

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. Nos. 1781 & 1782/Mum/2021
(निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-20)

Kohinoor Printers Pvt. Ltd. Unit No.1, Ground Floor, Prakash Power Laundry Building, Senapati Bapat Marg, Dadar West, Mumbai-400028.	बनाम/ Vs.	DCIT, CPC Banglore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACE1634R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mahesh Rajora
Revenue by:	Ms. Bharti Singh (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 05/04/2022

घोषणा की तारीख /Date of Pronouncement: 28/04/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the order dated 26.08.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “NFAC”] relevant to the A.Ys. 2018-19 & 2019-20.

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2. The assessee has filed the present appeal against the order dated 26.08.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “NFAC”] relevant to the A.Y. 2018-19.

3. The assessee has raised the following grounds: -



“1. (a) The Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [‘CIT(A)’] erred in confirming disallowance of Rs.4,51,308/- u/s 36(1) (va) of the IT Act out of Employees Contribution to PF & ESIC, made by the Deputy Commissioner of Income Tax(CPC), Bangalore (AO) holding it as disallowance of expenditure indicated in the tax audit report but not taken into account in computing the total income in the return of income.

The Appellant submits that the contribution to PF & ESIC is not shown as disallowance in Tax Audit Report and is merely a reporting clause in tax audit with dates of deposit in the respective funds and hence same is correctly not been disallowed while computing total income in the return of income; thus the AO shall be directed to delete the addition.

(b) The CIT(A) erred in confirming disallowance of Rs.4,51,308/- made by the AO out employees contribution to PF & ESIC to the extent not credited to the respective funds on or before the due date specified in the respective Acts.

The Appellant submits that the payment of employees contribution to EE & FP SIC of Rs.4,51,308/- is made during the year under consideration itself and or before the due date of filing return of income and same shall be allowed as deduction us 43B r.w.s. 36(1)(va) of the Act.

(c) The CIT(A) erred in not following the binding decision of Hon‘ble Jurisdictional Bombay High Court in the case of CIT Vs. M/s Hindustan Organics Chemicals Ltd [366 ITR 1] and CIT Vs. Ghatge Patil Transports [td [368 ITR 749] while deciding the issue in appeal.”

ISSUE NO.1



4. Under this issue the assessee has challenged the confirmation of disallowance of Rs.4,51,308/- u/s 36(1)(va) of the Act out of Employees Contribution to PF & ESIC. The Ld. Representative of the assessee has argued that the payment of Employees Contribution to PF & ESIC of Rs.4,51,308/- was made during the year under consideration itself and on or before the date of filing the return of income, therefore, the same is liable to be allowable as deduction u/s 43B r.w.s. 36(1)(va) of the Act. In support of this contention, the Ld. Representative of the assessee has placed reliance upon the decision in the case of **DCIT Vs. Maharashtra Tourism Development Corporation Ltd. ITA. No.6425/Mum/2017 decided on 27.07.2021 & Others, CIT Vs. Ghatge Patil Transport Ltd. 368 ITR 849 & CIT Vs. M/s. Hindustan Organics Chemicals Ltd. (366 ITR 1)**. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by CIT(A) in question. It is not in dispute that the PF and ESIC was paid during the year under consideration and on or before the due date of filing the return of income. This is matter of controversy has been dealt by ITAT in the case of **DCIT Vs. Maharashtra Tourism Development Corporation Ltd. ITA. No.6425/Mum/2017 & Others**. The relevant finding is hereby reproduced as under: -

“13. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance made by Assessing Officer of employees contribution to provident fund beyond due date of respective statute amounting to ₹11,03,233/-. For this, Revenue has raised the following ground No.4: -

“4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of additions made by the



Assessing Officer of ₹11,03,233/- without taking into consideration and the fact that in identical circumstances decided the issue in favour of Revenue.”

14. Brief facts are that the Assessing Officer noticed from Annexure iii to 3CD report, being annual statement of accounts of the assessee in regard to the provident fund i.e. employees contribution for Pune Regional office, Nasik Regional Office and Mumbai Headquarter. The assessee either made no payment or there is difference in payment or the payment is made after due date as prescribed under the Provident Fund Act. The Assessing Officer has pointed out the following:-

Disallowance on account of difference	Rs.65,462/-
Disallowance on account of non-payment	1,28,798/-
Disallowance on account of payment after due date	9,08,973/-
Total	11,03,233/-

15. Hence, the Assessing Officer disallowed the claim of assessee of employees contribution to the provident Fund being paid beyond the due date of prescribed Act amounting to ₹ 11,03,233/- and added to the returned income of the assessee. Aggrieved assessee preferred the appeal before CIT(A). The CIT(A) allowed the claim of the assessee by observing in Para 5.6 as under: -

“5.6.1 This ground relates to addition of Rs. 11,03,233/- u/s 36(1)(va) on account of late payment of employees contribution to PF. During the appellate proceeding it has been contended that the same are paid before due date of filing of return. Relying on the case in 53 Taxmann.com 141, CIT vs. Ghatge Patil Transport (BOM) and other



jurisdictional judgements, the assessing officer is directed to verify and allow the same if paid before due date of filing the return of income. This ground is allowed subject to verification.” Aggrieved, now Revenue is in appeal before Tribunal.

16. Before us, the learned CIT DR Ms. Mamta Bansal stated that there is no question of allowance of differential payment of ₹65,462/- which has never been paid by the assessee and the amount which are not paid by the assessee amounting to ₹1,28,798/- being claimed on account of employees contribution of provident fund. The balance amount of ₹9,08,873/- was paid after the due date as prescribed under the provident fund Act. She stated that the Assessing Officer clearly brought out the amount due and amount paid. Now, the learned CIT DR further stated that there is an amendment in the Provisions of Section 36(va), wherein explanation 2 was added by the Finance Act 2021, with effect from 01.04.2021 and the relevant explanation read as under: -

“[Explanation-2- For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the “due date” under this clause;]

17. The learned CIT DR stated that this is only clarificatory explanation and normal presumption is that these provisions have been in the Act from the very inception, once it is clarificatory for this, she relied on CIT v. Podar Cement (Pvt.) Ltd. [1997] 226 ITR 625 (SC) and CIT vs. Gold Coin Health Food (P.) Ltd [2008] 304 ITR 308 (SC). 18. On the other hand, the learned Counsel for the assessee relied on the decision of Hyderabad Bench of ITAT in the case of Salzgitter Hydraulics (P.) Ltd. Vs. ITO (2021) 128 taxmann.com 192 (Hyderabad – Trib.) dated



15.06.2021, wherein it is held that the provident fund contribution received from employees deposited by assessee before the due date of filing of return under section 139(1) of the Act but after the due date prescribed in the relevant statute of provident Fund Act is to be allowed despite the fact that legislation has not only incorporated necessary amendment in section 36(1)(va) of the Act by inserting explanation 2 as well as explanation 5 to section 43B vide Finance Act, 2021 with effect from 01.04.2021, wherein it is clarified that the provisions of section shall not apply and shall be deemed to have been applied to a sum received by assessee from any of his employees covered by section 2(24)(x) of the Act because this explanations are prospective and not retrospective. The relevant Para 2 of the case reads as under: - “2. Coming to the sole substantive issue of ESI/PF disallowance of Rs. 1,09,343/- and Rs. 3,52,622/-, the assessee's and revenue's stand is that the same has been paid before the due date of filing sec. 139(1) return and after the due date prescribed in the corresponding statutes; respectively. I notice in this factual backdrop that the legislature has not only incorporated necessary amendments in Sections 36(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 1-4-2021 only. It is further not an issue that the forergoing legislative amendments have proposed employers contributions; disallowances u/s 43B as against employee u/s 36 (va) of the Act; respectively. However, keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 1-4-2021, I hold that the impugned disallowance is not sustainable in view of all these latest developments even if the Revenue's case is supported by the following case law.”



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19. *In view of the above, we are of the view that the legislative amendments incorporated in section 36(1)(va) and 43B of the Act by the Finance Act, 2021 by inserting explanation 2 and explanation 5 to the respective provisions, are prospective in application with effect from 01.04.2021. Hence, we find no infirmity in the order of Commissioner of Income Tax (Appeals). Hence, the appeal of the Revenue is dismissed.”*

5. Since the issue has duly been covered by the decision in the case of **Maharashtra Tourism Development Corporation Ltd (supra)**, therefore, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee.

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

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6. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.1781/Mum/2021, therefore, there is no need to repeat the same. However, the figure is different. The finding given above while deciding the ITA. No.1781/Mum/2021 is quite applicable to the facts of the present case also as *mutatis and mutandis*. Accordingly, we allowed the appeal of the assessee bearing ITA. No.1782/Mum/2021 also.

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

Order pronounced in the open court on 28/04/2022.

Sd/-
(S. RIFAUH RAHMAN)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 28/04/2022.
Vijay Pal Singh, (Sr. PS)

Sd/
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER



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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai