

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल” चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH “SMC” CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.268/CHD/2021

निर्धारण वर्ष / Assessment Year : 2018-19

Shri Inder Singh, M.S. Enterprises, Near Agro, Hansi Road, Jind.	बनाम	The DCIT, (CPC), ITO, Ward-2, Jind.
स्थायी लेखा सं./PAN NO: BRNPS0490M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sanjay Kumar Singla, Advocate

राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, JCIT

सुनवाई की तारीख/Date of Hearing : 01.12.2021

उद्घोषणा की तारीख/Date of Pronouncement : 01.12.2021

**Hearing through Video Conferencing**

**आदेश/ORDER**

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, (in short referred to as CIT(A) dated 11.08.2021 relating to A.Y. 2018-19, passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “Act”).

2. The solitary issue in the present appeal relates to the addition made to the income of the assessee in the intimation made u/s 143(1) of the Act, by disallowing delayed payments of employees contribution to ESI and PF

amounting to Rs.37,08,735/- by invoking the provisions of section 36(1)(va) of the Act.

3. The Ld. Commissioner of I.Tax (A) upheld the addition on the basis of the amendment effected by the Finance Act, 2021, to section 43B of the Act by insertion of Explanation-5 and to section 36(1)(va) of the Act by insertion of Explanation-2, both to the effect that due date for payment of employees' contribution to ESI and PF, for the purpose of claiming deduction of the said amount as per the provisions of section 36(1)(va) of the Act was not governed by section 43B stipulating the due date to be till the filing of return of income u/s 139(1) of the Act, meaning thereby the employees' contribution to ESI and PF was to be paid by due date specified in their respective Acts for the purpose of claiming deduction thereof. The Ld.CIT(A) held that the said amendment to be clarificatory and hence retrospective in application. Accordingly, the contention of the Ld. Counsel for the assessee that the issue already stood decided in its favour by the Hon'ble Jurisdictional High Court in the case of CIT vs. M/s Lakhani Rubber Udyog (P) Ltd ITA No.215 of 2010 dt 22.09.2015 & CIT vs Nuchem Ltd (2015) 371 ITR 164(P&H), was brushed aside and the addition upheld.

4. This issue has been dealt with and adjudicated by the ITAT in a number of cases, consistently ruling in favour of the assessee, holding that the amendment to section 43B of the Act by insertion of Explanation-5 and to section 36(1)(va) of the Act by insertion of Explanation-2, by the Finance Act 2021 is prospective and the issue otherwise stands decided by

the jurisdictional high court in favour of the assessee. In the case of Ajay Piplani Vs Assistant Director of Income Tax, CPC, Bengaluru in ITA No. 114/CHD/2021 order dated 04.10.2021 the issue has been adjudicated at para 5 to 7 of the order as under :

*“5. We have heard both the parties. It is not denied that the employees contribution to ESI and PF was allowable and claimed as deduction by the assessee on the strength of various decisions of the jurisdictional High Court holding contributions deposited by the due date of filing of return of income u/s 139(1) of the Act as allowable. The Revenue has disallowed the same in the impugned year by applying the amendment made by Finance Act 2021 to section 36(l)(va) and 43B of the Act allowing the claim of such deduction only when paid by due dates specified in their respective Acts, holding the amendment to be applicable on all pending cases post the amendment.*

*6. We have gone through the orders of the coordinate Benches of the ITAT cited by the Ld.Counsel for the assessee before us and have noted that it has been consistently held that the amendment to section 36(l)(va) and u/s 43B of the Act effected by the Finance Act 2021 is applicable prospectively ,reading from the Notes on Clauses at the time of introduction of the Finance Act, 2021, specifically stating the amendment being applicable in relation to assessment year 2021-22 and subsequent years. Therefore the addition, we hold, cannot be made on the strength of the amendment effected by Finance Act 2021 to section 36(l)(va)/43B of the Act. Moreover it is an admitted position that the jurisdictional High Court has in various decisions held that employees contribution to ESI & PF is allowable if paid by the due date of filing return of income u/s 139(1) of the Act. The jurisdictional High Court has held so in the following cases:*

- 1) CIT Vs. Nuchem Limited, ITA No.323 of 2009*
- 2) CIT Vs. Hemla Embroidery Mills Pvt. Ltd.(2014), 366 ITR167*

*7. In view of the above, we hold that the claim of employees contribution to ESI and PF as per section 36(l)(va) of the Act cannot be denied in the impugned year, i.e. 2019-20 on the basis of amendment made to the section by Finance Act 2021. The order of the Ld.CIT(A) upholding the said disallowance to the tune of Rs. 18,21,088/- is therefore set aside and the AO is directed to allow the claim of the assessee.”*

On similar lines the issue has been adjudicated in favour of the assessee in the case of M/s.Jupiter Aqua Lines Pvt. Ltd vs DCIT,Circle 6(1) Mohali in ITA No.83/Chd/2021 dated 27<sup>th</sup> August 2021.

5. In view of the aforesaid decisions of the ITAT, therefore the contention of the Ld.DR before us that the amendment to section 36(1)(va) of the Act is retrospective is dismissed. Also since no facts distinguishing the present cases from those decided by the ITAT have been pointed out by the Ld.DR before us and admittedly the amounts of employees' contribution to ESI and PF stood paid before the due date of filing of return of income, the issue of disallowance on account of delayed payments of employees' contribution to ESI and PF is squarely covered by the aforesaid decisions, following which the disallowance made of ESI/PF employees' contribution u/s 36(1)(va) amounting to Rs. 37,08,735/- is deleted.

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

Order pronounced in open court on 01.12.2021.

Sd/-

(संजय गर्ग)

( SANJAY GARG )

न्यायिक सदस्य/ Judicial Member

Poonam”

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
- 7.

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar