

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'ए', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 252/CHD/2021

निर्धारण वर्ष / Assessment Year : 2017-18

M/s A.K. Creative Outsourcing Services P.Ltd., 378-A, Pinjore Nalagarh Highway, Motia Plaza, Baddi (HP).	बनाम VS	The ITO, Solan.
स्थायी लेखा सं./PAN /TAN No: AALCA0661K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, JCIT

तारीख/Date of Hearing : 02.11.2021
उद्घोषणा की तारीख/Date of Pronouncement : 16.11.2021

VIRTUAL HEARING

आदेश/ORDER

PER DIVA SINGH

By the present appeal, the assessee assails the correctness of the order dated 30.07.2021 of ld. CIT(A) (NFAC i.e. National Faceless Appeal Centre) Delhi pertaining to 2017-18 assessment year passed u/s 250(6) of the Income Tax Act, 1961.

2. Though various grounds have been raised in the present appeal, however, it was the plea of the ld. AR that the issues can be subsumed in ground No. 2. The said ground which was argued reads as under :

“2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in making addition of Rs. 8,68,410/- u/s 36(l)(va) of the Act even when the appellant collected ESI and PF from salary of the employees and whole of the amount had been, deposited well before the due date of filing of Income Tax Return.”

3. The ld. AR submits that the issue is fully covered in favour of the assessee by virtue of the consistent orders of the ITAT, Chandigarh Benches. As an illustration order dated 27.08.2021 in the case of M/s Jupiter Aqua Lines Pvt. Ltd. Vs DCIT ITA 83/CHD/2021 was cited. Reliance was also placed on the decision of the jurisdictional High Court in the case of CIT Vs Hemla Embroidery Mills (P) Ltd(2014) 366 ITR 167(P&H).

4. The ld. Sr.DR relied upon the order. No contrary decision in support of the impugned order was relied upon for our consideration.

5. We have heard the submissions and perused the material available on record. Considering the issue, it is seen that it is no longer *res-integra*. The controversy whether the Amendments carried out by the Finance Act, 2021 in Section 36(l)(va) and u/s 43B of the Act were prospective in nature or retrospective, hence clarificatory in nature have been put to rest by consistent orders of the different Benches of the ITAT namely order dated 03.08.2021 in *Insta Exhibitions Pvt. Ltd. Vs Addl. CIT, New Delhi* in ITA No. 6941/Del/2017 of the

Delhi Benches; order dated 01.07.2021 of Hyderabad Benches in *M/s Crescent Roadways Pvt. Ltd. V Dy. CIT, Hyderabad* in ITA No. 1952/Hyd./2018, order dated 27.08.2021 in the case of *M/s Jupiter Aqua Lines Pvt. Ltd. Vs DCIT* ITA 83/CHD/2021 and order dated 04.10.2021 in the case of *Ajay Piplani Vs Assistant Director of Income Tax, CPC, Bengaluru* in ITA No. 114/CHD/2021 of the ITAT Chandigarh Benches. Reference may also be made to various other orders of the Chandigarh Benches in ITA 250/CHD/2021 in the case of *Shri Sukhdev Singh, Mohali* and ITA 255/CHD/2021 in the case of *M/s CZAR FAUCETS Ltd. Chandigarh* wherein consistently following the decisions of the jurisdictional High Court in the case of *CIT Vs Nuchem Ltd* (ITA No. 323 of 2009) and *CIT Vs Hemla Embroidery Mills Pvt. Ltd.*(2014) 366 ITR 167, the Tribunal has consistently allowed similar claims of the assessee holding that the *Amendments effected by the Finance Act 2021 to section 36(l)(va) and u/s 43B of the income Tax Act are not clarificatory in nature and they do not have retrospective effect and are applicable prospectively.* Reading from the Notes on Clauses at the time of introduction of the Finance Act, 2021, it has been held that the amendment being applicable in relation to assessment year 2021-22 and subsequent years. Accordingly, considering the factual backdrop of the present case and considering the

amendments in Section 36(1)(va) as well as Section 43B carried out by Finance Act, 2021 and Memorandum explaining the provisions in Finance Bill, 2021 we hold that the impugned disallowance is not sustainable. Hence, the addition is directed to be deleted as the amount stood deposited by the due date as held in Section 139(1) of the Act. Hence, within time. The appeal of the assessee is allowed. Said order was pronounced in the presence of the parties via Webex.

Order pronounced on 16th November, 2021.

Sd/-

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member
"Poonam"

(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar