

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND SHRI S.S. GODARA, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCE)**

<b>ITA No.538/Hyd/2020 (Assessment Year : 2018-19)</b>		
M/s. Swati Airport Support Services Pvt. Ltd., Hyderabad. PAN AARCS2870G	<b>Vs.</b>	Dy. Commissioner of Income Tax, Circle 3(2), Hyderabad.
Appellant		Respondent

Appellant By : None.

Respondent By : Shri T. Sunil Goutam.

Date of Hearing : 11.01.2022.

Date of Pronouncement : 17.01.2022.

**O R D E R**

**Per Shri S.S. Godara, J.M. :**

This assessee's appeal for Asst. Year 2018-19 arises from the Commissioner of Income Tax (Appeals)-3, Hyderabad's order dt.31.07.2020 passed in case No.10230/2019-20/A3/CIT(A)-3 in proceedings under Section 143(1) of Income Tax Act, 1961 ('the Act').

Case called twice. None appeared at assessee's behest. Heard learned department representative. We proceed to hear exparte.

2. We notice at the outset that assessee's instant appeal suffers from 1 day delay in filing. Learned counsel submitted that due to the outbreak of pandemic covid 19 unable to get the documents from the department which caused the impugned delay in filing of the instant appeal. Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No.9488 & 9489/2019 dated 17<sup>th</sup> Dec., 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of one is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits therefore.

3. Coming to the sole substantive issue of ESI/PF disallowance of Rs.43,77,132- made in both the lower proceedings, the rival stands adopted throughout and that the

same had been paid before the due date of filing Sec.139(1) return and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) as well as u/s. 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 01-04-2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/ disallowance u/s.43B as against employee's contribution u/s.36(va) of the Act; respectively. However, keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 01-04-2021 only, we hold that the impugned disallowance is not sustainable in view of all these latest developments. The impugned ESI/PF disallowance is deleted therefore.

4. These assessee's appeal is allowed in above terms.

Order pronounced in the open court on 17<sup>th</sup> Jan.,2022.

Sd/-

**(A.MOHAN ALANKAMONY)**  
Accountant Member

Sd/-

**(S.S. GODARA)**  
Judicial Member

Hyderabad, Dt. 17.01.2022.

\* Reddy gp

Copy to :

1.	M/s. Swati Airport Support Services Pvt. Ltd., Villa No.208, APR Pranav Antilla, Beside Keshav Reddy School, Bachupally, Hyderabad.
2.	DCIT, Circle 3(2), Hyderabad.
3.	Pr. C I T-3, Hyderabad.
4.	CIT(Appeals)-3, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.