

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No. 300/Ahd/2021
Assessment Years : 2018-19**

Mr. Atulbhai Ravjibhai Patel, S-09, Second Floor, Indiabulls Mega Mall, Jetalpur Road, Vadodara PAN : AHUPP 6260 E	Vs	The DCIT, CPC, Bangalore
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	None Written submission on record	
Revenue by :	Shri R.R. Makwana, Sr. DR	

सुनवाई की तारीख/**Date of Hearing** : **18/04/2022**
घोषणा की तारीख /**Date of Pronouncement** : **22/04/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 30.09.2021 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)") relating to the Assessment Year 2018-19.

2. The brief facts of the case are that the assessee is an individual and proprietor of M/s. Lopa Enterprise, which is engaged in providing manpower supply services to industrial customers. For the Assessment Year 2018-19, the assessee filed his return of income on 04.10.2018 declaring the income of Rs.37,22,340/-. The Centralized Processing Centre, Bangalore (hereinafter referred to as the "CPC") passed the intimation under Section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") vide intimation dated 17.05.2019 by making disallowance on account of the delayed payment in relation to sum received from employees of Rs.23,97,818/ as contribution to Provided Fund and other statutory

fund under Section 36(1)(va) of the Act and demanded a tax of Rs.7,96,320/-. This intimation order was challenged by way of an appeal before the National Faceless Appeal Centre (“NFAC” in short) by the assessee. The NFAC, after detailed discussion, held that *the facts indicate that the sum of Rs.23,97,818/- being employees contribution to provident fund has been paid late under that Act and based on the reasoning above, the addition made by the CPC deserves to be upheld* and confirmed the addition of Rs.23,97,818/- and dismissed the appeal filed by the assessee.

3. Aggrieved by the order of the NFAC, the assessee is in appeal before the Tribunal raising following grounds of appeal:-

“A. Ld. AO and Ld. CIT Appeals have grossly erred in disallowing employee contribution to PF aggregating to Rs.23,97,818/- as per the original TAR.

B. Ld. AO and Ld. CIT Appeals ought to have observed the apparent error in the reporting payment for the month of September'17 taking clues of previous as well as post payments made by the appellant and observed apparent excess payment of Rs.14,16,000/- reported in the TAR and hence ought not to have taxed the said amount.

C. Ld. AO and Ld. CIT Appeals have further erred in disallowing the payments made after due date but within grace period of five days allowed by the PF department, aggregating to Rs. 5,57,483/-.

D. Ld. AO and Ld. CIT Appeals ought to have followed the judgment of Hon'ble Rajasthan High Court in the case of M/s. Rajasthan state beverage corporation limited endorsed by Hon'ble Supreme Court on the identical issue.

E. Ld. CIT Appeals has erred in taking altogether new stand by placing reliance on explanation 2 inserted to 36(1)(va) with effect from 1/4/2021 and by treating the amendment as a retrospective by applying the same for the current year.

F. Ld. CIT Appeals failed to appreciate that employee's contribution post remittance to the PF authorities ceases to be an income in the hands of the assessee.

G. Appellant therefore pleads that

- (1) Excess disallowance of Rs.14,16,000/- be deleted as it is attributed due to arithmetic error.*
- (2) Disallowance of Rs.5,57,483/- made within the grace period be deleted as it is outside the scope of section 36(1)(va)*
- (3) Disallowance of Rs.4,24,335/- be deleted on the contentions raised above.*

4. At the time of hearing, none appeared for the assessee inspite of service of notice. However, a written submission with a few documents and judgments has been placed before us for consideration. Therefore, this appeal of the assessee is being disposed of with the written submission of the assessee, after hearing the arguments of the learned Departmental Representative and perusing the relevant material available on record.

5. Regarding the issue raised in concise ground No. G(1) with respect to the excess disallowance of Rs.14,16,000/- be deleted as it is attributed due to arithmetic error, the assessee by way of his submission submitted that there was a typographical error in reporting the details of the employees' contribution to PF in the Tax Audit Report for September 2017. It is also submitted that instead of the actual amount paid of Rs.1,57,315/-, an amount of Rs.15,73,315/- (number '3' was typed twice) was reported. The Tax Auditor duly corrected the said error by filing the revised Tax Audit Report on 28.03.2019 and copy of the revised Tax Audit Report was placed on record. It is, therefore, submitted that the addition of Rs.14,16,000/- out of the total addition of Rs.23,97,818/- on account of such undisputed facts deserves to be deleted in absence of collection of any such amount from the employees towards PF.

6. It can be seen that intimation under section 143(1) of the Act was issued by the CPC on 17.05.2019 and the assessee has not

made any attempt to file rectification petition against the intimation issued by the CPC u/s 143(1) of the Act. The assessee for the first time before this Tribunal has filed a combined challan of account for employees' PF as well as the revised Tax Audit Report under Section 44AB of the Act. The revised Tax Audit Report was uploaded on 28.03.2019 which is much earlier than the intimation issued by the CPC dated 17.05.2019 under Section 143(1) of the Act. The learned DR appearing for the Department stated that this issue has not been properly projected before the NFAC and hence the same may be remitted back to the file of Assessing Officer for verification and correction. We are in agreement with the statement of the learned Departmental Representative and hereby remit this issue back to the file of the Assessing Officer to rectify the arithmetic mistake.

