

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH, HYDERABAD.**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**ITA No.511/Hyd/2021
(Assessment Year : 2018-19)**

M/s. Progress Software Development
Private Limited,
Hyderabad.
PAN AADCP 4833A

.....Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 16(2), Hyderabad.

.....Respondent.

Appellant By : None.

Respondent By : Shri Sunil Goutam,(D.R.)

Date of Hearing : 25.04.2022.

Date of Pronouncement : 27.04.2022.

O R D E R

Per Shri L.P. Sahu, A.M. :

This assessee's appeal for Asst. Year 2018-19 arises from the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi's order dt.08.10.2021 passed in case No. ITBA / NFAC /S/ 250/ 2021-22/1036252669(1) in proceedings under Section 250 of Income Tax Act, 1961 ('the Act').

2. None appeared on behalf of the assessee at the time of hearing of this appeal. However, we proceed to dispose of

this appeal after hearing the ld. DR and considering the facts available on record.

3. Before us, the ld. DR, relied on the orders of revenue authorities and submitted that since the assessee failed to remit the employees contributions towards PF & ESI, within the due date as prescribed under the respective Acts, the revenue authorities disallowed the same u/s 36(1)(va) of the Act. Further, he submitted that the amendment made in the Act will not affect the earlier addition made by the AO on this issue.

4. We have considered the submissions of Ld. DR and perused the material on record as well as gone through the orders of revenue authorities. It is observed that the assessee had paid the employees' contribution to PF for the month of January on 26th February 2018 before filing of Return of Income for the impugned assessment year. The assessee submitted before the lower authorities that the employees' contributions to PF & ESI paid after the due date, but, before the due date of filing the return of income. Therefore, the issue has been settled that if the assessee has paid the PF and ESI payments before the due date of filing of return income u/s 139(1) of the Act, no disallowance is warranted as held by the coordinate bench of the ITAT Hyderabad in case of ITA No. 2197/Hyd/2017 for Assessment Year: 2013-14, in case of Value Momentum Software Services Private

Limited, Vs Deputy Commissioner of Income Tax, in which, it was held as under:

“5. Next comes the latter issue of Section 43B disallowance of Rs.8,11,648/- pertaining to employees provident fund. It is not in dispute that learned lower authorities held that the same had to be deposited before the due date prescribed in the corresponding statute than the due date for filing Section 139(1) return. The Revenue’s case in tune thereof relies on Section 36(va) read with explanation thereto that it is not Section 43B but the former provision which is applicable in such an instance. We find no merit in the Revenue’s foregoing stand. We take note of the explanatory memorandum to the Finance Act, 2021 proposing amendment in both Section 36(va) as well as Section 43B by inserting corresponding Explanations that although the impugned employees provident fund comes under the former provision only, the same is applicable from 01-04-2021 onwards. Meaning thereby that the legislature itself has condoned the impugned default before 01-04-2021. We thus delete the impugned employees provident fund disallowance of Rs.8,11,648/- for this precise reason alone. Necessary computation to follow as per law.”

4.1 As the issue is settled that if the assessee is remitted the employees contribution towards PF & ESI before filing of the return u/s 139(1) of the Act, no disallowance can be made under these heads. Therefore, following the decision of the coordinate bench cited supra, we direct the AO to delete the addition made on account employees contribution of PF & ESI of Rs.28,26,712/-. Accordingly, the grounds raised by the assessee on this issue are allowed.

5. In the result, appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 24th April, 2022.

Sd/-

(LALIET KUMAR)
Judicial Member

Sd/-

(L.P. SAHU)
Accountant Member

Hyderabad, Dt. 24.04.2022.

* Reddy gp

Copy to :

1.	M/s. Progress Software Development Pvt. Ltd., Unit 1101, A Wing, Galaxy, Sy.No. 83/1, HYD Knowledge City, TSIC, Raidurg Village, Serilingampally Mandal, Hyderabad.
2.	DCIT, Circle 16(2), Hyderabad.
3.	CIT(Appeals), NFAC Centre, Delhi.
4.	DR, ITAT, Hyderabad.
5.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.