

**THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**  
**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**  
**ITA No.234/Mum/2022**  
**(A.Y. 2018-19)**

GIA India Laboratory Pvt. Ltd., 10 <sup>th</sup> Floor, Trade Centre, Bandra Kurla Complex Bandra (E) Mumbai – 400 098	Vs.	The DCIT, CPC, Bangalore, 560500
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCG9457G		
Appellant	..	Respondent

Appellant by :	Shri Niraj Sheth
Respondent by :	Shri Hoshang B. Irani

Date of Hearing	20.04.2022
Date of Pronouncement	25.04.2022

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, which in turn arises 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 : 0 Re.: Adjustment of Rs. 26,82,210/- in respect of employees' contribution to 'Provident Fund':**

1 : 1 The Commissioner of Income-tax (Appeals) has erred in confirming the adjustment made by the Assessing Officer/ CPC Bangalore to the returned income of the Appellant in respect of the employees' contribution to Provident Fund of Rs. 26,82,210/- u/s. 36(1)(va) of the Income-tax Act, 1961.

1 : 2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made is misconceived, incorrect, erroneous and not in accordance with the law.*

1:3 *The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the disallowance so made and to re-compute its total income accordingly.*

**2: 0 Re.: Short grant of credit for tax deducted at source of Rs. 62,033/- :-**

2 : 1 *The Commissioner of Income-tax (Appeals) has erred in non-adjudicating the ground of appeal raised before him, treating it to be consequential in nature.*

2 : 2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject it is entitled to full credit of tax deducted at source from its income.*

2 : 3 *The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to grant full credit for tax deducted at source and to re-compute the Appellant's tax liability accordingly.*

**3 : 0 Re.: Interest u/s. 234C of the Income-tax Act, 1961 has been levied in excess by Rs. 50,012/-:**

3 : 1 *The Commissioner of Income-tax (Appeals) has erred in non-adjudicating the ground of appeal raised before him, treating it to be consequential in nature.*

3 : 2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, no further interest is leviable u/s. 234C (over and above the interest of Rs. 51,79,961/- computed and paid by the Appellant at the time of filing its return of income) and hence the action of the CPC-Bangalore/Assessing Officer in this regard is incorrect, erroneous and not in accordance with the law.*

3 : 3 *The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the excess interest so levied and to re-compute the Appellant's tax liability accordingly.*

**4 : 0 Re.: General:**

4 : 1 *The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”*

2. The fact in brief are that during the processing of return of income CPC, Bangalore made disallowance of Rs.26,82,210/- u/s 36(1)(va) on delayed payment made towards ESI subscription. The disallowance was

made on the ground that assessee has deposited the aforesaid contribution beyond the due date as prescribed in the relevant Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee holding that Explanation 2 to Sec. 36(1)(va) has been inserted to clarify that the provisions of Sec. 43B of the Act shall not apply for the purpose of determining the due date. The Id. CIT(A) also stated that the aforesaid amendment take effect from 01.04.2021 that it would have retrospective effect in view of the proposed deeming provisions.

4. Heard both the sides and perused the materials on record. The assessee has deposited employees contribution to ESI after due date specified in the ESI Act, but before the due date of filing the return of income as prescribed under section 139(1) of the Act. We have perused the decision of Honourable jurisdictional High Court in the case of Hindustan Organic Chemicals Ltd (2014) 366 ITR 1 (Bom) and the case of Ghatgepatil Transport Ltd. (2014) 368 ITR 749 (Bom). In the case of Hindustan Organic Chemical Ltd, the Hon'ble High Court held that where assessee made payment of employee's contribution towards PF, assessee's claim could not be disallowed on account of delayed payment in view of amendment to Section 43B of the Act. In the case of GhatgePatil Transport Ltd., the Hon'ble jurisdictional High Court held that both employer and employees' contribution are covered under amendment to section 43B of the Act and the judgement of Hon'ble Supreme Court in CIT vs. Alom Extrusions Ltd (2009) 319 ITR 306 holding that payment made was subject to benefit of section 43B of the Act. We have also gone through the decision of ITAT Chennai in the case of Adhyar Ananda Bhavan Sweets India P. Ltd Vs. ACIT vide 134

taxmann.com 56 wherein it is held that amendment brought in by inserting Explanation 2 to provision of Sec. 36(1)(va) r.w.s 43B vide Finance Act is prospective in nature and would be applicable from assessment year 2021-22.

5. In the case of the assessee, it had remitted the employees' contribution towards ESI beyond the due date as specified in the ESI Act, but within the due date for filing the return of income, therefore, following the aforesaid decisions, we are of the considered opinion that the ld. CIT(A) is not justified in disallowing the claim of deduction of assessee. Accordingly, we decide this issue in favour of the assessee and disallowance made by the Assessing Officer is deleted. The ground no. 1 of appeal of the assessee is allowed.

**Ground No.2 Short Grant of credit for tax deducted at source of Rs.62,033/-:**

6. The ld. Counsel has submitted that A.O/CPC Bangalore has not granted credit of tax deducted at source of Rs.62,033/-. The ld. Counsel has also submitted that ld. CIT(A) has not adjudicated the issue of short grant of tax deducted at source by Rs.62,033/-.

7. Heard both the sides and perused the material on record. We direct the A.O to allow the claim of credit of tax deducted at source to the assessee after verification of the relevant supporting evidences. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

**Ground 3: Interest u/s 234C of the Income Tax Act has been levied in excess by Rs.50,012/:**

8. The ld. Counsel has submitted that CPC Bangalore has incorrectly levied excess interest u/s 234B & u/s 234C of the Income Tax Act, 1961 as mentioned above.

9. Heard both the side and perused the material on record. We direct the A.O to recomputed the interest u/s 234B and 234C in accordance with provision of law. Therefore, these ground of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 25.04.2022

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 25.04.2022

PS: Rohit

**आदेश की प्रतिलिपि ढ्रेषित/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