

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORESHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA No.1354/Mum/2021 (A.Y 2018-19)

Borchers India chemicals Pvt. Ltd., 208 Anand Estates, 189A, Sane Guruji Marg, Mumbai – 400011	Vs.	The Income Tax Officer, Ward 25(2)(1), Aayakar Bhawan, M.K. Road, New Marine Lines, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHCB0226B		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	C.T. Mathews

Date of Hearing	22.03.2022
Date of Pronouncement	31.03.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the CIT(A) NFAC, Delhi, from the order passed by the A.O. u/s 143(1) of the Income Tax Act, 1961 for A.Y. 2018-19. The assessee has assailed the impugned order on the following grounds before us:

- “1. (a) The learned CIT(A) erred in confirming the jurisdiction exercised by Centralized Processing Centre under section 143(1) of the Income-tax Act, 1961 (‘the Act’) involving allowability of claim on account of delayed payment of employees’ contribution to Provident Fund (under the Employees Provident Fund & Miscellaneous Provisions Act, 1952) under section 36(l)(va) of the Act.

(b) The learned CIT(A) erred in not appreciating that adjustment under section 143(1) of the Act cannot be made on a debatable issue such as this and hence the impugned adjustment made is bad in law.

2. *(a) Without prejudice to the above, the learned CIT(A) erred in confirming the disallowance of Rs. 11,83,260 on account of delayed payment of employees' contribution under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, under section 36(l)(va) read with section 2(24) of the Act.*

(b) The learned CIT(A) erred in not appreciating that although the impugned payments of employee contribution to Provident Fund were made beyond the due dates under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, the same were however paid within the due date of filing of tax return of the Appellant and hence allowable as a deduction.

3. *The Appellant prays that the liability of education cess of Rs. 69,112 paid for the captioned year ought to be allowed as a tax-deductible expense while computing the total income.*

4. *The learned CIT(A) erred in confirming the levy of excess interest to the extent of Rs. 1,01,789 under section 234B of the Act.*

5. *The learned CIT(A) erred in confirming the levy of excess interest to the extent of Rs 24,860 under section 234C of the Act.*

6. *Each one of the above grounds of appeal is without prejudice to the other.*

7. *The appellant craves leave to add, to amend, to alter, to substitute, and to withdraw the above grounds of appeal."*

2. The fact in brief is that assessee has filed return of income declaring total income of Rs.92,14,970/-. The CPC, Bangalore has processed the return of income at Rs.10,39,83,330/- and addition of Rs.11,83,260/- has been made as employee contribution towards PF/ESIC has not been paid within due date as prescribed in the Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

2nd Ground: confirming disallowance of Rs.11,83,260/-

4. The assessee has deposited employees contribution to PF/ESIC after due dates prescribed in PF/ESIC Act but before the due date of filing the return of income as prescribed in Sec. 139(1) of the Act. During

the course of appellate proceedings before the ld. CIT(A) assessee has submitted that delay was occurred because the assessee had not received provident fund registration number from the provident fund office in time, however, same had been paid before the filing of income tax return and claimed as deduction u/s 36(1)(va) of the Act. The assessee has placed reliance on the decision of Hon'ble Jurisdictional Bombay High Court in the case of CIT Vs. Hindustan Organic Chemical ltd. (2014) 48 taxman.com 421 (Bom), wherein it is held that the employees contribution payment made to the provident fund account should be allowed as a deduction if the same have been paid within the due date of filing the return of income u/s 139(1) of the Act. The assessee has also placed reliance on the decision of CIT Vs. Ghatge Patil Transport Ltd (2015) 53 taxman.com 141 (Bom) wherein it is held that deduction of employees contribution were subject to benefit of Sec. 43b and hence deduction was allowable.

5. Heard the ld. D.R and perused the material on record. We have gone through the decision of ITAT in the case of Mavinahalli Shivanajappa Vijay Kumar Vs. DCIT (ITA No. 596 & 597/Bang/2021 and Adhyar Anand Bhavan Sweet India Pvt. Ltd. Vs. ACIT (ITA No. 402 & 403/Mum/2021 on the applicability of the amended provisions of Explanation2 to Sec. 36(1)(va). The ITAT vide ITA No. 596/Bang/2021 in the case of Mavinahalli Shivanajappa Vijay Kumar Vs. DCIT (supra) after following the decision of Hon'ble High Court of Karnataka held that amendment made to Sec.36(1)(va) of the Act will have prospective application. We have also perused the decision in ITAT Chennai in the case of Adhyar Anand Bhavan Sweet India Pvt. Ltd. Vs. ACIT (supra) wherein after following the decision of Hon'ble High Court of Madras in the case of Industrial Security and Intelligence Pvt. Ltd. in TCA No.

585/2015 held that the amendment brought in the statute by the Finance Act, 2021, provisions of Sec. 36(1)(va) r.w.s. 43B of the Act amended by inserting Explanation 2 is prospective and not retrospective.

6. In the case of the assessee it had remitted the employees contribution towards PF/ESIC on the due date for payment as specified in PF/ESIC Act within the due date for filing the return, therefore, following the aforesaid decision, we consider that ld. CIT(A) is not justified in disallowing the claim of deduction of the assessee. Accordingly, we decide this issue in favour of the assessee and disallowance made by the assessing officer is deleted.

3rd Ground: Education Cess of Rs.69,112/-

7. We have gone through the intimation u/s 143(1) of the Act dated 16.10.2019 issued by Dy. Commissioner of Income Tax, CPC and it is noticed that at column No. 28 as per return of income assessee has shown education cess of Rs.69,112/- whereas as per the intimation u/s 143(1) the A.O has taken the education cess at R.83,447/-. In this connection, we direct the assessing officer to recompute the education cess after allowing the claim of deduction of provident fund of Rs.11,83,260/- which has been decided in favour of the assessee as per ground no. 2 supra in this order. We don't find any other merit in the ground of appeal of the assessee, therefore, this ground is partly allowed for statistical purposes.

4th Ground: Charging of interest of Rs.1,01,789/-

8. In the return of income assessee has shown 234B interest to the amount of Rs.64,448/-, however, in the intimation u/s 143(1) the assessing officer has computed the interest u/s 234B to the amount of

Rs.1,66,237/-, in this regard we direct the A.O to recompute the interest to be charged u/s 234B after allowing the deduction of Rs.11,83,260/- pertaining to payment of provident fund. Therefore, this ground of appeal is allowed for statistical purposes.

5th Ground: Levy of excess interest of Rs.24,860/- u/s 234C of the Act:

9. The assessee has shown interest u/s 234C of the Act to the amount of Rs.54,834/- in the return of income, however, the assessing officer has computed the interest at Rs.79,694/- as per intimation u/s 143(1). We direct the A.O to recomputed the interest u/s 234C after allowing deduction of payment of Rs.11,83,260/- towards employees contribution to the provident fund by the assessee, therefore, this ground of appeal is allowed for statistical purposes.

10. Ground No. 1 of the assessee is not required to be adjudicated since we have allowed ground of appeal of the assessee regarding claim of deduction of Rs.11,83,260/- towards payment of employees contribution to provident fund u/s 36(1)(va) of the Act. Therefore, this ground of appeal is not required any adjudication and the same stand dismissed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.03.2022

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 31.03.2022

PS: Rohit

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True
Copy//

(Asst. Registrar)
ITAT, Mumbai