

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA Nos.154 & 155/PUN/2021
निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-20

Harakchand Deoji Shah, A/P. Koregaon, Tal. Koregaon, Dist. Satara Maharashtra – 415 501 PAN : AEBPS2834M	Vs.	ACIT, Satara Circle, Satara
(Appellant)		Respondent)

Appellant by Shri M.K. Kulkarni
Respondent by Shri S.P. Walimbe

Date of hearing 29-03-2022
Date of pronouncement 29-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee relate to the assessment years 2018-19 and 2019-20. As both the appeals are based on similar facts and common grounds, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. For the A.Y. 2018-19, the assessee is aggrieved by the confirmation of addition of Rs.4,08,380/- made by the Assessing Officer (AO) on account of late deposit of the employees' share of Employee State Insurance Corporation Scheme (ESIC)/Provident Fund (PF) contribution u/s 36(1)(va) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the return of the assessee was processed and an adjustment was proposed on account of late deposit of ESIC/PF. The Centralized Processing Centre, vide communication dated 19-01-2019 issued u/s.143(1)(a) of the Act, made an adjustment of Rs.4,08,380/- on account of late deposit of employees' share of ESIC/PF. The assessee contended before the Id. CIT(A) that the delayed amount was deposited before the filing of the return of income u/s.139(1) of the Act. The assessee relied on certain decisions in support of its contention. The Id. CIT(A), after admitting that the employees' contribution of ESIC/PF was late deposited by the assessee but before the stipulated time u/s.139(1) of the Act, sustained the addition.

4. After considering the rival submissions and perusing the relevant material on record, it is seen that the issue under consideration is no more *res integra* in view of the judgment of the Hon'ble Bombay High Court in *CIT Vs. Ghatge Patil Transports Ltd. (2014) 368 ITR 749 (Bom.)* in which it has been held that deduction for payment of employees' contribution cannot be disallowed in case the contribution of employees' share in the Welfare Funds got credited on or 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, ESIC, 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 1st April, 2021 and will, accordingly, apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment year under consideration, namely, 2017-18 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 *Ghatge Patil Transports Ltd. (supra)* squarely applies to the facts and circumstances of the instant case thereby not warranting any disallowance as 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.

A.Y. 2019-10 :

6. Both the sides are in agreement that the facts and circumstances of this appeal are *mutatis mutandis* similar to those of the A.Y. 2018-19. For this year also, the assessee late deposited the employees' share of contribution of ESIC/EPF amounting to Rs.3,81,992/-. The same was paid before the due date u/s.139(1) of the Act. Both the lower authorities have made and confirmed the disallowance u/s.36(1)(va) of the Act. Since the facts and circumstances for the instant year are admittedly similar to those for the A.Y. 2018-19, following the view taken hereinabove, I order to delete the disallowance.

7. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 29th March, 2022.

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

पुणे Pune; दिनांक Dated : 29th March, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), National Faceless Appeal Centre, Delhi
4. The Pr.CIT concerned
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
5. / 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	29-03-2022	Sr.PS
2.	Draft placed before author	29-03-2022	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.		

*