U/s 143(1)(a)(iv) of the Act.

6. We have heard the rival contentions and perused the material available on record. In case of **K.P. Airtech vs. DCIT (in ITA No. 41 &42/JP/2021 dated 16.08.2021**, the Coordinate Bench had extensively dealt with the identical matter relating to employee's contribution towards ESI/PF and our findings therein read as under:

"16. We have heard the rival contentions and perused the material available on record. On perusal of the audit report submitted by the assessee as part of his return of income, it is noted that the assessee has deposited the employees' contribution towards ESI and PF well before the due date of filing of return of income u/s 139(1) and the last of such deposits were made on 14.04.2018 whereas due date of filing the return for the impugned assessment year 2018-19 was 31.10.2018 and the return of income was also actually filed on the said date. Admittedly and undisputedly, the employees' contribution to ESI and PF which have been collected by the assessee from its employees have thus been deposited well before the due date of filing of return of income u/s 139(1) of the Act. The issue is no more res integra in light of series of decisions rendered by the Hon'ble Rajasthan High Court starting from CIT vs. State Bank of Bikaner & Jaipur (supra) and subsequent decisions.

17. In this regard, we may refer to the initial decision of Hon'ble Rajasthan High Court in case of CIT vs. State Bank of Bikaner & Jaipur wherein the Hon'ble High Court after extensively examining the matter and considering the various decisions of the Hon'ble Supreme Court and various other High Courts has decided the matter in favour of the

assessee. In the said decision, the Hon'ble High Court was pleased to held as under:

"20. On perusal of Sec.36(1)(va) and Sec.43(B)(b) and analyzing the judgments rendered, in our view as well, it is clear that the legislature brought in the statute Section 43(B)(b) to curb the activities of such tax payers who did not discharge their statutory liability of payment of dues, as aforesaid; and rightly so as on the one hand claim was being made under Section 36 for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assesseees in claiming the deduction i.e. accrual basis and the same was being allowed, as the liability did exist but the said amount though claimed as a deduction was not being deposited even after lapse of several years. Therefore, to put a check on the said claims/deductions having been made, the said provision was brought in to curb the said activities and which was approved by the Hon'ble Apex Court in the case of Allied Motors (P) Ltd. (supra).

21. A conjoint reading of the proviso to Section 43-B which was inserted by the Finance Act, 1987 made effective from 01/04/1988, the words numbered as clause (a), (c), (d), (e) and (f), are omitted from the above proviso and, further more second proviso was removed by Finance Act, 2003 therefore, the deduction towards the employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the explanation appended to Section 36(1)(va) of the Act further envisage that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under Section 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that Sec.43B starts with a

notwithstanding clause & would thus override Sec.36(1) (va) and if read in isolation Sec. 43B would become obsolete. Accordingly, contention of counsel for the revenue is not tenable for the reason aforesaid that deductions out of the gross income for payment of tax at the time of submission of return under Section 139 is permissible only if the statutory liability of payment of PF or other contribution referred to in Clause (b) are paid within the due date under the respective enactments by the assesseees and not under the due date of filing of return.

22. We have already observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assesseees though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment of interest and other consequences and to get benefit under the Income Tax Act, an assessee ought to have actually deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub-section (1) of Section 139 of the IT Act.

23. Thus, we are of the view that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under Section 139(1), cannot be disallowed under Section 43B or under Section 36(1)(va) of the IT Act.”

18. The said decision has subsequently been followed in CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307, CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 366 ITR 163, CIT vs Rajasthan State Beverages

Corporation Limited (supra) and PCIT vs Rajasthan Renewable Energy Corporation Ltd. In all these decisions, it has been consistently held that where the PF and ESI dues are paid after the due date under the respective statutes but before filing of the return of income under section 139(1), the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act.

19. *We further note that though the Id. CIT(A) has not disputed the various decisions of Hon'ble Rajasthan High Court and various other High Courts including Hon'ble Delhi High Court in case of CIT vs AIMIL Ltd 321 ITR 508 which were brought to his notice by the Id AR during the course of appellate proceedings but has decided to follow the decision of the Hon'ble Gujarat High Court in case of State Road Transport Corporation (supra). Given the divergent view taken by the Hon'ble Gujarat High Court as against consistent view of other High Courts including the Hon'ble Rajasthan High Court and the fact that the jurisdiction over the Assessing officer in the instant case lies with the Hon'ble Rajasthan High Court, in our considered view, the Id CIT(A) ought to have considered and followed the decision of the jurisdictional Rajasthan High Court, as evident from series of decisions referred supra, in the present case as the same is binding on all the appellate authorities as well as the Assessing officer under its jurisdiction in the State of Rajasthan.*

20. *In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs 1,25,431/- so made by the CPC towards the delayed deposit of the employees's contribution towards ESI and PF though paid well before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted as the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act in view of the binding decision of the Hon'ble Rajasthan High Court.*

21. *Given that we have adjudicated on the merits of the case whereby we have directed to delete the addition so made, the other ground of appeal relating to adjustment while processing the return of income and issue of intimation u/s 143(1) by CPC has become academic in nature and we do not deem it necessary to adjudicate the same."*

7. In the instant case, admittedly and undisputedly, the employees' contribution to ESI and PF collected by the assessee from its employees have been deposited well before the due date of filing of return of income u/s 139(1) of the Act. Further, it is noted that the Id CIT(A) has referred to the explanation to section 36(1)(va) and section 43B introduced by the Finance Act, 2021 and has also referred to the rationale of the amendment as explained by the Memorandum in the Finance bill, 2021, however, he has simply failed to consider the express wordings in the said memorandum which says "*these amendments will take effect from 1st April, 2021 and will accordingly apply to assessment year 2021-22 and subsequent assessment years*". The impugned assessment year is assessment year 2019-20 and therefore, the said amendment cannot be applied in the instant case.

8. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case and following the decision referred supra, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs 12,05,413/- so made by the CPC towards the

deposit of the employee's contribution towards ESI and PF though paid before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted.

Order pronounced in the open court on 12th October, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 12/10/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Bhivaram Pannalal Kumawat, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., CPC, Bengaluru.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 76/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar