

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

डॉ. एम. एल. मीना, लेखा सदस्य एवं डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: DR. M.L. MEENA, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA No. 138/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18

Rajasthan Cooperative Dairy Federation Ltd. Saras Sankul, JLN Marg, Jaipur.	बनाम Vs.	ACIT/DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR0278A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 139 & 140/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18 & 2018-19

P.R. Rolling Mills Pvt. Ltd. S-707, Road No. 6 V.K.I. Area, Jaipur-302013.	बनाम Vs.	ACIT/DCIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCP 4072 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
Shri Shalesh Mantri (C.A.) &
राजस्व की ओर से / Revenue by: Shri A.S. Nehara (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 23/05/2022
उदघोषणा की तारीख / Date of Pronouncement: 27/05/2022

आदेश / ORDER

PER BENCH

These three appeals filed by the assessee are directed against the order of the ld. Commissioner of Income Tax (Appeals)-2, Jaipur/ National Faceless Appeal Centre [herein after referred to as (CIT(A)/(NFAC)] in respect of assessment years 2017-18 & 2018-19 wherein the assessee has challenged the confirmation of addition made u/s 36(1)(va) on account of delay in payment of employees contribution towards PF & ESI.

2. The Assessing Officer made disallowance on the common issue of delayed payment of employees contribution towards PF & ESI, although the assessee has claimed that the said amounts of PF & ESI claimed were paid before due date of filing of return of income. The AO being not satisfied with the explanation of the assessee made the addition u/s 36(1)(va) of the Act r.w.s. 2(24)(10) of the Act.

3. In appeal, ld. CIT(A)/NFAC has confirmed the addition holding that though the assessee has claimed that issue is decided its favour by the Hon'ble High Court and Department's SLP has been dismissed by the Hon'ble Supreme Court. However, the assessee has not given any proof of the same.

4. The ld. CIT(A)/NFAC relying on the Jurisdictional Hon'ble Rajasthan High Court in the case of Ld. Pr.CIT-2, Jaipur vs. Rajasthan Renewal Energy Corp. in DBIT No. 10/2018, 11/2018 & 12/2018 dated 13.03.2018 holding that the

contribution of employees should have been deposited as per dates prescribed in ESI/PF Act and accordingly confirmed finding of the Assessing Officer.

5. The Id. counsel for the assessee, Sh. P. C. Parwal, CA has argued that the issue is covered in favour of the assessee by the decision of Hon'ble Tribunal in case of Sh. Sanjay Porwal vs. The CPC, Bengaluru in ITA No. 63/JP/2022 dated 06/04/2022 wherein the Hon'ble Tribunal vide para 4.7 of the order held as under:-

“4.7. We have considered the rival submissions as well as the relevant material on record. There is no dispute that prior to the amendment brought by the Finance Bill, 2021 in Section 36(1)(va) as well as Section 43B of the Act, the issue of allowability of employees contribution towards PF and ESI and depositing the same in the government account before the due date of filing of return of income U/s 139(1) of the Act was settled and decided in favour of the assessee by various binding precedents of Hon'ble High Courts including the Jurisdictional High Court. The limited controversy is whether the amendment brought to Section 36(1)(va) as well as 43B of the Act is applicable retrospective or from assessment year 2021-22 as it is specifically stated in the memorandum of Finance Bill, 2021. At the outset, it is noted that the Coordinate Bench of this Tribunal in the case of M/s Kogta Financial (India) Ltd. Vs CPC (supra) has considered this issue in para 5 to 7 as under:

“5. We have heard the rival contentions and perused the material available on record. In case of Mohangarh Engineers and Construction Company vs DCIT, CPC (Supra), speaking through one of us, we have extensively dealt with the identical matter relating to employee's contribution towards ESI/PF and our findings therein read as under:-

“13. We have heard the rival contentions and perused the material available on record. On perusal of the details submitted by the assessee as part of its return of income, it is noted that the assessee has deposited the employees's contribution towards ESI and PF well before the due date of filing of return of income u/s 139(1) and the last of such deposits were made on 16.04.2019 whereas due date of filing the return for the impugned assessment year 2019-20 was 31.10.2019 and the return of income was also filed on the said date. Admittedly and undisputedly, the employees's contribution to ESI and PF which have been collected by the assessee from its employees have thus been deposited well before the due date of filing of return of income u/s 139(1) of the Act.

