

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM

**ITA No. 2008/Mum/2021**  
(Assessment Year 2019-20)

**ITA No. 79/Mum/2022**  
(Assessment Year 2017-18)

**ITA No. 80/Mum/2022**  
(Assessment Year 2018-19)

Ramesh Narayan Shetty  
Prop: Geeta Caterers 407, Natasha  
Tower, Juhu Versova Link Road,  
Mumbai-400 061

**(Appellant)**

Vs.

The Dy. Commissioner of Income-tax,  
Central Processing Centre  
Bangalore,  
PIN-560100

**(Respondent)**

**PAN No. AAEPS2794R**

**Assessee by** : None  
**Revenue by** : Shri R A Dhyani, DR

**Date of hearing:** 06.05.2022  
**Date of pronouncement :** 12.05.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. Assessee has filed ITA No. 79/Mum/2022 for Assessment Year 2017-18, ITA No.80/Mum/2022 for Assessment Year 2018-19 and ITA No.2008/Mum/2021 for Assessment Year 2019-20. By application dated 27<sup>th</sup> April, 2022, assessee has stated that these are the three appeals filed by the assessee for three different assessment years involving common ground of appeal against the confirmation of disallowance on account of delayed payments of employees' contribution towards provident fund. As the issue involve is covered, the assessee requested for consolidation of the same.
02. On behalf of the assessee nobody appear to plead this consolidation application. The learned Departmental Representative submitted that it involves common ground.

03. The bench pointed out to the learned Departmental Representative that issue involved in all these three appeals are covered in favour of the assessee therefore can appeals decided without consolidating the same today itself. The learned Departmental Representative did not object. Therefore, instead of attending to the application for consolidation of these three appeals, we proceed to decide the issue involved in this appeal itself.
04. For Assessment Year 2017-18, as per order passed by the Central Processing Centre (CPC), Bangalore dated 14<sup>th</sup> March, 2019, there is a disallowance of ₹3,56,153/- on account of delayed payment of employees contribution towards provident fund. For Assessment Year 2017-18 similar disallowance was for ₹7,01,051/- as per order of CPC dated 25.06.2019. For Assessment Year 2019-20, disallowance on identical issue was of ₹ 2,24,892/-. All these three orders were challenged before the learned Commissioner of Income-tax (Appeals). The learned CIT (A) held that there is a clarificatory amendment by the Finance Act, 2021 to Section 36(1)(va) and Section 43B of the Act and therefore, there is no error in the order passed by the CPC, Bangalore.
05. The learned Departmental Representative vehemently supported the orders of the lower authorities.
06. We have carefully considered the contention of the learned Departmental Representative and order passed by the learned CIT (A). We find that identical issue has been decided by the co-ordinate bench in case of Kalpesh Synthetics (P.) Ltd. vs. DCIT [2022] 137 taxmann.com 475 (Mumbai - Trib.) dated 27<sup>th</sup> April, 2022. It is being held as under:-

*“10. In view of the detailed discussions above, we are of the considered view that the impugned adjustment in the course of processing of return under section 143(1) is vitiated in law, and we delete the same. As we hold so, we make it clear that our observations remain confined to the peculiar facts before us, that our adjudication is confined to the limited scope of adjustments which can be carried out under section 143(1) and that we see no need to deal with the question, which is rather academic in the present context, as to whether if such an adjustment was to be permissible in the scheme of Section 143(1), whether the insertion of Explanation 2 to Section 36(1)(va), with effect from 1<sup>st</sup> April 2021, must mean that so far as the assessment years prior to the assessment years*

*2021-22 are concerned, the provisions of Section 43B cannot be applied for determining the due date under Explanation (now Explanation 1) to Section 36(1)(va). That question, in our humble understanding, can be relevant, for example, when a call is required to be taken on merits in respect of an assessment under section 143(3) or under section 143(3) r.w.s. 147 of the Act, or when no findings were to be given on the scope of permissible adjustments under section 143(1)(a)(iv). That is not the situation before us. We, therefore, see no need to deal with that aspect of the matter at this stage.”*

07. Further amendment made by the Finance Act, 2021 to Section 36(1)(va) and Section 43B of the Act are held to be prospective by the co-ordinate Bench in case of Rakesh Janghu vs. CPC, Bangalore [2022] 136 taxmann.com 154 (Delhi - Trib.) dated [14-02-2022].
08. Therefore, respectfully following the above two decisions of the co-ordinate Benches, we delete the disallowance in all these three years and allow the appeals of the assessee.
09. In the result, all the three appeals are allowed.

Order pronounced in the open court on 12.05.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.05.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai