

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी.", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' 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. 213/CHD/2021

निर्धारण वर्ष / Assessment Year : 2018-19

M/s Metlonics Ind. Pvt. Ltd., Plot No. D-105, Industrial Area, Phase-7, Mohali (Punjab).	बनाम VS	The DCIT, CPC, Bangalore.
स्थायी लेखा सं./PAN /TAN No: AACCM2009A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Anil Batra, Advocate
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Sr. DR

तारीख/Date of Hearing : 10.11.2021
उद्घोषणा की तारीख/Date of Pronouncement : 18.11.2021

VIRTUAL HEARING

आदेश/ORDER

PER DIVA SINGH

In the present appeal, the assessee assails the correctness of the order dated 18.09.2021 passed u/s 250 of the Income Tax Act, 1961 by the CIT(A) (NFAC i.e. National Faceless Appeal Centre) Delhi pertaining to 2018-19 assessment year.

2. The assessee has raised various grounds assailing the order. The issue agitated at hand can be summed up in ground Nos. 1& 5. The remaining grounds can be considered as arguments in support of the prayer.

Accordingly, ground Nos. 1 & 5 being taken up are hereunder :

1. *That the Ld. Commissioner of Income (Appeals) has erred in law as well as on facts in upholding the disallowance of the expenditure of Rs.30,88,200/- (Rs.84,167/- ESI and Rs.30,03,674/- EPF totaling Rs.30,88,200/-) claimed on account of deposit in EPF/ESI as employees share while processing of return under section 143(1) r.w.s.154 which is arbitrary and unjustified.*
5. *That the Ld. Commissioner of Income Tax (Appeals) has dismissed the appeal of the relying upon the amendment made in the Act by The Finance Act 2021 assuming it to be retrospective and as such the order passed is illegal, arbitrary and unjustified.*

3. The point at issue in the present proceedings, it was submitted, by the Id. AR is fully covered in favour of the assessee not only by the decision of the jurisdictional High Court in the case of CIT Vs Hernia Embroidery Mills (P) Ltd(2014) 366 ITR 167(P&H) relied upon and referred to in ground No. 4 in the present proceedings but even otherwise by plethora of decisions of the ITAT. Reference was made to order dated 27.08.2021 in ITA No. 83 M/s *Jupiter Aqua Lines Put. Ltd. Vs DCIT* as an illustration.

4. The Id. Sr.DR Mr. Ashok Khanna relied upon the impugned order. No distinguishing facts, circumstances or position or law was canvassed on behalf of the Revenue.

5. We have heard the rival submissions and perused the material available on record. It is seen that the various Benches of the ITAT including the Chandigarh Bench decision dated 02.11.2021 in the case of *Shri Sukhdev*

Singh Vs ITO Chandigarh and order dated 02.11.2021 in ITA 255/CHD/2021 in the case of *M/s Czar Faucets Limited Chandigarh Vs DCIT, Bangalore* consistently taken the position that the amendments carried out to Section 36(1)(va) and u/s 43B of the Income Tax Act effected by the Finance Act, 2021 is prospective in nature. Reading from the Notes on Clauses at the time of introduction of the Finance Act, 2021 it has consistently been held that the amendment is applicable from 2020-21 assessment year onwards. In these circumstances, the addition made by way of disallowance of employees' share in EPF/ESI made beyond the specific statutory limits, however, within the time limit as laid down in Section 139(1) of the Act i.e. before the due date of filing of the return, the addition cannot be made. We have taken into consideration not only the decision of the jurisdictional High Court in the case of *CIT Vs Hemla Embroidery Mills (P) Ltd.*(2014) 366 ITR 167(P&H) but also the decision in the case of *CIT Vs Nuchem Ltd* (ITA No. 323 of 2009). Accordingly, considering the fact that the payment was made well within the time of due date of filing of the return u/s 139(1) and the return stood so filed, we are of the view that the addition by way of a disallowance cannot be made. Accordingly, the addition is directed to be deleted.

The appeal of the assessee is allowed. Said order was pronounced in the presence of the parties via Webex.

6. In the result, appeal of the assessee is allowed.

Order pronounced on 18th November, 2021.

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“Poonam”

आदेश की प्रतिलिपि अग्रेपित/ 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

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar