

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.1596/M/2021
Assessment Year: 2019-20**

M/s. Ciron Drugs and Pharmaceuticals Pvt. Ltd., C-1101/1102, Lotus Corporate Park, Graham Firth Steel Compound, Jay Coach Junction, Western Express Highway, Mumbai – 400 063 PAN: AABCC0873D	Vs.	National Faceless Appeal Centre (NFAC), Circle 1(2)(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R.A. Dhyani, D.R.

Date of Hearing : 29 . 03 . 2022
Date of Pronouncement : 29 . 03 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Ciron Drugs and Pharmaceuticals Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 13.08.2021 passed by Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter referred to as the CIT(A)] qua the assessment year 2019-20 on the grounds inter alia that :-

“Ground No.1

1. Employees Provident Fund

a) On the facts and in the circumstances of the case and in law, the CPC erred in disallowing payment made towards Employees Contribution to Provident Fund after specific due date at Rs.86,85,303/-.

b) Assessee had deposited the employees contribution to provident fund beyond the time period allowed under the PF act, however, the said amounts were paid before the 'due date' of filing of the return of income by the assessee under Sec. 139(1) of the Act which is in accordance to Sec 43B of the Act.

c) On the facts and in the circumstances of the case and in law, CPC erred in considering that context of the amendment to Sec. 43B, would be applicable to employees contribution as well as employers contribution.

However, the assessee has relied on the following judgments which observed and allowed both the employees and employer's contribution would be covered under the amendment to section 43B of the Income Tax Act, 1961. Therefore, assessee pray for the deletion of the Addition made of Rs.86,85,303/- made by CPC u/s - 143(1) of the Act.

Ground No. 2 :-

2. Delay in Filing of Appeal to Commissioner of Income Tax [CIT) A)]

As per order passed u/s - 250 of the Income Tax Act, 1961 states that the appeal ought to have been filed on or before 16/06/2020 and the appeal is belated by 159 days. In reference to this, the assessee relied on the following.

As per Cognizance for extension of limitation (Suo Motu Writ Petition (Civil) No.3 of 2020, decided on March 8, 2021.

The Hon'ble Supreme Court of India in computing the period of limitation for any suit, appeal, application or proceeding, the period from March 15, 2020 till March 14, 2021 shall stand excluded.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee being a private limited company filed its return of income for the year under assessment 2019-20 on 26.09.2019 declaring total income of Rs.39,80,97,767/-, qua which intimation under section 143(1) of the Income Tax Act, 1961 (for short 'the Act') was received on 18.05.2020 determining the total income of Rs.40,67,83,070/-. Central Processing Centre (CPC) under section 143(1) of the Act has made addition of Rs.86,85,303/- by way of disallowance of Employees Provident Fund Contribution made to the employees contribution to provident fund before filing of the return by invoking provisions contained under section 43B of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal on account of laches having been filed with the delay of 159 days. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) assessee has come up before the Tribunal by way of filing the present appeal.

4. Despite issuance of the notice to the assessee none appeared on behalf of it, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly, the assessee had deposited the employees contribution to provident fund beyond the time period allowed under Provident Fund Act, but deposited prior to the filing of the return of income by the assessee under section 139(1) of the Act. It is the case of the respondent-department that intimation and demand notice was duly communicated to the designated e-mail resource in accordance with section 13 of the Information Technology Act, 2000 and as such appeal ought to have been filed on or before 16.06.2020, as such barred by limitation.

7. So far as delay of 159 days in filing the appeal is concerned, Hon'ble Supreme Court in an order dated March 8th, 2021 passed in suo-moto Writ Petition (civil) No.3 of 2020 has ordered to exclude the period from 15.03.2020 to 14.03.2021 in computing the period

of limitation for any suit, appeal or application or proceedings before any courts and Tribunal on account of Covid-19 pandemic by returning following findings:

“2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from . 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts. Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound

applications, including for legal purposes, and educational and job-related requirements."

3. *The Suo Motu Writ Petition is disposed of accordingly."*

8. Following the order passed by the Hon'ble Supreme Court we are of the considered view that the delay period of 159 days in filing the present appeal before the Ld. CIT(A) stood excluded in computing the limitation period otherwise expired on 16.06.2020. So in these circumstances, we are of the considered view that since the Ld. CIT(A) has dismissed the appeal in limine without going into the merits of appeal of the assessee, the same is remanded back to decide on merits after condoning the delay of 159 days. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.03.2022.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.03.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.