

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.458/PUN/2021

निर्धारण वर्ष / Assessment Year : 2018-19

Maharashtra Light Industries 24-B, Hadapsar Industrial Estate, Pune – 411013 PAN : AADFM1525B	Vs.	ITO, Ward 14(1), Pune
Appellant		Respondent

Assessee by Shri Sarvesh Khandelwal  
Revenue by Shri M.G. Jasnani

Date of hearing 31-01-2022  
Date of pronouncement 31-01-2022

आदेश / ORDER

**PER R.S.SYAL, VP :**

This appeal by the assessee is directed against the order dated 14-09-2021 passed by the CIT(A), National Faceless Appeal Centre, in relation to the assessment year 2018-19.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.3,50,650 made by the AO on account of late deposit of employees’ share of EPF and ESI but before the due date u/s 139 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’).

3. Briefly stated, the facts of the case are that the AO made an addition of Rs.3,50,650 on account of late deposit of employees’

share of EPF and ESI contribution that was deposited before the due date of return u/s 139. The ld. CIT(A) confirmed the disallowance in terms of section 36(1)(va) of the Act.

4. I have heard both the sides in Virtual Court and gone through the relevant material on record. It is an admitted position that the assessee did deduct employees' share of EPF and ESI but paid the same after the due date under the respective legislations but before the time for filing return u/s 139(1) of the Act. This issue is no more *res integra* in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The Hon'ble Himachal Pradesh High Court in *CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP)* has held that there exists no difference between employees' or employer's contribution and both are to be allowed as deduction if deposited before the due date.

5. At this juncture, it is relevant to mention that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01.04.2021. The effect of this amendment is that if the amount of employees'

contribution towards EPF, ESI, etc is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1<sup>st</sup> April, 2021 and will, accordingly, apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment year under consideration, namely, 2018-19 is anterior to the amendment carried out with effect from A.Y. 2021-22, I hold that the position of law as set out by various Hon'ble High Courts including the one in *CIT vs. Nipso Polyfabriks Ltd. (supra)* squarely applies to the facts and circumstances of the instant case thereby not warranting any disallowance since the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 31<sup>st</sup> January, 2022.

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 31<sup>st</sup> January, 2022  
GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned CIT(A)
4. The concerned Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे /  
DR 'SMC', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,****// True Copy //**Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	31-01-2022	Sr.PS
2.	Draft placed before author	31-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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