14. *The issue is no more res integra in light of series of decisions rendered by the Hon'ble Rajasthan High Court starting from CIT vs. State Bank of Bikaner & Jaipur (supra) and subsequent decisions.*

15. *In this regard, we may refer to the initial decision of Hon'ble Rajasthan High Court in case of CIT vs. State Bank of Bikaner & Jaipur wherein the Hon'ble High Court after extensively examining the matter and considering the various decisions of the Hon'ble Supreme Court and various other High Courts has decided the matter in favour of the assessee. In the said decision, the Hon'ble High Court was pleased to held as under:*

“20. On perusal of Sec.36(1)(va) and Sec.43(B)(b) and analyzing the judgments rendered, in our view as well, it is clear that the legislature brought in the statute Section 43(B)(b) to curb the activities of such tax payers who did not discharge their statutory liability of payment of dues, as aforesaid; and rightly so as on the one hand claim was being made under Section 36 for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assesseees in claiming the deduction i.e. accrual basis and the same was being allowed, as the liability did exist but the said amount though claimed as a deduction was not being deposited even after lapse of several years. Therefore, to put a check on the said claims/deductions having been made, the said provision was brought in to curb the said activities and which was approved by the Hon'ble Apex Court in the case of Allied Motors (P) Ltd. (supra).

21. *A conjoint reading of the proviso to Section 43-B which was inserted by the Finance Act, 1987 made effective from 01/04/1988, the words numbered as clause (a), (c), (d), (e) and (f), are omitted from the above proviso and, furthermore second proviso was removed by Finance Act, 2003 therefore, the deduction towards the employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the explanation appended to Section 36(1)(va) of the Act further envisage that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under Section 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that Sec.43B starts with a notwithstanding clause & would thus override Sec.36(1) (va) and if read in isolation Sec. 43B would become obsolete. Accordingly, contention of counsel for the revenue is not tenable for the reason aforesaid that deductions out of the gross income for payment of tax at the time of submission of return under Section 139 is permissible only if the statutory liability of payment of PF or other contribution referred to in Clause (b) are paid within the due date under the respective enactments by the assesseees and not under the due date of filing of return.*

22. We have already observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assessee though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment of interest and other consequences and to get benefit under the Income Tax Act, an assessee ought to have actually deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub-section (1) of Section 139 of the IT Act.

23. Thus, we are of the view that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under Section 139(1), cannot be disallowed under Section 43B or under Section 36(1)(va) of the IT Act.”

16. The said decision has subsequently been followed in CIT vs. Jaipur Vidyut Vitran Nigam Ltd. (supra), CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. (supra), and CIT vs Rajasthan State Beverages Corporation Limited (supra). In all these decisions, it has been consistently held that where the PF and ESI dues are paid after the due date under the respective statutes but before filing of the return of income under section 139(1), the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act.

17. We further note that though the Id. CIT(A) has not disputed the various decisions of Hon'ble Rajasthan High Court but has decided to follow the decisions rendered by the Hon'ble Delhi, Madras, Gujarat and Kerala High Courts. Given the divergent views taken by the various High Courts and in the instant case, the fact that the jurisdiction over the Assessing officer lies with the Hon'ble Rajasthan High Court, in our considered view, the Id CIT(A) ought to have considered and followed the decision of the jurisdictional Rajasthan High Court, as evident from series of decisions referred supra, as the same is binding on all the appellate authorities as well as the Assessing officer under its jurisdiction in the State of Rajasthan.

18. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs 4,38,530/- so made by the CPC towards the delayed deposit of the employees's contribution towards ESI and PF though paid well before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted as the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act in view of the binding decisions of the Hon'ble Rajasthan High Court.”

6. In the instant case, admittedly and undisputedly, the employees' contribution to ESI and PF collected by the assessee from its employees have been deposited well before the due date of filing of return of income u/s 139(1) of the Act. Further, the ld D/R has referred to the explanation to section 36(1)(va) and section 43B by the Finance Act, 2021 and has also referred to the rationale of the amendment as explained by the Memorandum in the Finance Bill, 2021, however, I find that there are express wordings in the said memorandum which says "these amendments will take effect from 1st April, 2021 and will accordingly apply to assessment year 2021-22 and subsequent assessment years". In the instant case, the impugned assessment year is assessment year 2018-19 and therefore, the said amended provisions cannot be applied in the instant case. Similar view has been taken by the Coordinate Bangalore Benches in case of Shri Gopalkrishna Aswini Kumar vs. ACIT (supra) wherein it has held as under:-

"7. The Hon'ble Karnataka High Court in the case of Essae Teraoka Pvt. Ltd., (supra) has taken the view that employee's contribution under section 36(1)(va) of the Act would also be covered under section 43B of the Act and therefore if the share of the employee's share of contribution is made on or before due date for furnishing the return of income under section 139(1) of the Act, then the assessee would be entitled to claim deduction. Therefore, the issue is covered by the decision of the Hon'ble Karnataka High Court. The next aspect to be considered is whether the amendment to the provisions to section 43B and 36(1)(va) of the Act by the Finance Act, 2021, has to be construed as retrospective and applicable for the period prior to 01.04.2021 also. On this aspect, we find that the explanatory memorandum to the Finance Act, 2021 proposing amendment in section 36(1)(va) as well as section 43B is applicable only from 01.04.2021. These provisions impose a liability on an assessee and therefore cannot be construed as applicable with retrospective effect unless the legislature specifically says so. In the decisions referred to by us in the earlier paragraph of this order on identical issue the tribunal has taken a view that the aforesaid amendment is applicable only prospectively i.e., from 1.4.2021. We are therefore of the view that the impugned additions made under section 36(1)(va) of the Act in both the Assessment Years deserves to be deleted."

7. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case and following the consistent decisions taken by the various Benches of the Tribunal, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs. 37,62,586/- so made by the CPC towards the deposit of the employees's contribution towards ESI and PF though paid before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted."

Thus, it is clear from the above cited decision that this Tribunal has considered various decisions on this issue and by following decisions of the Coordinate Benches of the Tribunal, this issue was decided in favour of the assessee by holding that amendment in Section 36(1)(va) as well as Section 43B of the Act by way of inserting the explanation vide Finance Bill, 2021 are applicable only from A.Y. 2021-22 and subsequent assessment years and therefore, the said amendment is not applicable to the assessment year under consideration.”

6. Similar view has been taken by the Delhi Benches of Tribunal in the case of Chatru Mal Garg vs. ACIT in ITA No. 850/Del/2021 dated 29/10/2021 and in the case of Indian Geotechnical Services in ITA No. 622/Del/2018 dated 27/08/2021 had decided the issue on identical facts in favour of the assessee deleting the addition made on account of employees contribution towards PF & ESI being deposited before due date of filing of return of income u/s 139(1) of the Act.
7. The ld. DR stand by the impugned orders.
8. Heard. Following Coordinate Bench decision on identical fact we hold that the ld. CIT(A)/NFAC was not justified in confirming the addition made on account of late payment of PF & ESI which were deposited before due date of filing of return of income.
9. Accordingly, the addition made on account of disallowance of PF & ESI is hereby deleted.
10. In ITA No. 140/JP/2022, the assessee has also challenged the confirmation of the addition of Rs. 22,643/- on account of duty drawback, without examination of the actual facts of the case.

11. The Id. CIT(A)/NFAC has observed that as no stage, the appellant has made any efforts to reconcile ITS data with the duty draw back receipts. The ITS is based on information returns furnished by the payers or data directly received on customs department and since the appellant has failed to reconcile the data so he has confirmed the addition made by the Assessing Officer accordingly.

12. The Id. AR submitted that the Id. CIT(A)/NFAC and the AO has not examined the actual ITS data in view of the documents submitted during the course of assessment proceeding and appellate proceedings as well. The Ld. AR argued that the assessee has filed complete bank statement wherein duty drawback were credited by the customs department besides duty drawback ledger and export invoices (APB page No. 7 to 12) and shipping bills were also submitted. The Ld. AR has also filed the acknowledgement of submission of documentary evidences to this effect before the lower authorities (APB page No. 13 to 14).

13. The Id. AR has requested that the matter may be remanded back to the file of the Assessing Officer for the afresh verification of the documentary evidences for the purpose of reconciliation ITS data with the receipts as above.

14. The Id. DR stand by the impugned order, but he has no objection to the request of the assessee on this issue.

15. Admittedly, the appellant-assessee has accounted for the export sales and duty drawback amount received on these export sales. He has filed copies of export invoices

alongwith shipping bills and ledger of duty drawback account before Id. CIT(A)/NFAC. Accordingly, the issue of reconciliation of duty drawback as per details claimed and sanctioned on the exports sales, is restored back to the Assessing Officer to re-examine in view of documentary evidence filed on record as above. No doubt, the assessee shall cooperate in the assessment proceedings before the Assessing Officer to furnish further information if any required on the issue of verification of duty drawback to reconcile the ITS data with the receipts.

16. In the backdrop of the aforesaid discussion, these appeals are disposed of in the terms indicated as above.

Order pronounced in the open court on 27/05/2022

Sd/-

(डॉ. एस. सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

Sd/-

(डॉ. एम. एल. मीना)

(Dr. M.L. Meena)

लेखा सदस्य / Accountant Member

दिनांक / Dated:- 27/05/2022

*Ganesh/Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Rajasthan Cooperative Dairy Federation Ltd., Jaipur.
P.R. Rolling Mills Pvt. Ltd. Jaipur.
2. प्रत्यर्था / The Respondent- ACIT/DCIT, Circle-6, Jaipur.
ACIT/DCIT, Circle-3, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 139 to 140/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar