

IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH MUMBAI

Before Shri Shamim Yahya (AM)

ITA No. 1742/Mum/2021
Assessment Year: 2018-19

Starline Workshop,
1 C/o Sterling Motor Compound,
Old Agra Road, Gadkari Chowk,
Nashik 422001

vs. ITO-Ward1(1)
Nashik 422 002

Appellant.

Respondent.

PAN ACBFS2289L

Assessee by : Shri Ryan Saldanha
Revenue by : Ms. Usha Gaikwad

ITA No. 1746/Mum/2021
Assessment Year: 2019-20

Vishnu Sadu Gade,
C-3, 302, Ashar Estate,
Shreenagar, Thane (W)-400604

vs. DCIT, Circle -3
Thane 400 604

Appellant.

Respondent.

PAN AABPG4702C

Assessee by : None
Revenue by : Ms. Usha Gaikwad

ITA No. 1747/Mum/2021
Assessment Year: 2018-19

Associated Hospitality and Developers Pvt. Ltd.,
4th Floor, Techniplex-I, Techniplex Complex,
Veer Savarkar Flyover, Goregaon (W),
Mumbai 400 062

vs. DCIT, CPC

Appellant.

Respondent.

PAN AAFCA7847P

Assessee by : Shri Rajesh Shah
Revenue by : Ms. Usha Gaikwad

ITA No. 1575/Mum/2021
Assessment Year: 2018-19

M/s. Vasundhara Packaging Industry, vs. CIT(A)- (Faceless)
501, Blue Bell, Royal Complex,
Eksar Road, Borivali (W),
Mumbai 400 092

Appellant.

Respondent.

PAN AADFV0326M

Assessee by : Shri Ajay Singh
Revenue by : Ms. Usha Gaikwad

Date of Hearing : 26-04-2022
Date of pronouncement : 27-04-2022

ORDER

PER SHAMIM YAHYA, A.M.

These are appeals by the different assessee's directed against the respective orders of learned Commissioner of Income Tax. Since the issues are common these appeal are disposed of by this common order.

2. The common issues raised is that ld. CIT(A) erred in upholding action of AO by confirming that adjustment made by the learned Deputy Commissioner of Income Tax, CPC ('the AO') are within the purview of section 143(1)(a) of the Income Tax Act, 1961 (the Act) which relate to disallowance u/s. 36(1)(va) of that of the employees contribution to PF & ESI dues beyond the respective due dates but before the due date of filing return of income.

3. Brief facts of the case are that 143(1) adjustment was done by CPC in this case for addition regarding late payment of employees contribution to ESI & PF by assessee which was deposited before due date of the filing of the return. The ld. CIT(A) in his adjudication noted that on this issue there are decisions of High Courts (other than Hon'ble Bombay High Court) and there

has been amendment in the Act . Hence he confirmed the jurisdiction of prima-facie adjustment u/s. 143(1) as well as on merits of the adjustment.

4. Against the above order assessee is in appeal before the ITAT.

5. I have heard the the parties and perused the record. I find that the ld. CIT(A) has grossly erred in ignoring the decision of Hon'ble jurisdictional High Court in the case of Ghatge Patil Transports Ltd. [2014] 368 ITR 749, wherein Hon'ble Bombay High Court has followed the Hon'ble Supreme Court decision in Alom Extrusions Ltd., and has held that employees contribution to PF & ESI up to the date of filing of return cannot be disallowed. Hence, by no stretch of imagination it can said that the above said adjustment can fall under the category of 143(1) prima-facie adjustment. Hence, I hold that CPC has no jurisdiction of adjustment u/s. 143(1) on this issue where admittedly there were decisions in favor of the assessee from the Hon'ble jurisdictional High Court. Moreover, as regards, merits of the case the aforesaid explanation was added by Finance Act, 2021 and the said explanation by no stretch of imagination can be said to retrospective. The assessment year during the present case is prior to the said amendment/insertion, when Hon'ble jurisdictional High Court exposition on the subject in favor of the assessee was there. Hence, on merits also, the issue is covered in favor of the assessee as before the amendment, there were catena of decisions of Hon'ble Bombay High Court in favor of assessee on the said issue.

6. In the result the appeals by the assesseees are allowed.

Order pronounced in open court on 27.04.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated 27.04.2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar/Sr.PS)

ITAT, Mumbai