

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI AMARJIT SINGH (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1378/MUM/2021
Assessment Year: 2018-19**

&

**ITA No. 1506/MUM/2021
Assessment Year: 2019-20**

Duratex Apparels,
122-Sanjay Building 5A, Mittal
Industrial Estate, Andheri-Kurla
Road, Andheri-East,
Mumbai-400059.

PAN No. AAGFD 5111 K

Appellant

Vs. Income Tax Officer-24(1)(1),
3rd floor, Piramal Chamber,
Mumbai-400012.

Respondent

Assessee by : Mr. Ryan Saldanha, AR
Revenue by : Mr. T. Shankar, DR

Date of Hearing : 23/02/2022
Date of pronouncement : 28/02/2022

ORDER

PER AMARJIT SINGH, A.M.

The captioned appeals filed by the assessee are directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-36, Mumbai [in short 'CIT(A)'], which in turn arises from the assessment order passed by the AO u/s 143(3) of the Income Tax Act, 1961, dated 16.10.2019 for the assessment years (AY) 2018-19 & 2019-20.

2. Since identical issues on similar facts are involved in these two appeals, therefore, both these appeals are adjudicated together by taking the ITA No. 1506/M/2021 as lead case and its finding will be applied to ITA No. 1378/M/2021.

3. The fact in brief is that the assessee filed return of income on 30.09.2019 declaring a total income of ₹1,18,64,460/-. The return was processed u/s 143(1) of the Act vide order dated 02.07.2020. In the intimation u/s 143(1) of the Act, the CPC, Bangalore have disallowed the contribution to Employee's Provident Fund and ESIC funds u/s 36(1)(va) of the Act of ₹3,22,274/- on the ground that the assessee deposited the aforesaid contribution beyond the due date as prescribed in the relevant Act.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The 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 1st April 2021 though it would have retrospective effect in view of the proposed deeming provisions. During the course of appellate proceedings before us, the Ld. counsel contended that the impugned addition cannot be made u/s 143(1) of the Act as the issue is

debatable and beyond the scope of adjustment u/s 143(1) of the Act. The Ld. counsel has also submitted that Hon'ble Bombay High Court in the case of CIT v. Hind Filter Ltd. (2018) 90 taxmann.com 51 (Bombay) has held that their assessee made contribution of employees provident fund after due date as specified in Explanation 2 to section 36(1)(va) of the Act, it is entitled to deduction of the same provided filed the return of income within the due date as prescribed in the Act. The Ld. counsel has also placed reliance on the decision of Hon'ble Bombay High Court **CIT v. Ghatge Patil Transports Ltd. [2015] 53 taxmann.com 141 (Bombay)**. The Ld. counsel has also submitted that amendment as per Explanation 2 to section 36(1)(va) is to be applied prospectively w.e.f. 01.04.2021 not retrospectively as held by the Ld. CIT(A). In this regard, the Ld. counsel has placed reliance on the decision of ITAT Bangalore and ITAT Chennai Benches in the cases of **Mavinahalli Shivanajappa Vijay Kumar v. DCIT (ITA Nos. 596 & 597/Bang/2021)** and **Adhyar Anand Bhavan Sweets India P. Ltd. v. ACIT (ITA No. 402 & 403/Chennai/2021)**.

5. On the other hand, the Ld. Departmental Representative (DR) has supported the order of lower authorities.

6. Heard both sides and perused the material on record. Without rendering the facts as elaborated above, the assessee has deposited employee's

contribution to PF/ESIC after due date specified in PF/ESIC Acts but before the due date of filing the return of income as prescribed in section 139(1) of the act. With the assistance of Ld. Representative, we have perused the decision of Hon'ble Jurisdiction Bombay High Court in the case of CIT v. Hind Filter (supra) and Ghatge Patil Transports Ltd. (supra). In the case of Ghatge Patil Transports Ltd. (supra), the Hon'ble jurisdictional High Court held that both employers and employee's contributions are covered under the amendment to section 43B and judgment of the Hon'ble Supreme Court in CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416 and payment made was subject to benefit of section 43B. We have also gone through the decision of ITAT Mavinahalli Shivanajappa Vijay Kumar (supra) and Adhyar Anand Bhavan Sweets India P. Ltd. (supra) on the issue of applicability of the amended provisions of Explanation 2 to section 36(1)(va). The ITAT Bangalore vide ITA No. 596/Bang/2021 in the case of Shivanajappa Vijay Kumar (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 Sweets India P. Ltd. (supra), wherein after following the decision of Hon'ble High Court of Madras in the case of M/s Industrial Security and Intelligence India P. Ltd. in TCA No. 585/2015 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.

6.1 In the case of the assessee, it had remitted the employee's contribution towards PF/ESIC beyond the due date for payment as specified in PF/ESIC Act, but within the due date for filing the return of income, therefore, following the aforesaid decisions, we considered 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. Since we have decided the issue in favour of the assessee, therefore, ground No. 1 of the assessee is not required adjudication.

7. In the result, the appeal filed by the assessee is allowed.

8. Our decision for the AY 2018-19 applies mutatis mutandis to AY 2019-10.

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

Order pronounced in the open Court on 28/02/2022.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/02/2022

Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai