

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE**

**SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 53/Hyd/2022**  
(Assessment Year: 2019-20)

The Assistant Commissioner  
of Income Tax,  
Circle-8(1),  
Hyderabad

Vs. M/s.Vijai Electricals Limited,  
Hyderabad  
[PAN No. AAACV7259B]

Appellant

Respondent

Assessee by: Shri S.Rama Rao,  
Revenue by: Shri Rohit Mujumdar,

Date of hearing: 09/05/2022  
Pronouncement on: 10/05/2022

**ORDER**

**PER K. NARASIMHA CHARY, JM:**

Challenging the order dt.28/12/2021, passed u/s.250 of the Income Tax Act, 1961 ("the Act") in the case of M/s.Vijai Electricals Limited, ("the assessee"), Revenue preferred this appeal, stating that the delayed remittances of employees' contributions towards PF/ESI is not allowable u/s.43B of the Act inspite of specific provisions of the Act u/s.36(1)(va) of the Act.

2. Brief facts of the case are that a sum of Rs.1,49,99,997/- was disallowed u/s.36(1)(va) of the Act for the delayed payments of ESI/PF contribution of the employees by the employer, but which was paid before the due date of filing the return of income u/s.139(1) of the Act. When the appeal was preferred, a view is taken to the effect that the decision of the Hon'ble Apex Court in the case of CIT Vs. Vinay Cement Limited (2007) 213 CTR 268 (Supreme Court), followed by the Hon'ble High Court in the case of CIT Vs. AIMIL Limited (2010) 188 Taxmann 265 (Delhi) is applicable to the facts of the case and the employees' contribution towards PF and ESI would qualify for deduction even if it is paid after due date prescribed under the Provident Fund Act and ESI Act but before the due date for filing the return of income. The appellate order further reads that this view has been followed in various other decisions by many Hon'ble High Courts. Appeal of the assessee, therefore, allowed and the addition was deleted.

3. It is argued before us by the Ld.DR that the amendments that were brought through the Finance Act, 2020-21, amendment to Section 43B and Section 36(1)(va) of the Act only reiterate the intention of the legislature that in respect of the employees' contribution to PF and ESI, provisions of Section 43B of the Act shall deemed to have never been applied. It is further submitted that such amendments by way of Finance Act, 2021 are purely clarificatory to clear the meaning of the provision of the principal Act.

4. Per contra decision submitted on behalf of the assessee that the assessee is entitled to the deduction of the employees' contribution to PF and ESI having regard to the provisions u/s.43B of the Act and the Hon'ble Karnataka High Court held so in Essae Teraoka Pvt. Ltd. Vs. DCIT [366 ITR

408] (Kar). Ld.AR also submitted the Co-ordinate Bench's decision in the cases of – M/s.Plivo Communications Private Limited Vs. The Asst.Commissioner of Income Tax, CPC (ITA No.716/Bang/2021) and in the case of Srinivas Achar Mohankumar Vs. Income Tax Officer [2022] (135 taxmann.com 129) (Bangalore – Trib) in support of his arguments.

5. We have gone through the record in the light of the submissions made on either side. As a matter of fact, the issue involved in this case is no longer res integra and has been covered by the Hon'ble Karnataka High Court's decision in the case of Essae Teraoka Pvt. Ltd. Vs. DCIT (supra) and also the view taken by the Co-ordinate Bench in the case of Shakuntala Agarbathi Company Vs. Dy.CIT (IT Appeal No.385(Bang) of 2021, dt.21/10/2021). In a number of appeals, the Hyderabad Bench of the Tribunal had also taken the view that the assessee is entitled to the deduction of employees' contribution to PF and ESI as is held by the Hon'ble Delhi High Court in the case of CIT Vs. AIMIL Limited (supra), following the decision of Hon'ble Supreme Court in the case of CIT Vs. Vinay Cement Limited (supra). Further, various Benches of the Co-ordinate Benches of the Tribunal are taking the consistent view that the employees' contribution to PF and ESI, if paid on or before the due date of filing of the return, no disallowance be made. It has further been held that the amendment of Section 36(1)(va) by the Finance Act, 2021 is prospective and not retrospective. Since the view taken by the First Appellate Authority is consistent with the view taken by the Co-ordinate Benches in a number of appeals, in line with the decision of the Hon'ble Apex Court in the case of CIT Vs. Vinay Cement Limited (supra) and Hon'ble Delhi High Court in the case of AIMIL (supra), we do not find any irregularity or illegality in the

findings returned by the First Appellate Authority and accordingly, uphold the same. The appeal is, therefore, devoid of merits and deserves to be dismissed. We order accordingly.

6. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on this the 10<sup>th</sup> day of May, 2022

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

*TNMM*

Hyderabad,  
Dated: 10/05/2022

Copy forwarded to:

1. The Assistant Commissioner of Income Tax, Circle-8(1), Hyderabad.
2. M/s.Vijai Electricals Limited, 6-3-648/1 and 2, Rajbhavan Road, Somajiguda, Hyderabad.
3. CIT(Appeals)-NFAC, Delhi.
4. DR, ITAT, Hyderabad
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD