

आयकर अपीलिय अधिकरण
मुंबई पीठ " सी " , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
आ.अ.सं. 1409/मुं/2021 (नि.व.2019-20)
ITA No. 1409/Mum/2021 (A.Y. 2019-20)

PMGS India Pvt. Ltd.

M/s. Kalyaniwalla & Mistry LLP,
Esplanade House, 2nd Floor,
29, Hazarimal Somani Marg,
Fort, Mumbai-400001

PAN: AAFCP8896B

..... अपीलार्थी / Appellant

बनाम Vs.

ITO, Range- 1(2)(4),
Room No. 537, 5th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. M.M. Golvala, CA
प्रतिवादी द्वारा/ Respondent by : Sh. R. A. Dhyani, Sr. DR
सुनवाई की तिथि/ Date of hearing : 07/03/2022
घोषणा की तिथि/ Date of pronouncement : 07/03/2022

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as 'the CIT(A)'] dated 24.07.2021 for the Assessment Year (AY) 2019-20.

2. Sh. M.M. Golvala appearing on behalf of the assessee submitted that the assessee in appeal has raised five grounds. All grounds are directed towards the single issue of disallowance of late payment of employee contribution to Provident Fund (PF) Rs. 91,378/-. The Id. Authorized Representative (AR) submitted that the assessee had filed its return of income on 26.11.2019 declaring total income of Rs. 1,19,78,980/-. The assessee received a communication from Central Processing Centre, Bangalore (in short 'CPC') under section 143((1)(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') proposing adjustment under section 36(1)(va) in respect of late payment of PF. In response to the aforesaid notice, the assessee filed reply stating that the payments were made before due date of filing return of income and hence, no disallowance of the aforesaid expenditure under section 36(1)(va) of the Act should be made. In support of its submissions, the assessee placed reliance on the following decisions:

1. CIT Vs. Alom Extrusions Ltd. 319 ITR 306 (SC),
2. CIT Vs. Hindustan Organics Chemicals Ltd. 368 ITR 748 (Bom.)
3. CIT Vs. Ghatge Patil Transport 368 ITR 748 (Bom.)

The CPC without considering submissions of the assessee vide intimation under section 143(1) of the Act dated 05.03.2020 disallowed assessee's claim of deduction in respect of payment of PF and made addition of Rs. 91,378/-.

Aggrieved against the intimation under section 143(1), the assessee filed appeal before the CIT(A). The CIT(A) in the impugned order observed that there are several decisions in favour of the Revenue on this issue. Thereafter, the CIT(A) followed the decision rendered in the case of CIT Vs. Gujarat State Road Transport Corporation 41 taxmann.com 100 and held that employees contribution to

PF/ESIC, if not paid within due date mentioned in the respective statute is not allowable as deduction. The CIT(A) further placed reliance on the amendment made by the Finance Act, 2021 to section 36(1)(va) of the Act to disallow assessee's claim of payment of PF.

2.1. The Id. AR submitted that the CIT(A) has failed to take note of the fact that Explanation-(2) to section 36(1)(va) of the Act was inserted by the Finance Act, 2021 w.e.f. 01.04.2021, therefore, the AY 2019-20 would not fall within the purview of amended provisions. The Id. AR referred to memorandum explaining the provisions in the Finance Bill, 2021. The Id. AR pointed that it has been specifically mentioned in the memorandum that the amendment will take effect from 01.04.2021 and will accordingly apply to AY 2021-22 and subsequent AYs. The Id. AR submitted for the impugned AY, the law laid down by the Hon'ble Supreme Court of India and the Hon'ble Jurisdictional High Court would be applicable with regard to allowability of payments towards PF/ESI before due date of filing of the return of income.

3. Per contra, Sh. R. A. Dhyani representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee.

4. Both sides heard, orders of the authorities below examined. The solitary issue raised in the appeal is with regard to allowability of PF payment after the due date as mentioned in relevant statute but before due date of filing return of income. The CPC, Bangalore has disallowed assessee's claim in proceedings under section 143(1) of the Act. The assessee in response to the notice issued under section 143(1)(a) had intimated the CPC, Bangalore that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Apex Court in the

case of CIT Vs. Alom Extrusions Ltd. (supra) and the decision of Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transport. Despite that CPC disallowed assessee's claim under section 36(1)(va) of the Act. In First Appellate Proceedings, the CIT(A) upheld the order of CPC by placing reliance on the decision of non-jurisdictional High Court and referring to the provisions of section 36(1)(va) as amended by the Finance Act, 2021. It is relevant to mention here that the CIT(A) in the impugned order has mentioned the fact that there are judgments in favour of the assessee and the Revenue. Though, the issue has been settled by the Hon'ble Apex Court, still some of the High Courts have taken a contrary view, this make the issue debatable. It is a well settled legal position that no disallowance can be made under section 143(1) of the Act, where the issue is debatable.

5. Further, the CIT(A) has disallowed assessee's claim by following the decision of non-jurisdictional High Court and remained silent on the decisions referred by the assessee which includes decision of Hon'ble Supreme Court of India and the decision of Hon'ble Jurisdictional High Court. The Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transport (supra) following the judgment rendered in the case of CIT Vs. Alom Extrusions Ltd. (supra) held that assessee would be eligible for claiming deduction in respect of delayed payment (as per respective Act) of PF of employees contribution, if paid before due date of filing return of income. Therefore,, the reason given by CIT(A) to disallow the claim of assessee is unsustainable.

6. In so far as applicability of Explanation (2) to section 36(1)(va) inserted by the Finance Act, 2021, the same is effect from 01.04.2021. The Memorandum Explaining the provisions in Finance Bill, 2021 has in an unambiguous manner has expressed that the amendment will take effect from 01.04.2021 and will apply to

the AY 2021-22 and subsequent AYs. Thus, in light of above, we hold that the CIT(A) has erred in applying amended provisions of section 36(1)(va) to disallow assessee's claim of deduction of PF.

7. We find merit in appeal by the assessee, hence, the impugned order is set-aside and appeal of the assessee is allowed.

Order pronounced in the open court on **Monday**, the **7th** day of March, 2022.

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 07/03/2022

SK, Sr.PS

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

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ITAT, Mumbai