

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.96/Ind/2021
Assessment Year:2017-18**

Shri Bhuvnesh Kumar Kabra Bhopal (Appellant)	<u>बनाम/</u> Vs.	DCIT/ACIT 2(1) Bhopal (Respondent)
P.A. No.AEBPK8409E		
Revenue by	Shri Arpit Mundra, AR	
Respondent by	Shri Amit Soni, Sr. DR	
Date of Hearing:	10.11.2021	
Date of Pronouncement:	26.11.2021	

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeal at the instance of Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals), (in short 'CIT(A)'), Bhopal dated 05.03.2021 which is arising out of the order u/s 143(1) of the Income Tax Act 1961(In

short the 'Act') dated 21.05.2019 framed by the Assessing officer of CPC Bangalore.

2. Brief facts of the case as culled out from the records are that the assessee is individual engaged in the business of manufacturing and processing of plastic packaging goods. E-return of income filed on 05.10.2018 declaring income of Rs.13,74,370/-. The case of the assessee was processed u/s 143(1) of the Act by the Central Processing Centre vide order dated 21.05.2019 income was assessed at Rs.17,30,310/- after making disallowance of Rs.3,55,935/- for delay for payment of Provident Fund and ESIC for the contribution by employer and employee.

3. Aggrieved assessee preferred an appeal before the ld. CIT(A) but partly succeeded.

4. Now the revenue is in appeal before this Tribunal raising following grounds:

1. On the fact and on the circumstances of the case the Ld. CIT(A) has erred in confirming the addition of Rs.1,54,463/- on account of contribution for belated payment of employees share of PF & ESIC i.e. after due date specified in respective Act and treated the income of the assessee as per section 2(24)(X) of the Act.

2. On the fact and on the circumstances of the case the Ld. CIT(A) has erred in directing the Ld. AO to verify the claim of the appellant pertaining

to employer's contribution of Rs.2,01,472/- same is bad in law and beyond the jurisdictional powers conferred to Ld. CIT(A).

3. The appellant craves leave to add, alter, amend or withdraw the grounds of appeal as and when necessary.

5. At the outset, Ld. counsel for the assessee referring to the paper book containing 87 pages states that the issue raised in the instant appeal squarely covered by the decision of 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* and disallowance is uncalled for, as the alleged payments towards PF/ESIC contributions were deposited before due date of filing the return u/s 139(1) of the Act.

6. Per contra ld. DR supported the orders of both lower authorities.

7. We have heard rival contentions and perused the records placed before us. We note that the disallowance of Rs.3,55,940/- was made by the CPC while processing the return of income u/s 143(1) of the Act. This disallowance constitutes two amounts of which Res.1,54,463/- is towards sum received from employees on account of PF/ESIC contribution and remaining amount of Rs.2,01,472/- the employers contribution. On perusal of the records and details filed it remains uncontroverted fact with the total alleged sum has been deposited with the concerned authority before due date of

filing of return of income. This disallowance was made for delay in depositing the said sum before the due date as prescribed by the authorities regulating PF/ESIC. Though the provisions of *section 36(1)(va)* refers to the sum received by the assessee from employees towards PF/ESIC but the CPC has made the disallowance for sum contributed by employer also which is not justified. Even otherwise total contribution by employer and employee totaling to Rs.3,55,935/- stands deposited before the due date of filing the return u/s 139(1) i.e. 31.10.2018. This facts remains uncontroverted by the Revenue.

6. We find that under the given facts and circumstances, where there is a delay in deposit of employees contribution to PF/ESIC as per the due date prescribed under the provisions of PF/ESIC but the contribution is deposited before the due date of filing of return of income. No disallowance is called for u/s 36(1)(va) of the Act as held by this Tribunal in the case of *M/s Industrial Filters and Fabrics Pvt. Ltd. (supra)* wherein the tribunal has observed the following:

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.

7. Ld. DR failed to bring any binding precedence in its favour of the jurisdictional High Court on this issue, therefore, the issue raised in the instant appeal is squarely covered by decision of this Tribunal. We, accordingly set aside the finding of Ld. CIT(A) and delete the

disallowance of Rs.3,55,935/-(employees contribution to PF/ESIC at Rs.1,54,463/- and employees contribution to PF and ESIC at Rs.2,01,472/-). Ground no.1 & 2 raised by the assessee are allowed. Ground No.3 is general in nature which needs no adjudication.

8. In the result, Appeal of the assessee in ITANo.96/Ind/2021 is allowed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on ... 26.11.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/11/2021

Patel/PS

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

By order

Assistant Registrar, Indore