

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 2491/Mum/2021

(Assessment Year 2018-19)

ITA No. 2492/Mum/2021

(Assessment Year 2019-20)

The Income-Tax Officer,
Ward 13(1)(1),
Room no. 225,
Aayakar Bhavan,
M.K. road,
Mumbai-400 020

Vs.

35 Integrated Facility
management Pvt. Ltd.
108, Ruby Industrial Estate,
Chincholi Bunder Road,
Off. New Link Road,
Malad (W),
Mumbai-400 064

(Appellant)

(Respondent)

PAN No. AAACZ8848E

Assessee by : None

Revenue by : Shri B.K. Bagchi, DR

Date of hearing: 11.05.2022

Date of pronouncement : 23.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Income-tax officer, 13(1)(1), Mumbai (the learned Assessing Officer) for Assessment Year 2018-19 against the order passed by the National Faceless Appeal Centre (NFAC), dated 30th September, 2021, wherein the learned Commissioner of Income-tax (Appeals) [the learned CIT(A)] has deleted the disallowance with respect to the late payment of employees' and employers' contribution to Employee Provident Fund (EPF) and Employee State Insurance (ESI) of ₹2,74,34,450/- are held to be allowable as deduction

under section 36(1)(va) of the income-tax Act, 1961 (the Act) read with section 43B of the Act. The learned Assessing Officer aggrieved and has preferred this appeal raising following grounds:-

"1. "Whether on the facts and circumstances of the case and in law, the Id.CIT(A) erred by holding that both employees and employers contribution to EPF and ESI of Rs.2,74,34,450/- are allowable as deduction u/s.36(1)(va) of the Act if it is paid before due date of filing of return of income by ignoring the fact that the clarification issued by CBDT vide Circular No. 22/2015 dated 17th December, 2015 wherein it has been clarified that the time limit as prescribed vide section 43B does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act."

The appellant prays that the order of the Ld.CIT (A) be set aside and the order of the AO be restored."

02. The fact shows that assessee is a company filed return of income declaring total income at ₹ nil on 31st October, 2018. The assessment under section 143(3) of the Act was completed by Central Processing Centre, Bangalore (the learned Assessing Officer) by making a disallowance under section 36 of the Act towards belated payment of EPF and ESI of ₹ 2,74,34,450/-.
03. On appeal before the learned CIT(A), the claim of the assessee was allowed, relying on the decision of Hon'ble Bombay High Court in case of Commissioner of Income-

tax, (Central), Pune Vs. Ghatge Patil Transports Ltd. [2015] 53 taxmann.com 141 (Bombay).

04. The learned Assessing Officer is aggrieved with that order has preferred this appeal.
05. The learned Departmental Representative supported the order of the CPC, Bangalore. He also relied on the amendment made to the income-tax Act on this aspect.
06. None appeared on behalf of the assessee. Looking to the issue involved it is decided on the merits of the case.
07. We have carefully considered the contention of the learned Departmental Representative as well as the orders of the CPC, Bangalore and the learned Commissioner of Income-tax (Appeals). The impugned assessment year is 2018-19. We find that this issue is squarely covered in favour of the assessee by the decision of co-ordinate bench in case of Kalpesh Synthetics (P.) Ltd. Vs. Deputy Commissioner of Income-tax, CPC Bangaluru [2022] 137 taxmann.com 475 (Mumbai - Trib.). In view of this, the solitary ground of appeal raised by the learned Assessing Officer is dismissed.
08. In the result, the appeal of the learned Assessing Officer for Assessment Year 2018-19 is dismissed.
09. Coming to the appeal for Assessment Year 2019-20, filed by the learned Assessing Officer on the similar ground where, disallowance made by the CPC, Bangalore is of ₹2,74,92,659/-, an identical fact exists. The assessee filed

return of income at ₹2,58,42,730/- on 31st October, 2019 and CPC, Bangalore made a disallowance of ₹2,74,92,659/- under section 143(1) of the Act, which was deleted by the learned CIT(A). As there is no change in the facts and circumstances of the case, we respectfully following the decision of co-ordinate Bench in case of Kalpesh Synthetics (P.) Ltd. (*supra*), dismiss the appeal of the learned Assessing Officer. In the result, the appeal for Assessment Year 2019-20 filed by the learned Assessing Officer is dismissed.

010. In the result, both the appeals filed by the learned Assessing Officer are dismissed.

Order pronounced in the open court on 23.05.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23.05.2022

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