

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

BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1873/MUM/2021 (A.Y.2018-19)

Ajay Naresh Aggarwal 6 and 7, Court House L.T. Marg, Dhobi Talao Mumbai-400 002 PAN : ADOPA5571B	vs	Income-tax Officer Circle 18(1), Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Sanjay R Parikh
Department represented by	Shri Ravinder Sindhu, DR

Date of hearing	30/03/2022
Date of pronouncement	23/05/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal is filed by the Assessee against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 19/08/2021 for the Assessment year 2018-19.

2. The brief facts are that for the A.Y. 2018-19, intimation under section 143(1) of the I.T. Act, 1961 was passed by the CPC in assessee's case whereby disallowance to the tune of Rs.16,99,705/- under section 36(1)(va) was made with regard to the employees' contribution to provident fund and ESIC which was duly deducted by the Assessee from the salary of the employees. The said amount was disallowed for the reason that it was paid after the due date

specified in the relevant Act; but was paid before the due date for filing of return of income under section 139(1). Aggrieved by the said order, the Assessee was in appeal before the Ld.CIT(A), who confirmed the order of the Assessing Officer.

3. The Assessee is in appeal before us against the order of Ld.CIT(A). During the appellate proceedings, the Ld.AR contended that the deposit of employees' contribution to PF / ESIC though made after the due date specified in the relevant Act, was made before the due date of filing of return of income. The Ld.DR had nothing to controvert the same and had relied on the order of the lower authorities.

4. Having heard both the learned representatives and perused the materials on record alongwith the various judicial pronouncements cited by both the sides, we observe that the Assessee has deposited the employees' contribution to EPF / ESIC after the due date specified in the relevant Acts but paid before the due date of filing the return of income under section 139(1). The only substantial issue that arises from this appeal is whether the disallowance of Rs.16,99,705/- on account of late payment of employees' contribution towards EPF / ESIC is to be allowed considering the various decisions of the co-ordinate benches pertaining to similar issue. The Ld.AR has relied on the Hon'ble Delhi Tribunal decision in Prowiz Mansystems Pvt Ltd vs DCIT (ITA No.818/Del/2021); Hon'ble Chandigarh Bench of the Tribunal in case of Arjun Yadav vs DCIT (ITA No.351/Chd/2021); Hon'ble Hyderabad Tribunal in case of Salzgitter Hydraulics (P) Ltd [2021] 128 taxmann.com 192 (Hyderabad – Trib)and various other decisions. The Ld.CIT(A) has passed the impugned order on the basis that due to the delayed deposit of the said amount, the Assessing

Officer had jurisdiction to disallow the same under sub clause (ii) and (iv) of section 143(1)(a) of the I.T. Act. The Ld.CIT(A) contended that only Employer's contribution to PF / ESI is allowable if paid on or before the due date for filing of return of income under section 139(1) and since the employees' contribution to PF / ESI falls under the ambit of section 36(1)(va), the same is disallowed if paid after the due date prescribed under the relevant Acts and not before the filing of return of income under section 139(1) of the I.T. Act, 1961. The Ld.CIT(A) has relied on the amendment brought out by the Finance Act, 2021 which has inserted Explanation 2 to clause (va) of section 36(1) and Explanation 5 to section 43B of the Act.

5. Taking into consideration the above observations, we are of the considered opinion that the issue relating to delayed deposit of EPF / ESI has already been dealt with by various Hon'ble High Courts including the jurisdictional Hon'ble Bombay High Court in CIT vs Ghatge Patil Transport Ltd (2014) 368 ITR 749 (Bom) wherein it was held that the decision of the Hon'ble Apex Court in CIT vs Alom Extrusions Ltd (2009) 319 ITR 306 (SC) that the amendment to section 43B of I.T. Act was applicable to both employer's as well as employees' contribution. Furthermore, the amendment brought out in the Finance Act, 2021 was only prospective and not retrospective thereby was applicable only to assessment year 2021-22 onwards and to subsequent years. The same has been reiterated by the decision of various Benches of the Tribunal.

6. We, therefore, are of the considered opinion that the addition made to the tune of Rs.16,99,705/- towards delayed deposit of employees' contribution towards EPF / ESI paid after the specified due date under the relevant Acts, but

nevertheless paid before the due date of filing of the return of income under section 139(1) of the Act, is hereby directed to be deleted.

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

Order pronounced in the open Court on 23rd day of May, 2022.

Sd/-

sd/-

(M.BALAGANESH)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 23/05/2022

Pavanan

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai