IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "SMC-A", BANGALORE

Before Shri George George K, Judicial Member

ITA No.421/Bang/2021 : Asst.Year 2018-2019

M/s.R.R.Forgings Private Limited No.332, 4th Main 9th Cross Peenya 4th Phase Bangalore – 560 058. **PAN : AAECR3432N.**	v.	The Deputy Commissioner of Income-tax CPC Bangalore
(Appellant)		(Respondent)

Appellant by : Sri.Vishal S. Rao, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 08.11.2021		**Date of Pronouncement : 08.11.2021**

O R D E R

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 10.08.2021. The relevant assessment year is 2018-2019.

2. Two issues are raised in this appeal –

(i) Whether the CIT(A) has erred in upholding the addition of Rs.6,21,831 made by the A.O. u/s 36(1)(va) of the I.T.Act disregarding the fact that the assessee has remitted the same before the due date specified u/s 139(1) of the I.T.Act

(ii) Whether the CIT(A) has erred in sustaining the A.O.'s addition of Rs.9,915 u/s 43B of the I.T.Act disregarding that the amount has already been disallowed by the assessee though inadvertently u/s 40A(3) of the I.T.Act.

3. The brief facts of the case are as follows:

The Assessing Officer, CPC had disallowed a sum of Rs.6,21,831 being the employees' contribution to PF / ESI for

the reason that the amounts were not paid within the due date specified under the respective Acts. Further, the Assessing Officer also disallowed a sum of Rs.9,915 being GST payment, since the same was not paid within the due specified u/s 139(1) of the I.T.Act.

4. Aggrieved, the assessee filed an appeal to the first appellate authority. The CIT(A) dismissed the appeal of the assessee. The relevant finding of the CIT(A) as against the disallowance of Rs.6,21,831 reads as follows:-

> *"5.3 I have carefully gone through the assessment order. I have also carefully perused written submission and supporting documents filed by the appellant. In the written submission the appellant has mentioned that such deductions are allowable u/s 43B even when the payments are delayed as per the due dates of PF and ESI Acts, if the employee's contribution is paid before the due date of filing return u/s 139(1) of the I.T.Act. However, the proviso to section 43B, which allows deduction if it is made before the due date of filing return u/s 139(1) has been rendered ineffective by inserting Explanation 5 to the section 43B which states that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of 2(24)(x) applies. In the present case there is no dispute that sum received by the appellant are such to which the provisions of section 2(24)(x) applies. Further the language of the newly inserted explanation makes it clear that it applies with retrospective effect. The submission of the appellant is based on the position of law which existed before explanation 5 was inserted in section 43B by the Finance Act 2021. Similarly the decisions cited by the appellant have been given before the insertion of explanation 5 and are no longer applicable in view of the new law. The grounds of appeal 1 & 2 are accordingly dismissed."*

4.1 Further, the finding of the CIT(A) regarding disallowance of Rs.9,915 reads as follows:-

> *"6.2 I have gone through the intimation order u/s 143(1). I have also gone through the written submission and the dtails submitted by the appellant. It is seen from a perusal of Audit Report in Form 3CD that at column No.26(i)(B)(b), the appellant has clearly mentioned that an amount of Rs.9,915 under the head Goods & Service Tax has not been paid on or before the due date of filing return of income u/s 139(1) as per the provision of section 43B(a). It is also seen that at the relevant Colum where disallowance u/s 40A(3) is to be mentioned. The appellant has not mentioned these details. Thus, it becomes clear that an amount of Rs.9,915 has been disallowed u/s 43B only. Therefore, the entire argument of the appellant is misplaced. After considering the facts of the case, the grounds of appeal No.3 is dismissed."*

5. Aggrieved, the assessee has filed this appeal before the Tribunal. As regards the disallowance of Rs.6,21,831 is concerned, the learned AR submitted that an identical issue was considered in ITAT's order in the case of M/s. Shakuntala Agarbathi Company Vs. DICT in ITA No.385/Bang/2021 (order dated 21.10.2021), wherein it was clearly held that the amendment to section 36(1)(va) and 43B of the I.T.Act by the Finance Act, 2021 is only prospective. As regards the disallowance of Rs.9,915 is concerned, it was submitted that since the assessee has not paid GST amount of Rs.9,915 before the due date of filing of return u/s 139(1) of the I.T.Act, the same was voluntarily disallowed by the assessee in the return of income filed u/s 139(1) of the I.T.Act, though inadvertently the reference was made to section 40A(3) of the I.T.Act instead of u/s 43B of the I.T.Act. Therefore, it was contended that the amount which is already disallowed u/s 40A(3) of the I.T.Act by the assessee voluntarily being again disallowed u/s 43B of the I.T.Act would tantamount to double taxation. In this context, the learned AR had placed copies of

the computation of income, copy of the income tax return filed for the relevant assessment year, etc.

6. The learned Standing Counsel, on the other hand, as regards the disallowance of Rs.6,21,831 is concerned, submitted that the amendment to section 36(1)(va) and 43B of the I.T.Act is clarifactory and has got retrospective operation. In this context, the learned Standing Counsel relied on the judgment of the Hon'ble Apex Court in the case of *CIT Vs. Gold Coin Health Food Pvt. Ltd., reported in 304 ITR 308 (SC).* As regards the disallowance of Rs.9,915, the learned Standing Counsel placed reliance on the orders passed by the Income Tax Authorities.

6.1 In the rejoinder, the learned AR submitted that the case law relied on by the learned Standing Counsel, namely, *CIT Vs. Gold Coin Health Food Pvt. Ltd., (supra)* is distinguishable on facts. It was submitted that the conclusion of the Hon'ble Apex Court in the case of *CIT Vs. Gold Coin Health Food Pvt. Ltd., (supra)* is based on settled position of law that income includes also loss. It was submitted that it is in this context that the Hon'ble Apex Court held that penalty under section 271(1)(c) of the Act could be imposed even in the case of assessment where the income is determined at loss. Learned AR strongly relied on the larger Bench judgment of the Hon'ble Apex Court in the case of *CIT Vs. Vatika Township Pvt. Ltd., reported in 367 ITR 466 (SC).*

7. I have heard rival submissions and perused the material on record. As regards the disallowance of Rs.6,21,831 is

concerned, I noticed that on identical facts, the Bangalore Bench of the Tribunal in the case of M/s. Shakuntala Agarbathi Company Vs. DCIT (supra) had held that amendment by Finance Act, 2021, to section 36[1][va] and 43B of the Act is not clarificatory. The relevant finding of the ITAT in the case of M/s. Shakuntala Agarbathi Company Vs. DCIT (supra), reads as follows:

> *"7. We have heard rival submissions and perused the material on record. Admittedly, the assessee has remitted the employees' contribution to ESI before the due date for filing of return u/s 139(1) of the I.T.Act. The Hon'ble jurisdictional High Court in the case of Essae Teraoka (P.) Ltd. v. DCIT reported in 366 ITR 408 (Kar.) has categorically held that the assessee would be entitled to deduction of employees' contribution to ESI provided the payment was made prior to the due date of filing of return of income u/s 139(1) of the I.T.Act. The Hon'ble jurisdictional High Court differed with the judgment of the Hon'ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation reported in 366 ITR 170 (Guj.). The Hon'ble High Court was considering following substantial question of law:-*
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> > *"Whether in law, the Tribunal was justified in affirming the finding of Assessing Officer in denying the appellant's claim of deductions of the employees contribution to PF/ESI alleging that the payment was not made by the appellant in accordance with the provisions u/s 36[1][va] of the I.T.Act?"*
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> *7.1 In deciding the above substantial question of law, the Hon'ble High Court rendered the following findings:-*
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> > *"20. Paragraph-38 of the PF Scheme provides for Mode of payment of contributions. As provided in sub para (1), the employer shall, before paying the member, his wages, deduct his contribution from his wages and deposit the same together with his own contribution and other charges as stipulated therein with the provident fund or the fund under the ESI Act within fifteen days of the closure of every month pay. It is clear that the word "contribution" used in Clause (b) of Section 43B of the IT Act means the contribution of the employer and the employee. That being so, if the contribution is made on or before the due date for furnishing the return of income under sub-section (1)*

of Section 139 of the IT Act is made, the employer is entitled for deduction.

21. The submission of Mr.Aravind, learned counsel for the revenue that if the employer fails to deduct the employees' contribution on or before the due date, contemplated under the provisions of the PF Act and the PF Scheme, that would have to be treated as income within the meaning of Section 2(24)(x) of the IT Act and in which case, the assessee is liable to pay tax on the said amount treating that as his income, deserves to be rejected.

22. With respect, we find it difficult to endorse the view taken by the Gujarat High Court. WE agree with the view taken by this Court in W.A.No.4077/2013.

23. In the result, the appeal is allowed and the substantial question of law framed by us is answered in favour of the appellant-assessee and against the respondent-revenue. There shall be no order as to costs."

