

**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. 75/Hyd/2022
(Assessment Year: 2018-19)

Panzer Technologies
Private Limited,
Hyderabad
[PAN No. AAGCP1372D]

Vs. The Income Tax Officer,
Ward-1,
Mahabubnagar

Appellant

Respondent

Assessee by: Shri Radha Krishna,
Revenue by: Shri Rohit Mujumdar,

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

ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 28/07/2021 for the AY.2018-19, passed u/s.250 of the Income Tax Act, 1961 ("the Act") in the case of M/s.Panzer Technologies Private Limited ("the assessee"), the assessee preferred this appeal. Ground of disallowance is that the delayed remittances of employees' contributions towards PF/ESI is not allowable u/s.43B of the Act, in spite 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.24,25,453/- 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 and consequently demand for Rs.7,90,602/- was raised. When the appeal was preferred, the same was dismissed holding that Section 43B of the act does not cover the employees' contribution referred to in clause (va) of Section 36(1) of the Act.

3. It is argued before us by the Ld.AR that the total amounts of PF and ESI recovered from employees along with the employer's contribution during the year were paid within the due date for filing the return of income and there should not be any disallowance in this regard. In this connection, he relied on the order of the Co-ordinate Bench of the Tribunal in the case of M/s.Annapurna Studios Private Limited Vs. ITO, in ITA No.1290/Hyd/2017, dt.09-05-2018 that if the employees contribution is paid before the due date for filing the return of income, it is suffice for allowing the deduction.

4. Per contra, 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. On this score, he justified the orders of the authorities below.

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 (2010) 188 Taxmann 265 (Delhi), following the decision of Hon'ble Supreme Court in the case of CIT Vs. Vinay Cement Limited (2007) 213 CTR 268 (Supreme Court).

6. In the case of the assessee, it is not disputed that the employees' contributions towards ESI and PF of Rs.24,25,453/- were deducted by the assessee and remitted in the Government Treasury within the due date of filing the return of income under the Income Tax Act, 1961. Since the case of the assessee relates to assessment year 2018-19 and the amendment though clarificatory in nature has come into effect from 01/04/2021, for the relevant year under consideration it would suffice that the employees' contribution towards ESI and PF deducted by the assessee is remitted in the Government Treasury within the due date of filing of the return of income as prescribed under the Act. 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. Therefore, the disallowance made by the Ld. Revenue Authorities is deserved to be deleted. Hence, we hereby direct the Ld. AO to delete the addition made in the hands of the assessee amounting to Rs.24,25,453/- towards disallowance of payment made in regard to the employees' contribution to PF & ESI fund, and consequently the demand raised to the tune of Rs.7,90,602/- has to be quashed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on this the 10th 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. Panzer Technologies Private Limited, 5-9-84/1, Ramachander House,
Chapel Road, Near L.B.Stadium, Hyderabad.
2. The Income Tax Officer, Ward-1, Mahabubnagar.
3. CIT(Appeals)-NFAC, Delhi.
4. DR, ITAT, Hyderabad
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD