

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2071/Mum/2021
(निर्धारण वर्ष / Assessment Years : 2017-18)

Scindia Investments Pvt Ltd B-431, Phoenix House, 462, Senapati Bapat Marg Lower parel, Mumbai – 400 013.	बनाम/ Vs.	CIT(A) National Faceless Appeal Centre, Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS8590C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Ninda Patade
प्रत्यर्थी की ओर से/ Respondent by :	Shri Hoshang B. Irani (DR)

सुनवाई की तारीख / Date of Hearing	04.05.2022
घोषणा की तारीख/ Date of Pronouncement	04.05.2022

आदेश / O R D E R

PER SHRI OM PRAKASH KANT, AM:

This appeal has been preferred by the assessee against the order dated 19.09.2021 of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFSC), Delhi (in short 'Ld. CIT(A)) for the A.Y 2017-18. The assessee has raised the following grounds of appeal.

1 : 0 Re.: Adjustment of Rs. 1,78,169/- in respect of

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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. 1,78,169/- u/s. 36(1)(va) of the Act.

1 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the Commissioner of Income-tax (Appeals) is misconceived, incorrect, erroneous and not in accordance with the law.

1 : 3 The Appellant submits that the Commissioner of Income-tax (Appeals) be directed to delete the disallowance so made and to re-compute its total income accordingly.

2: 0 Re.: General:

2 : 1 The Appellant craves leave to add, alter, amend, substitute and/or otherwise modify in any manner whatsoever the foregoing ground of appeal at or before the hearing of the appeal.

2. The briefly stated the facts are that the assessee has filed the return of income for the year under consideration on 24.05.2018 declaring total income of Rs. 2,88,25,689/- under the normal provisions and Rs. 4,39,58,786/- under book profits u/s 115JB of the Income Tax Act, 1961 (in short 'the Act') and has claimed refund of Rs. 24,19,110/-. The return of income was processed u/s 143(1) of the Act, wherein, the disallowance for employees' contribution to

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Provident Fund (PF) of Rs. 1,78,169/- has been made u/s 36(1)(va) of the Act.

3. We have heard the rival submissions and perused the material available on record. It is the contention of the revenue that employees' contribution has been paid after the due date for payment of EPF and ESIC prescribed in relevant Acts, therefore, the same is disallowable in terms of Sec. 36(1)(va) of the Act. Whereas, the Ld. Counsel of the assessee before us submitted that the Hon'ble Bombay High Court decision in the case of CIT Vs. Ghatga Patil Transport Ltd in Income Tax Appeal No. 1002 & 1034 of 2012 order dated 14.10.2014 has held that both the employer and employee's contribution to PF and ESIC paid before the due date of the filing of the return of income are allowable as deduction. The Hon'ble Tribunal in following decisions has also upheld the same view:

1. *M/s BI Worldwide India Pvt Ltd. Vs. DCIT in ITA No.433/Bang/2021 dated 04.01.2022.*

2. *Shri Satish Kumar Sinha Vs. ITO in ITA No.293/Hyd/2021,A.Y 2019-20 order dated 23.08.2021*

3.3 Further, the amendment Sec. 36(1)(va) of the Act as well as to Sec. 43B of the Act introduced by way of Finance Act 20211 has been made effective from 01.04.2021. The Hon'ble Tribunal in various decisions has held that his

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amendment has prospective in nature. In view of the binding precedent of Hon'ble Jurisdictional High Court, the disallowance was beyond scope of adjustment u/s 143(1)(a) of the Act, therefore the order of the Ld. CIT(A) is set aside and addition made by the A.O is deleted. Accordingly, the grounds of appeal of the assessee are allowed.

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

Order pronounced in the open court 04.05.2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, Dated 04.05.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/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, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	04.05.2022		PS
2.	Draft placed before author	05.05.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			