

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.117/Chny/2022**

(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s. Electrical India 205, Old No.92/2, Lake View Road, West Mambalam, Chennai-600 033.		The Assistant Director of Income Tax, CPC Bangalore.
PAN: AAAFE 2087M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. S. Sriniranjani,Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar,JCIT

सुनवाईकीतारीख/Date of hearing	:	31.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	31.03.2022

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 12.11.2021 and pertains to assessment years 2018-19.

2. At the outset, learned AR for the assessee submitted that appeal filed by the assessee is time barred by 42 days for which necessary petition for condonation of delay along with affidavit explaining reasons for delay has been filed. The AR further submitted that the assessee could not file appeal within

the time allowed under the Act, mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of Hon'ble Supreme Court suo motu Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR for the assessee, we find that the Hon'ble Supreme Court in suo motu Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of courts and tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme

Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee and admitted for adjudication.

5. The assessee has raised following grounds of appeal:-

*"1. The order of Commissioner of Income Tax (Appeals) is erroneous, illegal and opposed to facts to the extent it confirms the order of rectification passed by the Assessing Officer.*

*2.1 The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 46,12,420/- u/s 36(1)(va) on account of belated remittance of employees contribution to PF I ESI.*

*2.2 The Commissioner of Income Tax (Appeals), having accepted the fact that the amounts have been remitted well within the due date of filing the return of income, ought not have proceeded to confirm the disallowance; this is illegal and untenable.*

*2.3 The Commissioner of Income Tax (Appeals) went wrong in holding that the amendments made to Sec. 36(1)(va) and Sec. 43B by the Finance Act, 2021 is retrospective in operation, when the Act clearly says that it shall come into force w.e.f 01.04.2021. This is also against the settled position of law laid down by this Hon'ble Tribunal.*

*2.4 The Commissioner of Income Tax (Appeals) has not considered the elaborate submissions and case laws cited by the Appellant in the proper perspective."*

6. Brief facts of the case are that the assessee company is engaged in the business of electrical equipment installation and maintenance services filed its return of income for assessment year 2018-19 on 24.09.2018 admitting total income of Rs.49,52,444/-. The order passed u/s.143(1) was rectified under section 154 of the Act in which delayed payments of ESI/PF payments amounting to Rs.46,12,420/- was disallowed by CPC, Bangalore. The assessee carried the matter in appeal before the first appellate authority and the learned CIT(A) for reasons stated in his appellate order partly allowed appeal filed by the assessee, where he has confirmed disallowance of Rs.46,12,420/- made by the Assessing Officer towards not depositing of employee's contribution of PF & ESI u/s. 2(24)(x) r.w.s 36(1)(va) of the Income Tax Act, 1961, but paid after due dates specified under the relevant Acts. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

7. The learned A.R for the assessee submitted that the Assessing Officer has disallowed employee's contribution to statutory funds on the ground that although the assessee has

remitted employee's contribution to statutory funds on or before due date of filing return of income, but such remittance has been made after due date prescribed under respective statutes. It was explanation of the assessee that belated remittance of employee's contribution to PF & ESI is allowable as deduction, if such remittance is made beyond due date specified under respective Acts, but within due date specified u/s.139(1) of the Act, for filing return of income for relevant assessment years.

8. The learned DR, on the other hand strongly supporting order of the learned CIT(A) submitted that in light of amendment to provisions of section u/s.36(1(va) by the Finance Act, 2021 w.e.f. 01.04.2021 by insertion of Explanation 1 on the ground that it is clarificatory in nature and thus, applicable retrospectively from the date such proviso was inserted to the statute and hence, the learned CIT(A) was right in confirming disallowance made by the Assessing Officer.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities

below. We find that this issue of deduction towards employees contribution to PF & ESI after due date specified under respective Acts, but within due date prescribed for filing return of income u/s.139(1) of the Income Tax Act, 1961, as has been considered by the Hon'ble Jurisdictional Madras High Court in the case of M/s Industrial Security & Intelligence India Pvt. Ltd. in TCA No. 585 & 586 of 2015 dt. 24.07.2015, and held that if employees contribution to PF & ESI is remitted before due date for filing of return of income cannot be disallowed, even though such remittance was made beyond due date specified under relevant statutes. In this case, the assessee claims that it has remitted employees contribution to PF & ESI on or before due date specified u/s.139(1) of the Act, for filing return of income. The learned CIT(A), after considering relevant facts and following clarificatory amendments made by Finance Act, 2021 to section 36(1)(va) and section 43B rejected the arguments advanced by the assessee and confirmed disallowance made by the Assessing Officer as said late payments are not covered under section 43B of the Act. we find that amendment brought to the statute by insertion of

Explanation 1 to section 36(1(va) by the Finance Act, 2021 w.e.f. 01.04.2021 is considered to be prospective in nature as per the decision of the co-ordinate Bench of ITAT., Chennai in ITA No. 402 & 403/Chny/2021 dated 08.12.2021, where it was held that insertion of Explanation 1 to said section cannot be considered as retrospective in nature and thus, belated payment of employees contribution to PF & ESI after due date specified under respective Act, but before due date for filing of return of income u/s.139(1) of the Act is allowable deduction. The relevant findings of the Tribunal in ITA No.402 & 403/Chny/2021 dated 08.12.2021 are as under:-

*"6.8 In the present case also, before insertion of Explanation 2 to Section 36(1)(va) of the Act, there is ambiguity regarding due date of payment of employees' contribution on account of provident fund and ESI, whether the due date is as per the respective acts or up to the due date of filing of return of income of the assessee. As noted by Hon'ble Supreme Court an amendment made to a taxing statute can be said to be intended to remove hardship only of the assessee and not of the Department. Imposing of a retrospective levy on the assessee would be caused undue hardship and for that reason Parliament specifically chose to make the proviso affective from a particular date. In the present case also, the amendment brought out by Finance Act, 2021 w.e.f. 01.04.2021 i.e. for and from assessment year 2021-22 of Explanation-2 to s. 36(1)(va) of the Act and not retrospectively.*

*6.9 Thus, from the above, it is clear that the amendment brought in the statute i.e., 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. Hence, the amended provisions of Section 43B r.w.s. 36(1)(va) of the Act are not applicable for the assessment year 2018-19 but will apply from assessment year 2021-22 and subsequent assessment years. Hence, this issue of assessee's appeal is allowed."*

10. In this view of the matter and consistent with the view taken by the co-ordinate Bench, we direct the Assessing Officer to delete additions made towards disallowance of employees contribution to PF & ESI u/s.36(1)(va) r.w.s. 2(24)(x) of the Act.

Order pronounced in the open court on 31<sup>st</sup> March , 2022

Sd/-  
(वी. दुर्गा राव)  
(V.Durga Rao)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(जी. मंजुनाथ)  
(G.Manjunatha)  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 31<sup>st</sup> March, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.