7. As far as the issue raised in concise ground Nos. G(2) and G(3) relating to the disallowance of Rs.5,57,483/- made within the grace period be deleted as it is outside the scope of section 36(1)(va) of the Act and disallowance of Rs.4,24,335/- are concerned, the assessee in its written submission claimed that an amount of Rs.9,81,818/- out of the total addition of Rs.23,97,818/- has been paid well before the due date of filing of the return under Section 139 of the Act. It is also submitted by the assessee in his written submission that several Hon'ble High Courts as well as ITAT have taken a view that the employees' contribution paid before the due date of filing of the return under Section 139(1) of the Act cannot be disallowed under Section 36(1)(va) of the Act. It was, therefore, submitted by the assessee that the CPC is not correct in making the disallowance on the late payment of the provident fund amount by relying upon the following case laws:-

- i) CIT vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)
- ii) CIT vs. State Bank of Bikaner & Jaipur [2014] 363 ITR 70 (Raj.)

- iii) CIT vs. Hemla Embroidery Mills (P.) Ltd [2014] 366 ITR 167 (P&H)
- iv) CIT vs. Nuchem Ltd. [2015] 59 taxmann.com 455 (P&H)
- v) CIT vs. Magus Customers Dialog (P.) Ltd. [2015] 57 taxmann.com 94
- vi) Essae Teraoka (P.) Ltd vs. DCIT, 366 ITR 408 (Kar)
- vii) Spectrum Consultants India (P.) Ltd v. CIT [2013] 215 taxman 597(Kar)
- viii) CIT vs. AIMIL Ltd. [2010] 188 Taxman 265/321 ITR 508 (Del)
- ix) PCIT vs. Rajasthan State Beverages Corpn Ltd [2017] 250 taxman 32(Raj)
- x) Rakesh Janghu vs. CPC, [2022] 136 taxmann.com 154 (Delhi Trib)
- xi) B.R.S. Precision Manufacturing (P) Ltd Vs. DCIT, [2022] 135 taxmann.com 248 (Bangalore Trib.)

8. The assessee also tried to distinguish the jurisdictional High Court judgment in the case of CIT Vs. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100 (Guj) and requested to delete the disallowance made by the CPC.

9. Per contra, the learned DR appearing for the Department submitted that the jurisdictional High Court in the case of Gujarat State Road Transport Corporation (supra) has dealt with the issue in a very detailed manner and upheld the disallowance made under Section 36(1)(va) of the Act. He has also brought to our attention to paragraph No.8 of the said judgment which is extracted as follows:-

“8. In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund on or before the due date as per the

explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act.”

10. Further, the learned DR has also placed on record a Circular No.WSU/9(1)2013/Settlement dated 09.01.2016 of Employees' Provident Fund Organization informing the withdrawal of concession of grace period of 5 days to remit the employers contribution to PF account with effect from February 2016. The relevant paragraphs of the said circular are reproduced herein below for the reference:-

“2. The grace period of five days have been allowed for the employers to remit the contributions as the system of calculation of wages of the employees and their corresponding dues under the twee schemes (Employees' Provident Fund Scheme 1952, Employees' Pension Scheme 1995 & Employees' Deposit Linked Insurance Scheme 1976) were done manually and its remittances in the bank required additional time in the earlier manual setup.

3. In the present era, employers compute the wages and EPF liabilities electronically (in most of the cases on real time basis) and file Electronic Challan-cum-Return (ECR). The remittances are also being deposited through Internet Banking. This has reduced the process and time taken in calculation of PF dues and its remittances in the bank. Accordingly, it has been decided that concession of grace period of 5 days available to the employers for depositing the contribution & other dues is withdrawn herewith. This decision shall apply from February, 2016 (contributions for month of January, 2016 and payable in the month of February, 2016).”

Thus the EPFO has literally withdrawn the grace period of five days with effect from February 2016, whereas the assessment year involved herein is AY 2018-19. Therefore, following the jurisdictional High Court's judgment in the case of Gujarat State Road Transport Corporation (supra) and the circular issued by the Head Office of EPFO (supra), the question of grace period does not applicable to the

assessee, since the assessment year involved is AY 2018-19 and he accordingly pleaded that the addition made by the CPC be confirmed.

11. We have given our thoughtful consideration to the orders of the authorities below and also perused the material available on record. The case laws relied upon by the assessee in his written submission are clearly distinguishable and we are bound to follow the judgment passed by the Hon'ble jurisdictional High Court in the case of Gujarat State Road Transport Corporation (supra). Another jurisdictional High Court's judgment relied on by the assessee namely Amoli Organics Pvt. Ltd is a case relating to the assessment year 2003-04 wherein the grace period was available to the assessee; therefore, this case law is not helpful to the assessee's claim for AY 2018-19. The case law relied upon by the assessee by the co-ordinate bench in ITO vs. Anunay Fab (P.) Ltd, [2021] 133 taxmann.com 412 (Ahd Trib) is also not in support of the claim of the assessee wherein the withdrawal of grace period w.e.f. February 2016 is not considered. For the above reasons, we hold that the disallowance made by the CPC under Section 36(1)(va) of the Act towards late payment of PF is sustainable in the eyes of law; and, we, therefore, reject these grounds of appeal raised by the assessee.

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22nd April, 2022 at Ahmedabad.

Sd/-

Sd/-

(DR. ARJUN LAL SAINI)
ACCOUNTNAT MEMBER

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 22/04/2022

*2

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad