

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI SATBEE SINGH GODARA, JUDICIAL MEMBER**

ITA No. 520/Hyd/2021 Assessment Year: 2018-19		
Majestic Enterprises, Hyderabad. PAN - AACFM818F 0(Appellant)	Vs.	Income-tax Officer, Ward - 5(1), Hyderabad. (Respondent)
Assessee by:	Shri MV Joshi for P. Murali Mohana Rao	
Revenue by:	Shri Swapnil Patil for Shri TS Goutam	
Date of hearing:	02/02/2022	
Date of pronouncement:	02/02/2022	

ORDER

PER A. MOHAN ALANKAMONY, A.M.:

This appeal filed by the assessee is directed against CIT(A)'s National Faceless Appeal Centre (NFAC) order dated 26/10/2021 for AY 2018-19 involving proceedings u/s 154 of the Income Tax Act, 1961, in short "the Act".

2. The only issue involved in this appeal is that the addition of Rs. 5,97,685/- towards employees' contribution to PF made on the ground that the same was not paid

before the due date as provided u/s 36(1)(va) of the I.T. Act.

3. Briefly, the facts of the case are that the assessee the appellant is a firm and furnished its return of income for the A.Y. 2018-19 on 28.10.2018 admitting total income of Rs.7,53,438/-. The A.O passed order u/s. 143(1) levying demand of Rs.4, 13,290/- The request of appellant was rejected u/s 154 by CPC vide order dated 04.02.2020 computing total income of the appellant at Rs. 18,31,915/- by making an addition of Rs.5,97,685/- u/s 143(1) towards disallowance of appellant's claim of payment of provident fund, on the ground that the same was not paid into the account before the due date as provided in section 36(1)(va) of the Act.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the disallowance made by the AO.

5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee submitted before the lower authorities that the employees' contribution to PF paid after the due date, but, before the due date of filing the return of income. Therefore, the issue has been settled that if the assessee has paid the PF and

ESI payments before the due date of filing of return income u/s 139(1) of the Act, no disallowance is warranted as held by the coordinate bench of the ITAT Hyderabad in case of ITA No. 2197/Hyd/2017 for Assessment Year: 2013-14, in case of Value Momentum Software Services Private Limited, Vs Deputy Commissioner of Income Tax, in which, it was held as under:

“5. Next comes the latter issue of Section 43B disallowance of Rs.8,11,648/- pertaining to employees provident fund. It is not in dispute that learned lower authorities held that the same had to be deposited before the due date prescribed in the corresponding statute than the due date for filing Section 139(1) return. The Revenue’s case in tune thereof relies on Section 36(va) read with explanation thereto that it is not Section 43B but the former provision which is applicable in such an instance. We find no merit in the Revenue’s foregoing stand. We take note of the explanatory memorandum to the Finance Act, 2021 proposing amendment in both Section 36(va) as well as Section 43B by inserting corresponding Explanations that although the impugned employees provident fund comes under the former provision only, the same is applicable from 01-04-2021 onwards. Meaning thereby that the legislature itself has condoned the impugned default before 01-04-2021. We thus delete the impugned employees provident fund disallowance of Rs.8,11,648/- for this precise reason alone. Necessary computation to follow as per law.”

5.1 Respectfully, following the above judgement of the coordinate bench of Tribunal, we direct the AO to delete the addition of Rs. 5,97,685/- made towards employees PF contribution and confirmed by the Id. CIT (A) and

accordingly, the grounds raised by the assessee on this issue are allowed.

6. In the result, appeal of the assessee is allowed in above terms.

Pronounced in the open court on 2nd February, 2022.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 2nd February, 2021.

Copy to :

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2	<i>ITO, Ward - 5(1), Hyderabad.</i>
3	<i>CIT(A), NFAC, Delhi</i>
4	<i>ITAT, DR, Hyderabad.</i>
5	<i>Guard File.</i>