

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.255/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sarvesh Multiplast India (P) Ltd., Sr.No. 367/1, Kothampalayam, Chennimalai, Erode – 638 051.	बनाम/ Vs.	DCIT, CPC, Bengaluru.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AANCS-0352-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri ARV Sreenivasan, (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	11-01-2022
घोषणा की तारीख / Date of Pronouncement	:	11-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The only grievance of the assessee in the captioned appeal for Assessment Year (AY) 2018-19 is disallowance on account of late payment of employees' contribution to ESI and PF for Rs.26.63 Lacs. The Ld. AR submitted that these payments were made by the assessee before due date of filing of return and therefore, the same are allowable as deduction. Reliance has been placed on the recent decision of this

Tribunal in **Adyar Anand Bhawan Sweets India Pvt. Ltd. V/s ACIT (ITA Nos. 402-403/Chny/21 dated 08.12.2021)**. On the other hand, Ld. DR submitted that amendment to Sec.36(1)(va) by way of insertion of Explanation-2 by Finance Act, 2021 w.e.f. 01.04.2021 was retrospective in nature.

2. The material on record would show that an intimation was issued to the assessee u/s 143(1) on 16.10.2019 wherein the Business Income was taken to be Rs.474.58 Lacs as against Rs.447.95 Lacs reflected by the assessee. The difference arose on account of the fact that there was late payment of employees' contribution to PF & ESI amounting to Rs.26.63 Lacs. Upon further appeal before National Faceless Appeal Centre (NFAC), the assessee submitted that the dues were paid before due date of filing of return of income and therefore, the same would be deductible as per various judicial decisions. However, relying upon contrary decision of Hon'ble Gujarat High Court in **Gujarat State Road Transport Corporation (41 Taxmann.com 100)**, it was held by appellate authority that the same would not be allowable as per Sec.36(1)(va). The amendment to this section by Finance Act, 2021 was clarificatory in nature. Aggrieved, the assessee is in further appeal before us.

3. We find that in the cited decision of **Adyar Anand Bhawan Sweets India Pvt. Ltd. V/s ACIT (ITA Nos. 402-403/Chny/21 dated 08.12.2021)**, it has already been held by the coordinate bench that the amendment to Sec.36(1)(va) by way of insertion of explanation-2 would operate prospectively only. Therefore, considering the same, we remit the matter back to the file of learned first appellate authority to ascertain

the actual dates of payment made by the assessee and re-adjudicate the issue in the light of this decision.

3. The appeal stand allowed for statistical purposes.

Order pronounced on 11th January, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 11-01-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF