

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI DUVVURU R L REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S. BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 158/VIZ/2021
(Asst. Year : 2017-18)**

Eisai Pharmaceuticals
India Pvt. Ltd., Plot Nos.
96, 97, 98, 124 & 126,
Ramky Pharma City Sez,
Parawada, Visakhapatnam

Vs. DCIT, Circle-4(1),
Visakhapatnam.

PAN No. AABCE 8168 P
(Appellant)

(Respondent)

Assessee by : Shri Y.Surya Chandrarao, CA.
Department by : Shri Mudaliar, Sr.DR

Date of hearing : 02/02/2022.
Date of pronouncement : 16/02/2022.

ORDER

PER S. BALAKRISHNAN, AM

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [for short, "CIT(A)"], National Faceless Appeal Centre in order No.ITBA/NFAC/S/250/2021-22/1034474665(1), dated 28/07/2021 for the A.Y. 2017-18.

2. Brief facts of the case are that assessee engaged in the business of manufacturing drugs and pharmaceuticals, filed its

return of income for the A.Y. 2017-18 on 29/11/2017 admitting total income of Rs. 20,26,07,770/-. The return was selected for scrutiny under CASS and statutory notices 143(2) & 142(1) were issued to the assessee. The assessee submitted various records to the AO as per the questionnaire issued to it. The AO after considering the submissions relied on Form 3CD at serial No.20b regarding the contribution received from employees as detailed below:-

PF Contribution

S.No.	Type of contribution	Sum received from employee	Month	Due date for payment	Date of remittance
1	EPF	731658	Apr'16	15/05/2016	18/05/2016
2	EPF	627258	Feb'17	15/03/2017	16/03/2017
Total		1358916			

ESI Contribution

S.No.	Type of contribution	Sum received from employee	Month	Due date of payment	Date of remittance
1	ESI	6227	Apr'16	21/05/2016	25/05/2016
2	ESI	6090	Jul'16	21/08/2016	23/08/2016
3	ESI	7216	Aug'16	21/09/2016	23/09/2016
4	ESI	3785	Jan'17	21/02/2017	24/02/2017
5	ESI	13930	Jan'17	21/02/2017	28/02/2017
Total		37248			

The AO therefore disallowed the employees contribution towards PF aggregating to Rs. 13,58,916/- and employees contribution towards ESI aggregating to Rs. 37,248/- stating that the payments under the respective Acts were made with a delay, hence, disallowance is attracted as per the provisions of section 36(1)(va) of the Act.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A). The Id.CIT(A) after considering the

various case laws and relying on the amendment made in the Finance Act 2021, in respect of sections 36 & 43B of the Act, confirmed the order of the AO. Aggrieved by the order of the Id.CIT(A), assessee is in appeal before this Tribunal.

4. The assessee has submitted a detailed written submission dated 25/01/2022 and relied on various case laws of the Hon'ble High Courts and Co-ordinate benches.

5. Ld.DR has accepted that the payments are made on or before the due date of filing of return u/sec. 139(1) of the Act.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. made additions towards belated payment of employees' contributions to PF and ESI under the respective Acts. According to the A.O., employees' contribution to provident fund and ESI, is deductible under the provisions of section 36(1)(va) of the Act, if the same is paid on or before the due date specified under the respective Act. The A.O. further was of the opinion that in view of the clear provisions of section 2(24)(x) r.w.s. 36(1)(va) of the Act, any recovery from employees towards provident fund and ESI contribution is deemed to be income of the assessee, if the employer had not paid the same to the account of the employee within due date specified under the provisions respective Acts. It is the contention of the assessee that second proviso to section 43B of the Act provides that no deduction shall be allowed unless such sum is actually been paid on or before due date as specified in explanation to 36(1)(va) of the Act which was omitted by the Finance Act, 2003 w.e.f. 1.4.2004 and accordingly, there was no

special provision regarding employees' contribution to PF/ESI. It is further contended that as per the amended provisions of section 43B of the Act, any sum payable by the assessee as an employer by way of contribution to PF shall be allowed, if the same is paid on or before the due date of filing of return of income u/s 139(1) of the Act.

7. The only issue to be resolved is whether the assessee would be entitled to claim deduction for the employees' contribution made to PF/ESI after the due date prescribed under the respective Act, but before the due date prescribed for filing of income tax return in the light of the provisions contained in section 36(1)(va) of the Act and section 43B(b) of the Act. It is the contention of the assessee that there is no distinction between employer and employee contribution after omission of second proviso of section 43B of the Act by Finance Act, 2003 w.e.f. 1.4.2004. We find force in the arguments of the assessee for the reason that there is no difference between employees and employer contribution under the respective Act. If the legislature intends to differentiate employees and employer contribution, then there would have been two due dates like in the case of Income Tax Act.

8. On merits also, this Tribunal has consistently viewed that the employees contribution to PF and ESI is allowable deduction if the same is paid before the due date of filing the return of income. In the case of APEPDCL in I.T.A.No.609/V/2014 dated 29.07.2016, the coordinate bench of ITAT, Visakhapatnam after considering the decision of Hon'ble Karnataka High Court in the case of *Essae Teraoka (P) Ltd. Vs. DCIT 366 ITR 408* and the decision of

coordinate bench of ITAT Hyderabad in the case of *Tetra Soft (India) Pvt. Ltd. Vs. ACIT* (2015) 40 ITR (Trib) 470 and also taking support from the decision of Hon'ble Supreme Court in the case of *CIT Vs. M/s Vegetables Products Ltd.*, 88 ITR 192, decided the issue in favour of the assessee.

9. Considering the facts and circumstances of the case and also following the judicial precedents as discussed above, we are of the view that there is no distinction between employees' and employer contribution to PF and if the total contribution is deposited on or before the due date of furnishing return of income u/sec. 139(1) of the Act, then no disallowance can be made towards employees' contribution to PF/ESI.

10. Therefore, for the reasons recorded in the preceding paragraphs, the appeal filed by the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 16th day of Feb., 2022.

sd/-
(DUVVURU R L REDDY)
Judicial Member

sd/-
(S. BALAKRISHNAN)
Accountant Member

Dated: 16th Feb., 2022.

vr/-

Copy to:

1. *The Assessee - Eisai Pharmaceuticals India Pvt. Ltd., Plot Nos. 96, 97, 98, 124 & 126, Ramky Pharma City Sez, Parawada, Visakhapatnam.*
2. *The Revenue - DCIT, Circle-4(1), Visakhapatnam.*
3. *The CIT(A), NFAC, Delhi.*
4. *The D.R., Visakhapatnam.*
5. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.