

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1713/Mum/2021 (A.Y. 2019-20)

Sangeeta Dudyraj Singh Indira Nagar, Gaondevi Vakola Pipeline, Kalina Santacruz, Mumbai-55 PAN : EARPS4732J (Appellant)	Vs.	ACIT, CPC Bengaluru (Respondent)
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Assessee by	None
Department by	Shri Pravin Salunkhe
Date of Hearing	31.03.2022
Date of Pronouncement	27.04.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 2.8.2021 pertains to A.Y. 2019-20.

2. The grounds of appeal read as under :-

1. The Assessing Officer has erred in adding to income of Rs. 22,62,260/- being late payment of Employees Contribution to Provident Fund.
2. The above addition is not sustainable under section 143(1).

3. Brief facts of the case are that in the order under section 143(1) of the I.T. Act passed by CPC, Bangalore disallowing the aforesaid sum.

4. Against the above order the assessee appealed before learned CIT(A). Learned CIT(A) confirmed the action of CPC by holding as under :

5.41. I have carefully considered the arguments of the appellant as well as various decisions cited by the appellant. In the instant case, disallowance has been made u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on the ground that the employees' contribution to ESIC were deposited much after the specified dates mentioned in the said Act and the same is clearly mentioned in the Tax Audit Report.

5.42. Hon'ble Delhi High Court in the case of CIT vs. Bharat Hotels Ltd., reported in (2019) 410 ITR 417 has held that Employees' State Insurance Corporation and Provident Fund dues paid beyond prescribed period is not an allowable deduction. Thus, the Hon'ble Delhi High Court has decided the identical issue in favour of revenue, which is after the date of SLP dismissed by the Hon'ble Apex Court in the case of Rajasthan State Beverages Corporation Ltd. Recently, Hon'ble ITAT Delhi vide their order dated 18.02.2021 in the cases of Dabur India Ltd., Vs Addl. CIT, Range-10 Delhi in 1TA Nos. 3241 & 6525/Del/2014 Assessment Years: 2007-08 & 2008-09 and 1TA Nos. 3114 & 6256/Del/2014 Assessment Years: 2007-08 & 2008-09 has upheld the same view and confirmed addition made by the AO. Also, the relevant sections s. 36(1)(va) and s.436 of the Act) has been amended retrospectively by the Finance Act 2021.

5.43. From the above judicial decisions and also from the unambiguous wording of the now amended provisions of section 36(1) and 43B, it is clear that the employee's contribution can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant welfare funds and this position of law is and has always been the case and the clarifications brought about by the amendment clearly apply retrospectively. The case laws relied on by the appellant which were rendered prior to the clarificatory amendments, therefore are not applicable to the present case. As regards letter of the DGIT(L&R) is concerned , that is also before the date of amendment and therefore not applicable as such.

6. It is therefore, held that the disallowance made u/s.143(1) by CPC on account of appellant's failure to pay the employee's contribution of PF/ESI within the prescribed due dates as per section 36(1)(va) is strictly in accordance with law and clearly comes under the prima facie adjustments as envisaged under section 143(1)(a)(iv). The order under section 143(1) issued by CPC is therefore confirmed fully. Appellant's ground on the issue falls."

5. Against this order the assessee is in appeal before the ITAT.

6. I have heard learned Departmental Representative and perused the record. I find that prior to the amendment there were Hon'ble Bombay High Court decision in CIT Vs. Ghatge Patil Transport Pvt. Ltd. (ITA No. 1002 of 2012 order dated 14.10.2014 following Hon'ble Supreme Court decision in Alom Extrusions Ltd. (319 ITR 306) which laid down that deposits of the sum up to the date of filing of return is sufficient compliance. The Finance Act, 2021 has provided an explanation in this regard for the disallowance of the sum which is paid after the due date. When this fact is taken into account by no stretch of imagination it can said that the above said adjustment can fall under the category of 143(1) prima-facie adjustment. Hence, I hold that CPC

has no jurisdiction of adjustment u/s. 143(1) on this issue where admittedly there were decisions in favour of the assessee from the Hon'ble High Courts and the legislature has brought in an Explanation by Finance Act, 2021 in this regard subsequently. Moreover, as regards, merits of the case the aforesaid explanation was added by Finance Act, 2021 and the said explanation in my considered opinion cannot be said to be retrospective. The assessment year during the present case is AY 2018-19 and is prior to the said amendment/insertion. Hence, on merits also, the issue is covered in favour of the assessee as before the amendment, there were decisions of Hon'ble Bombay High Court and Hon'ble Supreme Court in favor of assessee on the said issue.

7. In the result, the appeal by the assessee is allowed and the orders of the authority below are set aside.

Order pronounced in the open court on 27.04.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/04/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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