

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.153/Ind/2021
Assessment Year:2019-20**

Natraj Dal Mill Indore (Appellant)	बनाम/ Vs.	ACIT 5(1) Indore (Respondent)
P.A. No. AADFN3699P		

Appellant by	Shri Ashish Goyal & N.D. Patwa, ARs
Respondent by	Shri Amit Soni, Sr.DR

**ITA No.131/Ind/2021
Assessment Year:2011-12**

Shri Ashok Somani Indore (Appellant)	बनाम/ Vs.	Dy. CIT, PS, Bangalore (Respondent)
P.A. No.AGTPS5575R		

Appellant by	S/Shri Anil Kamal Garg & Arpit Gour, ARs
Respondent by	Shri Amit Soni, Sr.DR

Date of Hearing:	12.11.2021
Date of Pronouncement:	06.12.2021

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeals at the instance of Assessee are directed against the order of National Faceless Appeal Centre (in short NFAC), Delhi dated 19.07.2021 & 08.06.2021 which are arising out of the order u/s 143(1) of the Income Tax Act 1961(In short the 'Act') dated 25.02.2020 & 19.06.2019 framed by ACIT,CPC, Bangalore.

The Assessee namely Natraj Dal Mill has raised following grounds of appeal in ITANo. 153/Ind/2021:

- 1. On the facts and circumstance of the case, the ld. CIT(A), National Faceless Appeal Centre(NFAC), Delhi erred in sustaining disallowance of employee's contribution to PF and ESI of Rs.1,14,038/- and Rs.12,615/- respectively paid late by the appellant which is wrong, illegal and unjustified.*
- 2. Ld. CIT(A) failed to appreciate the facts of the case in proper perspective.*
- 3. The appellant prays for relief.*
- 4. The appellant craves leave to add, alter or amend any grounds of appeal as and when the necessity or occasion arises.*

The Assessee namely Ashok Somani has raised following grounds of appeal in ITANo. 131/Ind/2021:

Grounds of Income-Tax appeal before the Hon'ble Income-Tax Appellate Tribunal, Indore Bench, Indore, against the Appellate Order passed under s. 2501143(3) of the Income-Tax Act, 1961 by the learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, pertaining to the A.Y. 2018-19 in response to the appeal filed against the Assessment Order under s. 143(1) of the Act, passed by the learned DCIT, CPC, Bangalore.

- 1. That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO in determining the Total Income of the appellant at Rs.14,19,2501- as against the Returned Income of Rs.12,10,0701-*

thereby making addition of Rs.2,09,1801- which is quite unjustified, unwarranted, arbitrary, excessive and bad-in-law.

2a). That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.2,09,1801- made by the AO in the appellant's income, on account of Employees' Contribution towards Provident Fund by invoking the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Income-Tax Act, 1961, without considering the material fact that the appellant had made the entire payment before due date under s. 139(1) of the Act for furnishing of return of income.

2b). That, the learned CIT(A) grossly erred, both on facts and in law, in not considering and appreciating the material fact that the entire payment of the impugned sum made by the appellant was also eligible for deduction under s.37(1) of the Act.

That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary

2. As the issues raised in these appeals are common relate to different assessee's at the request of all the parties, both these appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

3. The common grievance relates to disallowance of employees contribution to PF & ESIC and for adjudicating this issue we take the facts in case of Natraj Dal Mill in ITANo.153/Ind/2021 and our decision shall apply *mutatis mutandis* to the appeal of another assessee namely Ashok Somani in ITANo.131/Ind/2021.

4. Brief facts of the case as culled out from the records are

that the assessee is a partnership firm. Return of income for A.Y. 2019-20 was filed Assessee is obliged to deduct employees contribution towards PF/ESIC and to deposit the same with the concerned authority. During the year there was a delay for deposit of employees contribution of Rs. 1,26,653/- but the amount was deposited before the due date of filing the return of income. CPC vide its information dated 25.02.2020 u/s 143(1) of the Act disallowed the employees contribution of PF/ESIC of Rs.1,26,653/-. Assessee challenged the said disallowance before the ld. CIT(A) claiming that as the assessee has deposited the alleged amount before the due date of filing the return of income u/s 139(1) of the Act, Assessee should get the benefit of section 43B of the Act, but Ld. CIT(A) was not satisfied with the submissions and confirmed the disallowance.

5. Aggrieved assessee is now in appeal before the Tribunal.

6. At the outset, Ld. counsel for the assessee submitted that the issue raised in the instant appeal is squarely covered in favour of the assessee by various decisions including the decision of this tribunal in the case of *ACIT vs. M/s Parag*

Fans & Cooling System Pvt. Ltd. (2021) 9 ITJ online 118.

Reliance was also placed on following decisions:

a. Sagun Foundry (P) Ltd. vs. CIT [2007] 78 taxmann.com 47 (Allahabad)

b. Bihar State Warehousing Corporation Ltd. vs. DCIT [2017] 393 ITR 386 (Patna)

c. Pr. CIT vs. Rajasthan State Beverage Corpn. Ltd. (20017) 250 Taxman 32 (Rajasthan)

d. Pr. CIT vs. Hind Filter Ltd. [2018] 90 taxmann.com 51 (Bombay)

7. Per contra ld. DR submitted that the issue is debatable and some of the Hon'ble High Courts have also decided against the assessee on this particular issue, but agreed that no decisions on this issue have been given by the Hon'ble Jurisdictional High Court. Reliance placed on following decisions:

1. Pr. CIT vs. Suzlon Energy Ltd. (2020) 115 Taxmann.com 340 (Gujarat)

b. CIT vs. Merchem ltd. [2015] 378 ITR 443 (Kerala)

c. CIT vs. South India Corporation Ltd. (2015) 232 Taxman 241 (Kerala)

8. We have heard rival contentions and perused the records placed before us. Sole issue relates to disallowance of employees contribution of PF/ESIC at Rs.1,26,653/-. We note that as per the provisions of section 36(1)(va) of the Act “*any sum received by the*

assessee from any his employee's towards contribution to any PF or superannuation fund or any fund set up under the provisions of Employee Estate Insurance Act, 1948 or any other fund for the welfare of such employees is allowed as an expenditure if such sum is credited by the employer to the employees account in the relevant fund or funds on or before the due date". And for the purpose of this section 36(1)(va) explanation (1) to this section provides that " 'due date' means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there under or under any standing order, award, contract or service or otherwise.

9. We further find that the alleged disallowance was made as there was a delay in deposit beyond the due date provided under relevant Act which deals with PF/ESIC. But undisputedly the amount has been deposited with the relevant fund before the due date of filing the return of income u/s 39(1) of the Act.

10. We find that this Tribunal in the case of *M/s Industrial Filters and Fabrics Pvt. Ltd. vs. Asstt. CIT (2020) 8 ITJ online 6, (2020) 37 ITJ 61* has dealt delay with very same issue and on observing

similar set of facts deleted the disallowance relying on various judgments observing as follows:

25. We have heard both the parties, perused the materials available on record and gone through the orders of the Authorities below. In the light of judgment of Hon'ble Rajasthan High Court in the case cited (supra), wherein the Hon'ble High Court has held as under:

"3. However, taking into consideration, the judgement of this court in the case of assessee itself in D.B. Income Tax Appeal No.150/2016 (Principal Commissioner of Income Tax. Jaipur-2 v. M/s. Rajasthan State Beverages Corpn. Ltd.) decided on 4.8.2016 wherein Division Bench observed as under:

"5. So far as the question relating to privilege fees amounting to Rs, 26.00 Crores in the instant year as well as the deduction of claim of Rs. 17,80,765/- on account of Provident Fund (PF) and ESI is concerned, the Court has extensively considered the aforesaid two questions in assessee's own case vide judgement and order dated 26.5.2016 referred to (supra) and has held that the privilege fees being a revenue expenditure, is required to be allowed as a revenue expenditure. This court in the aforesaid case has also allowed the claim of the assessee, in so far as payment of PF & ESI etc. is concerned, on the finding of fact that the amounts in question were deposited on or before the due date of furnishing of the return of income and taking in consideration judgement of this Court in Commissioner of Income Tax v. State Bank of Bikaner & Jaipur and Commissioner of Income Tax v. Jaipur Vidyut Vitaran Nig., Ltd (2011) 363 ITR 70 (Raj.) : (2014) 265 CTR 471 and accordingly both the questions are covered by the aforesaid judgment and against the revenue.

11. Subsequently in the case of *ACIT vs. M/s Parag Fans &*

Cooling System Pvt. Ltd.(supra) similar view was taken by this Tribunal. Relevant extract is reproduced below:

20. We find that there occurred some delay on the part of the assessee in depositing the ESIC and EPF contribution of employees. However this is not in dispute that the total amount of employees contribution was deposited in Treasury before the due date of filing of return of income i.e. 30.11.2014. Under these given facts and circumstances Ld. CIT(A) deleted the disallowance observing as ITA Nos.561 & 562/Ind/2018 Parag Fans Cooling System Pvt. Ltd follows:-

Ground No.5:- Through this ground of appeal the appellant has challenged the addition of Rs4,17,302/- on account of disallowance of EPF and ESIC late deposit. The appellant made the above payments before filing of return of income. The above expenditure is allowable expenditure in view of Hon'ble ITAT, Indore's decision in the case of Asst. CIT v .Indira Export Pvt Ltd. (201 3) 21 ITJ 372 (Trib. - Indore)- Employees contribution to provident Fund- Employees contribution to Provident Fund -Employees contribution to Provident Fund - Deletion of second proviso to [section 43B](#)- HELD-In view of CIT v Alom Extrusions Ltd. (2010) 14 ITJ 133(SC), deletion of second proviso is retrospective-Therefore, even if employees contribution is deposited before due date of filing of return, same is allowable. Therefore, the addition made by the AO amounting to Rs.4,17,302/- is deleted. Therefore, the appeal on this ground is Allowed.

12. We further find that ld. DR has submitted that for the instant issue is debatable and there are various judgments against the assessee also. We, however, find that Hon'ble

Supreme Court in the case of *CIT vs. Vegetable Products Ltd.* 88 ITR 192(SC) has held that “if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted”.

13. We, therefore, under the given facts and circumstances of the case and taking a consistent view in light of judicial precedence or discussed above as well as the decision taken by this Tribunal in the case of *M/s Industrial Filters and Fabrics Pvt. Ltd. & ACIT vs. M/s Parag Fans & Cooling System Pvt. Ltd.(supra)* delete the disallowance and allow grounds raised by the assessee.

14. Now we take up Assessee’s appeal in ITANo.131/Ind/2021 in the case of Shri Ashok Somani raising similar grounds of appeal as were raised in the case of Natraj Dal Mill (supra) with the only difference of figure of employees contribution to PF and ESIC. The action of the Ld. AO and finding of Ld. CIT(A) are verbatim similar to one given in the case of assessee, Natraj Dal Mill in ITANo.153/Ind/2021. Since we have already adjudicated there issue in the case of Natraj Dal Mill(supra), we apply our decision *mutatis mutandis* in the case of

Shri Ashok Somani and delete the disallowance and therefore, grounds 1 to 3 raised by the Assessee are allowed.

15. In the result, Appeal of the assessee namely Natraj Dal Mill in ITANo.153/Ind/2021 & Ashok Somani in ITANo.131/Ind/2021 are allowed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 06.12.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 06/11/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore