

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
ITA No. 1624/MUM/2019 (A.Y.2018-19)
ITA No. 1625/MUM/2019 (A.Y.2019-20)

M/s Empower Activity Camps Pvt Ltd 303, New Blue Heaven Juhu Versova Link Road Andheri (West) Mumbai-400 053 PAN : AABCE3784H	vs	National Faceless Appeal Centre (NFAC)
APPELLANT		RESPONDENT

Assessee represented by	Shri Shashi Bekal
Department represented by	Shri Pavan Kumar Beerla

Date of hearing	23/03/2022
Date of pronouncement	/03/2022

ORDER

Per Amarjit Singh (AM):

These are appeals filed by the assessee against the independent orders passed by the National Faceless Appeal Centre (NFAC), Delhi for the assessment years 2018-19 and 2019-20.

2. Since identical issues on similar facts are involved in these two appeals, therefore, these appeal are adjudicated together by taking ITA No.1625/Mum/2021 as lead case and its finding will be applied to ITAT No.1624/Mum/2021 mutatis mutandis.

3. The facts in brief are that return of income filed by the assessee was processed under section 143(1) of the Act. A disallowance to the amount of Rs.66,885/- under section 36(1)(va) of the Act on delayed payment made to

employees' contribution to Provident Fund was made by the Assessing Officer. This disallowance was made on the ground that assessee has deposited the aforesaid contribution beyond the due date as prescribed in the relevant Act.

4. Aggrieved, assessee filed appeal before the Ld.CIT(A). Ld.CIT(A) has dismissed the appeal of the assessee holding that Explanation 2 to section 36(1)(va) has been inserted to clarify that the provisions of section 43B shall not apply for the purpose of determining the due date. The Ld.CIT(A) has also stated that the aforesaid amendment take effect from 01/04/2021 that it would have retrospective effect in view of the proposed deeming provisions.

5. During the course of appellate proceedings before us, the Ld.Counsel contended that amended law cannot be applied retrospectively. The Ld.Counsel also submitted that prior to the amendment in the Finance Act, 2021, the Hon'ble jurisdictional High Court in the case of CIT vs Hindustan Organic Chemicals Ltd (2014) 366 ITR 1 (Bom); held that where assessee company made payment of employees' contribution towards Provident Fund that could not be disallowed in view of amendment to section 43B of the Act. The Ld.Counsel has also placed reliance on decision of Ghatgepatil Transport Ltd (2014) 368 ITR 249 (Bom) wherein it is held that section 43B of the Act is applicable to both employees and employers' contribution.

6. On the other hand, the Ld.DR has supported the orders of lower authorities.

7. Heard both the sides and perused the materials on record. The assessee has deposited employees contribution to Provident Fund after due date specified in the Provident Fund Act, but before the due date of filing the return

of income as prescribed under section 139(1) of the Act. With the assistance of learned representatives, we have perused the decision of Honourable jurisdictional High Court in the case of Hindustan Organic Chemicals Ltd (supra) and the case of Ghatgepatil Transport Ltd. The Hon'ble jurisdictional High Court held that both employer and employees' contribution are covered under the amendment to section 43B and also the judgement of Hon'ble Supreme Court in CIT vs Alom Extrusions Ltd (2009) 319 ITRE 306 that payment made was subject to benefit of section 43B. We have also gone through the decision of ITAT in the case of Mavinahalli Shivanjappa Vijayakumar and Adhyar Anand Bhavan Sweets India P.Ltd Chennai on the issue of applicability of the amended provisions of Explanation to section 36(1)(va)vide (ITA No.596 & 597/Bang/2021) and (ITA No.402 & 403/Chennai/2021). The ITAT, Bangalore Bench vide ITA No.596/Bang/2011 in the case of Mavinahalli Shivanjappa Vijayakumar (supra) after following the decision of Hon'ble High Court of Karnataka held that the amendment made to section 36(1)(va) of the Act will have prospective application. We have also perused the decision of ITAT Chennai in the case of Adhyar Anand Bhavan Chennai (supra) wherein after following the decision of Hon'ble High Court of Madras in the case of Industrial Security & Intelligence Pvt Ltd in TCA No.585 of 2015 held that the amendment brought in the statute by Finance Act, 2021, the provisions of section 36(1)(va) r.w.s. 43B of the Act amended by inserting Explanation 2 is prospective and not retrospective.

8. In the case of the assessee, it had remitted the employees' contribution towards Provident Fund beyond the due date as specified in the Provident Fund Act, but within the due date for filing the return of income, therefore, following the aforesaid decisions, we are of the considered opinion that the Id.CIT(A is not justified in disallowing the claim of deduction of assessee. Accordingly, we

decide this issue in favour of the assessed and disallowance made by the Assessing Officer is deleted.

9. Our decision for A.Y. 2019-20 will apply mutatis mutandis to appeal for AY. 2018-19.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 29/03/2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: /03/2022
Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai

	Details	Date	Initials	Designation
1	Draft dictated/ directed typed on computer on	25/03		Sr.PS/PS
2	Draft Placed before author	28/03		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

