

THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No.226/Mum/2022
(A.Y. 2019-20)

Geeta Udyog 404, Gupta Bhavan, Ahmedabad Street, Carnac Bunder, Mumbai – 400009	Vs.	Asst. Director of Income Tax, CPC, Bengluru Centralized Processing Centre, Income Tax Department, Bengaluru 560500
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJFG1369H		
Appellant	..	Respondent

Appellant by :	Shri Hari S. Raheja
Respondent by :	Shri Hoshang B. Irani

Date of Hearing	20.04.2022
Date of Pronouncement	26.04.2022

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. 2019-20. The assessee has assailed the impugned order on the following grounds before us:

- “1. *On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax Appeals), National Faceless Appeal Centre (NFAC is not justified in upholding the determination of total income of appellant in the limitation u/s 143(1) of the Act, at Rs.8,42,64,580/- as against the returned income of Rs.8,37,15,480/-, on account of the*

disallowance of Rs.5,49,046/- made u/s 36(1)(va) of the Act, based upon the details in the Tax Audit Report in Form 3CD.

2. *On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), NFAC ought to have appreciated that the aforesaid disallowance of Rs.5,49,046/- in respect of the belated payments of the Employee's share of PF Rs.4,66,648/- and ESI Rs.82,398/- was allowable having regard to the judgment of the Hon'ble Bombay High Court in the case of Pranav Agro Indus. Ltd. vide order dated 08.07.2019 and Ghatge Patil Transport Ltd. (368 ITR 749 - Bombay) since the same has been paid before the due date of filing the return of income u/s 139(1) of the Act and hence, the disallowance made ought to have been deleted.*
3. *On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), NFAC is not justified in holding that the amendment made by insertion of Explanation 2 to the provisions of section 36(l)(va) of the Act and the insertion of Explanation 5 to section 43B of the Act by the Finance Act, 2021 with effect from 01/04/2021 was clarificatory in nature and therefore, these amendments were retrospective in operation.*
4. *On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), NFAC ought to have appreciated that the aforesaid amendments by the Finance Act, 2021 cannot be regarded as retrospective in nature as they were not in the nature of a beneficial legislation to remove intended hardships cast on the assessee and therefore, sustained on this basis is oppose of the appellant's case, the disallowance sustained on this basis is opposed to law and facts.*
5. *On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), NFAC is not justified in refusing to follow the binding judgements of the Hon'ble Jurisdictional High Court of Bombay in favour of the assessee.*
6. *The appellant craves leave to add, amend, alter, modify, delete and/or change all or any above grounds on or before the date of hearing."*

2. There was a delay in filing this appeal by 32 days. During the course of appellate proceedings before us the assessee has filed affidavit for condonation of delay in filing the appeal. It is stated in the affidavit that assessee has neither received the hardcopy of the order of Id. CIT(A) order at the address mentioned in the memorandum of appeal (Form No. 35) nor any softcopy has been forwarded to the email address. Incidentally, the chartered accountant of the assessee has himself noticed from the Income Tax Portal about the passing of the appeal order by the Id. CIT(A)

on 21.01.2022. Therefore, requested that there was bonafide reason for delay in filing this appeal by 32 days and the same may be condoned.

3. Heard both the side and perused the material on record. We consider that there was a reasonable cause for marginal delay in filing the appeal because of non receipt of order of the ld. CIT(A). Therefore, we condone the delay in filing of this appeal.

4. The fact in brief is that the A.O has made adjustment in the intimation u/s 143(1) by way of disallowance of delayed remittance of employees contribution to PF & ESI for the period 01.04.2018 to 31.03.2019 to the amount of Rs.5,49,046/-. The said amount was disallowed u/s 36(1)(va) on the ground that assessee has deposited the aforesaid contribution beyond the due date as prescribed in the relevant Act.

5. The assessee has filed appeal before the ld. CIT(A), however the ld. CIT(A) has dismissed the appeal of the assessee.

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. We have perused the decision of Hon'ble Jurisdiction Bombay High Court in the case of CIT v. Hindustan Organics Chemicals Ltd. (2014) 366 ITR 1 (Bom) and decision of GhatgePatil Transports Ltd. (2014) 368 ITR 249 (Bom). In the case of Hindustan Organics Chemicals Ltd. it is held that payment of employees contribution towards provident fund could not be disallowed on account of delayed payment in view of amendment to Section 43B of the Act. In the case of GhatgePatil Transports Ltd. (supra), the Hon'ble jurisdictional High Court

held that both employers and employee's contributions are covered under 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 that payment made was subject to benefit of section 43B. We have also gone through the decision of ITAT Chennai in the case of Adhyar Anand Bhavan Sweets India P. Ltd. (2022) 134 taxmann.com 56 wherein it is held that amendment brought in by inserting Explanation 2 to the provisions of section 36(1)(va) r.w.s. 43B of the Act is prospective in nature and would be applicable from assessment year 2021-22.

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 consider that Ld. CIT(A) is not justified in disallowing the impugned 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.

Order pronounced in the open court on 26.04.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 26.04.2022
PS: Rohit

आदेश की प्रतिलिपि ढ ग्रेषित/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