7.2 The further question is whether the amendment to section 36[1][va] and 43B of the Act by Finance Act, 2021 is clarificatory and declaratory in nature. The Hon'ble Supreme Court in the recent judgment in the case of M.M.Aqua Technologies Limited v. CIT reported in (2021) 436 ITR 582 (SC) had held that retrospective provision in a taxing Act which is "for the removal of doubts" cannot be presumed to be retrospective, if it alters or changes the law as it earlier stood (page 597). In this case, in view of the judgment of the Hon'ble jurisdictional High Court in the case of Essae Teraoka (P.) Ltd. v. DCIT (supra) the assessee would have been entitled to deduction of employees' contribution to ESI, if the payment was made prior to due date of filing of the return of income u/s 139(1) of the I.T.Act. Therefore, the amendment brought about by the Finance Act, 2021 to section 36[1][va] and 43B of the I.T.Act, alters the position of law adversely to the assessee. Therefore, such amendment cannot be held to be retrospective in nature. Even otherwise, the amendment has been mentioned to be effective from 01.04.2021 and will apply for and from assessment year 2021-2022 onwards. The following orders of the Tribunal had categorically held that the amendment to section 36[1][va] and 43B of the Actby Finance Act, 2021 is only prospective in nature and not retrospective.

(i) Dhabriya Polywood Limited v. ACIT reported in (2021) 63 CCH 0030 Jaipur Trib.

(ii) NCC Limited v. ACIT reported in (2021) 63 CCH 0060 Hyd Tribunal.

(iii) Indian Geotechnical Services v. ACIT in ITA No.622/Del/2018 (order dated 27.08.2021).

(iv) M/s.Jana Urban Services for Transformation Private Limited v. DCIT in ITA No.307/Bang/2021 (order dated 11th October, 2021)

7.3 In view of the aforesaid reasoning and the judicial pronouncements cited supra, the amendment by Finance Act, 2021 to Sec.36[1][va] and 43B of the Act will not have application to relevant assessment year, namely A.Y. 2019-2020. Accordingly, we direct the A.O. to grant deduction in respect of employees' contribution to ESI since the assessee has made payment before the due date of filing of the return of income u/s 139(1) of the I.T.Act, It is ordered accordingly."

7.1 The learned Standing Counsel had relied on the judgment of the Hon'ble Apex Court in the case of *CIT Vs. Gold Coin Health Food Pvt. Ltd., (supra)* to content that the amendment to section 36[1][va] and 43B of the Act is clarificatory. The judgment of the Hon'ble Apex Court in the case of *CIT v. Gold Coin Health Food Pct. Ltd. (supra)* is distinguishable. The Hon'ble Apex Court was considering the question of whether penalty can be imposed u/s.271(1)(c) of the Act for concealment of income where returned losses were reduced in assessment and there was no tax payable by the assessee. Earlier, the Hon'ble Apex Court in the case of *Virtual Soft Systems in 289 ITR 83 [SC]* had taken the view that no penalty could be levied on mere reduction in loss as there would be no tax payable by the assessee, which was a sine-quo-non for imposition of penalty. Amendments were made by the Finance Act, 2002, to Section 271(1)(iii) of the Act by incorporating the expression "if any" and also in Explanation 4 setting out the meaning of the phrase "amount of tax sought to be evaded". The Hon'ble Apex Court in the case of *CIT Vs. Gold Coin Health Food [P] Ltd., [2008] 304 ITR 308 [SC]*, held

that the Parliament clarified the position by using the expression "if any", which was not a substantive amendment creating penalty for the first time. It was held that income always included loss and even the unamended provisions would have to be interpreted in the manner that right from 01.06.1976 penalty would have been leviable. Hence, the Hon'ble Apex Court went on to hold that the amendment is clarificatory in nature and hence will apply for the period before 01.04.2003. The relevant observations of the Hon'ble Apex Court reads as follows :-

> *"6. It would be of some relevance to take note of what this Court said in Virtual's case (supra). Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the matter. The Court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory prsvision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The Court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive.*
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> *In Reliance Jute and Industries Ltd. vs. Commissioner of Income Tax, West Bengal (1979 (120) ITR 921) it was observed, by this Court that the law to be applied in income tax assessments is the law in force in the assessment year unless otherwise provided expressly or by necessary implication. Before proceeding further, it will be necessary to focus on the definition of the expression 'income' in the statute. Section 2 (24) defines' income' which is an inclusive definition, and includes losses i. e. negative profit. The position has been elaborately dealt with by this Court in Commissioner of Income Tax (Central), Delhi v. Harprasad & Co. P. Ltd. (1975 (99) ITR 118). This Court held with reference to the charging provisions of the statute that the expression 'income' should be understood to include losses. The expression profits and gains' refers to positive income whereas losses represent negative profit or in other words minus income. This aspect does not appear to have been noticed by the Bench in Virtual's case (supra). Reference to the - order by this Court dismissing the revenue's Civil Appeal No.7961 of 1996 in Commissioner of Income Tax v. Prithipal Singh and Co. is also not very important because that was in relation to the assessment year 1970-71 when Explanation 4 to Section 271 (1) ((c) was not in existence. The*

view of this Court in Horprasods case (supra) Leads to the irresistible conclusion that income also includes Losses. Explanation 4 (a) as it stood during the period 1.4.1976 to 1.4.2003 has to be considered in the background.

8. It appears that what the Finance Act intended was to make the position explicit which otherwise was implied. The recommendations of the Wanchoo Committee pursuant to which Explanation 4(a) was inserted w.e.f. 1.4.1976 needs to be noted. At para 2.74 it was noted as follows:

> *"2.74 We are not unaware that linking concealment penalty to tax sought to be evaded can, at times, lead to anomalies. We would recommend that, in cases where the concealed income is to be, set off against Losses incurred by an assessee under other heads of income or against losses brought forward from earlier years, and the total income thus, gets reduced to a figure smaller than the concealed income or even to a minus figure, the tax sought to be evaded should be calculated as if the concealed income were the total income."*

9. Reference to the Department Circular No.204 dated 24.7.1976 reported in 1977 (110) ITR 21 (St.) has also substantial relevance. Same reads as follows:

> *"New Explanation 4 defines 'the amount of tax sought to be evaded'. According to the definition, this expression will ordinarily mean the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed. In a case, however, where on setting off the concealed income against any loss incurred by the assessee under other head of income or brought forward from earlier years, the' total income is reduced to a figure Lower than the concealed income or even to a minus figure, 'the tax sought to be evaded' will mean the tax chargeable on the concealed income as if it were the total income. Another exception to the general definition of the expression 'tax sought to be evaded' given earlier is a case to which Explanation 3 applies. Here, the tax sought to be evaded will be the tax chargeable on the entire total income assessed. "*

10. A combined reading of the Committee's ecommendations and the Circular makes the position clear that Explanation 4(a) to Section 271 (1) (c) intended to levy the penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or a minus figure. Therefore, even during the period between 1.4.1.976 to 1.4.2003 the position was that the penalty was leviable even in

a case where addition of concealed income reduces the returned loss.

11. When the word "income" is read to include losses as held in Harprasad's case (supra) it becomes crystal clear that even in a case where on account of addition of concealed income the returned loss stands reduced and even if the final assessed income is a loss, still penalty was leviable thereon even during the period 1.4.1976 to 1.4.2003. Even in the Circular dated 24.7.1976, referred to above, the position was clarified by Central Bureau of Direct Taxes (in short' CBDT). It is stated that in a case where on setting of the concealed income against any loss incurred by the assessee under any other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even to a minus figure the penalty would be imposable because in such a case "the tax sought to be evaded" will be tax chargeable on concealed income as if it is "total income". "

7.2 Thus, the judgment of the Hon'ble Apex Court in *CIT Vs. Gold Coin Health Food [P] Ltd., [2008] 304 ITR 308 [SC]*, took into consideration the evolved jurisprudence on the point of whether income includes loss and has interpreted that even before the amendment with effect from 01.04.2003, there was liability to penalty. Hence, it was concluded by the Hon'ble Apex Court that the clarificatory nature of the amendment cannot be a ground to hold that earlier no penalty could be levied. However, the position in this case quite different as the Hon'ble jurisdictional High Court in the case of *Essae Teraoka [P] Ltd., Vs. DCIT, reported in [2014] 366 ITR 408 [Kar]* has considered the concept of 'due date' as appearing in 36[1][va] and section 43B of the Act and has taken the view that the assessee is entitled to the relief having regard to the use of the expression "contribution" under the Provident Fund Act. Now it has been provided that the due date in section 43B is of no consequence to judge the applicability of provisions of section 36[1][va]of the Act and that too with effect from 01.04.2021. In other words, there is sufficient intrinsic evidence to show that

these amendments are not clarificatory in nature and the mere use of the expression "it is clarified" cannot be determinative of the nature of the amendment made. Furthermore, in the present case, Legislature has expressly given only prospective effect to these Explanations as is evident from the Memorandum Explaining the Provisions in the Finance Bill, 2021, by stating that the said amendment i.e., the insertion of another Explanation to the already existing explanation to clause [va] to sub-section [1] of section [36] of the Act, will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-2022 and subsequent assessment years. In contradistinction the relevant Finance Act, 2003 amending section 271(1)(iii) and Explanation 4 did not speak of application and merely provided that the amendments will take effect from 01.04.2003 [reproduced in para 5 of the judgment in case of Gold Coin (supra)].

7.3 Furthermore, a Constitution Bench of the Hon'ble Apex Court of 5 judges in the case of *CIT Vs. Vatika Township [P] Ltd., [2014] 367 ITR 466 [SC]*, has held as under:

> *"General Principles concerning retrospectivity*
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> *30. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by legislation. Legislation is not just a series of statements, such as one finds in a work of fiction/ nonfiction or even in a judgment of a court of law. There is a technique required to draft legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-a-vis ordinary prose, legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that*

arise by presumptions as to the intent of the maker thereof.

31. Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today rind in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should 'not find that his plans have been retrospectively upset. This principle of •law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips vs. Eyre', a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of fairness, which must be the basis of every legal rule as was observed in the decision reported in L 'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation. is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing these dicta, a little later.

33. The obvious basis of the principle against retrospectivity is the principle of fairness, which must be the basis of every legal rule as was observed in the decision reported in L 'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation. is for purpose of supplying an obvious omission in a former legislation or

> *to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing these dicta, a little later.*
>
> *33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by legislation, the rule against a retrospective construction is different. If legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India Et Ors. v. Indian Tobacco Association', the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra Et Ors." It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here……"*

7.4 The Hon'ble Apex Court in the case of *CIT v. Essar Teleholdings Ltd. (2018) 401 ITR 445 (SC)* considered the judgment of the Hon'ble Apex Court in the case of *CIT v. Gold Coins Health Foods (P.) Ltd. (supra)* and also the judgment of the Larger Bench of the Hon'ble Apex Court in the case of *CIT v. Vatika Township P. Ltd. (supra).* The Hon'ble Apex Court in the case of *CIT v. Essar Teleholdings Ltd. (supra),* held that judgment in the case of *CIT v. Gold Coins Health Foods (P.) Ltd. (supra)* is distinguishable and not applicable for the reason that Parliament clarified the position of law by changing the expression `any' by `if any' which was not a substantive amendment creating penalty for the first time. The Hon'ble Supreme Court followed the judgment in the case

of *CIT v. Vatika Township P. Ltd. (supra)* and held that Rule 8D of the I.T.Rules does not apply retrospectively. For the aforesaid reason and the judicial pronouncements, cited supra, I hold that the judgment of the Hon'ble Apex Court relied on by the CIT(A) in the case of *CIT v. Cold Coins Health Foods (P.) Ltd. (supra)* does not have application to the present case.

7.5 Since, the assessment year concerned in this case being 2018-2019, I hold that the amendment to section 36(1)(va) and 43B of the I.T.Act by Finance Act, 2021 does not have application. Therefore, I direct the A.O. to delete the disallowance of Rs.6,21,831 being employees' contribution to PF and ESI, since the same has been paid prior to the due date of filing of the return u/s 139(1) of the I.T.Act. It is ordered accordingly.

7.6 As regards the disallowance of GST of Rs.9,915 is concerned, I notice that an identical figure has been disallowed by the assessee voluntarily in the return of income filed u/s 40A(3) of the I.T.Act. If an identical amount has been disallowed inadvertently u/s 40A(3) of the I.T.Act, then further disallowance u/s 43B of the I.T.Act by the A.O. would amount to double taxation. Therefore, I restore this issue to the files of the A.O. The AO is directed to examine whether the assessee has voluntarily made disallowance of Rs.9,915 of GST since the same was not paid before the due date of filing of return u/s 139(1) of the I.T.Act. If the assessee has voluntarily made disallowance of the said amount (though inadvertently u/s 40A(3) of the I.T.Act), the same needs to be

deleted because the disallowance by A.O. u/s 43B of the I.T.Act tantamount to double taxation, which is impermissible in law. With these observations, I direct the A.O. to examine the issue afresh and pass an order after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 8th day of November, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 08th November, 2021.
Devadas G*
Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Delhi.
4. The Pr.CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore