

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए.", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 374/CHD/2021

Assessment Year : 2019-20

Gretis India Private Ltd., SCO 95, Sector 3, Panchkula.	बनाम VS	The ITO, Ward 3(5), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACR8554R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Mrs. Preet Kamal, CA

राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, Sr.DR

तारीख/Date of Hearing : 01.03.2022

उद्घोषणा की तारीख/Date of Pronouncement : 03.03.2022

VIRTUAL HEARING

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 01.10.2021 passed u/s 250 of the Income Tax Act, 1961 by the CIT(A) (NFAC i.e. National Faceless Appeal Centre) Delhi pertaining to 2019-20 assessment year on the following ground :

1. *Explanation to section 36(1)(va) and 43B is inserted by Finance Act 2021 w.e.f. 01.04.2021. That Ld. CIT(A) has wrongly applied it with retrospective effect. Memorandum explaining the provisions in The Finance bill 2021 clearly states at page no 42 that "These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.*
2. *That Ld.CIT(A) has not considered the fact that this issue has already been decided in assessee's favour in A.Y.2015-16 vide appeal no. 10409/17-18 on 07/02/2020.*
3. *That the Ld. CIT(A) has also ignored the jurisdictional Punjab and Haryana High Court decision in favour of appellant and has also ignored the binding decision of Hon'ble SC in the case of CIT vs. Alom Extrusions Ltd.(2009) 319 ITR306 (SC).*

4. *That Ld. CIT(A) is not justified in making the addition of Rs.57,29,716/- as the factual aspect is that Rs.55,49,965/- has been deposited on time and within due date u/s 36(l)(va) and there is delay for Rs. 1,79,751/- which has also been deposited before the due date of filing of ITR.*
 5. *That Ld. CIT(A) has treated the whole amount as income of the assessee while there is mistake in the preparation, signing and filing of the Tax Audit Report by Chartered Accountant. Hence the assessee be not penalized for the mistake of the Chartered Accountant (CBDT Circular No. 14(X L-35) of 1955 Dt 11.04.1955.*
 6. *That CIT(A) has wrongly interpreted that by late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. He has ignored that assessee also deposit interest and penalty according to welfare act for late deposit of contributions to the welfare fund and in that case how can be assessee get unjustly enriched by the amount.*
 7. *That the Assessee craves of permission to add, amend, alter or withdraw any grounds of appeal with approval of Hon'ble Bench.”*
2. Both the Id. AR and the Sr.DR were heard.
3. The relevant facts are found discussed in para 4.2.4 of the impugned order wherein the employees' contribution to PF/ESI was noticed to have been paid before the filing of the return of income u/s 139(1), however, under the specific Statute, there was a delay.
4. We have heard the submissions and perused the material available on record. It is seen that in the present appeal, the assessee has only assailed the disallowance sustained by the CIT(A) vide his order passed u/s 250(6) of the Act amounting to Rs. 57,29,716/- on the grounds that the ESI & PF payments were not made within time as per the relevant Statute. The claim of the assessee that the payments were made before the due date of filing of the return u/s 139(1)

was held to be not relevant. It is seen that the said issue as far as the present Forum is concerned, stands fully covered in favour of the assessee not only by the consistent orders of the various Benches of the ITAT namely; the order dated 03.08.2021 of the Delhi Benches in the case of Insta Exhibition Pvt. Ltd. Vs ACIT in ITA 6941/Del/2017; order dated 01.07.2021 of the Hyderabad Bench in the case of Crescent Roadways Pvt. Ltd. Vs DCIT in ITA No. 1952/Hyd/2018 but also consistent orders of the Chandigarh Bench. It is seen that all along the Co-ordinate Benches have held that the amendments to Sections 36(1)(va) and u/s 43B of the Income Tax Act effected by the Finance Act, 2021 is applicable prospectively and not retrospectively. While coming to the said conclusion, the Benches have relied upon and read from the Notes on Clauses at the time of introduction of the Finance Act, 2021 and have held that the amendment is applicable in relation to the assessment year 2021-22 and subsequent years and not retrospectively. Thus, in view of this legal position as considered by the Co-ordinate Benches and taking note of the decisions of the jurisdictional High Court in the case of CIT Vs Nuchem Limited ITA 323 of 2009 and CIT Vs Hemla Embroidery Mills Pvt. Ltd. (2014) 366 ITR 167 we are of the view that the additions cannot be made or sustained on the strength of the amendment effected by

Finance Act, 2021 to Sections 36(1)(va)/43B of the Act as the legal position thereon is very clear. The departmental stand that it is clarificatory in nature has consistently been rejected. Thus, in the face of the clear legal position, as set out hereinabove, we find that the claim of the assessee is to be allowed in the year under consideration which is 2019-20 assessment year. The impugned order, accordingly, is set aside and the AO is directed to delete the disallowance. The appeal of the assessee is allowed. Said order was pronounced in the presence of the parties via Webex.

5. In the result, the appeal of the assessee is allowed.

Order pronounced on 03 March,2022.

Sd/-

(VIKRAM SINGH YADAV)

लेखा सदस्य/ Accountant Member

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar