

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.103/Bang/2022
Assessment year : 2017-18

Hipower Support Centre LLP, 92/1B, Electronics City Phase 1, Konappana Agrahar, Bangalore-560 100. PAN – AAJFH 9654 E.	Vs.	The Asst. Director of Income-tax (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sushen Srivathsan, Advocate
Revenue by	:	Shri. Sankar Ganesh K, JCIT (DR)

Date of hearing	:	12.05.2022
Date of Pronouncement	:	13.05.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This assessee's appeal for A.Y. 2017-18 arises against the National Faceless Appeal Centre (NFAC) order dated 29.12.2021 passed in DIN & Order No. ITBA/NFAC/S/250/2021-22/1038226106(1) in proceedings u/s 154 of the Income Tax Act, 1961 [in short 'the Act'].

2. Heard both the parties. Case file perused.

3. Assessee has raised the following substantive grounds in its appeal.

"I. Deduction of Rs 4,06,667 as contribution made towards ESI.

1. The learned AO and the First Appellate Authority has erred in applying the provisions of Section 36 1 (va) retrospectively to the relevant assessment year of 2017-2018.

2. The High Court of Karnataka in Essae Teraoka v DCIT has held that the Assessee would be entitled to deduction of amounts paid as contributions towards PF and ESI provided that the payments were made prior to the due date of filing return under Section 139 (1).

3. The Bangalore bench of this tribunal, in Shakuntala Agarbatti Company v DCIT in ITA No. 385/Bang/2021 has applied the dictum in Essae Teraoka v DCIT and further held that the amendment to the Finance Act, 2021 to Section 36 (1) (va) and 43 B is not clarificatory and declaratory and it is effective only from the AY 2021 - 2022 onwards and has no application to AY 2019 - 2020.

4. The Bangalore bench of this tribunal in Zenpower Technologies LLP v ADIT in ITA No.426/Bang/2021 has relied upon the decision in Shakuntala Agarbatti Company v DOT in ITA No. 385/Bang/2021 and held that the provision of Section 36 (1) (va) has no application to the AY 2017 - 2018.

5. The various benches of this Tribunal have also held that the operation of Section 36 (1) (va) is prospective and not retrospective:

a. Dhabria Polywood Ltd v ACIT 2021 (63) CCH 0030 Jaipur

b. NCC Ltd v ACIT 2021 (63) CCH 0060 Hyderabad

c. Indian Geotechnical Services v ACIT ITA No.622/Del/2018

d. Jana Urban Services for Transformation Pvt Ltd v DOT in ITA No.307/Bang/2021

6. Therefore, the provision of Section 36 1 (va) is only applicable from AY 2021 - 2022 onwards and has no application to the assessment year 2017 - 2018 and the

learned AO and the First Appellate Authority ought to have erred in disallowing a Deduction of Rs 4,06,667 as contribution made towards ESI.”

4. The ld.AR of the assessee said that the ld.CIT(A) failed to appreciate that CBDT Circular No.22/2015 cannot override the provisions of section 43B and the amendments made in this regard in the Finance Act is prospective in nature, consequently, there cannot be disallowance u/s 36(1)(va).

5. Coming to the sole substantive issue of ESI/PF disallowance of Rs.4,06,667/-, the assessee's and Revenues plea that the same has been paid before the due date of filing sec. 139(1) return and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 1.4.2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s 43B as against employee's contribution u/s 36(va) of the Act; respectively.

6. We follow the order of the Hyderabad Bench in the case of M/s Chiphercloud India Pvt. Ltd., in ITA No.1367/Hyd/2018 and also keeping in mind the fact that the same has been clarified to be applicable only with prospective

effect from 1.4.2021, we hold that the impugned disallowance is not sustainable in view of all these latest developments even if the Revenues case is supported by the following case laws.

(i) CIT vs. Merchem Ltd, [2015] 378 ITR 443(Ker) ;

(ii) CIT vs. Gujarat State Road Transport Corporation (2014) 366 ITR 170 (Guj.);

(iii) CIT vs. South India Corpora' Ltd. (2000) 242 ITR 114 (Ker);

(iv.) CIT vs. GTN Textiles Ltd. (2004) 269 ITR 282 (Ker);

(v) CIT vs. Jairam & Sons [2004] 269 ITR 285 (Ker)

7. The impugned ESI/PF disallowance is directed to be deleted therefore.

8. In the result, the assessee's appeal is allowed in above terms.

Order pronounced in court on 13th day of May, 2022

Sd/-

(GEORGE GEORGE K)

Judicial Member

Bangalore,

Dated, 13th May, 2022

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

/ vms /

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2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
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By order

Asst. Registrar, ITAT, Bangalore.

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