

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.52/PUN/2022
निर्धारण वर्ष / Assessment Year : 2018-19**

M/s. Vikvins Consultants Pvt. Ltd.,
Shivaji Niketan Tejas Co. Op.HSG. Soc.,
Behind Kothrud Bus Stand,
Kothrud, Pune

PAN : AABCV7830M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Circle – 13, Pune

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 20-05-2022
घोषणा की तारीख / Date of Pronouncement : 06-06-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 20-12-2021 passed by the National Faceless Appeal Centre (NFAC), Delhi for assessment year 2018-19.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. The assessee called absent and set *ex-parte*. Therefore, we proceed to hear the Ld. DR and pass order on the basis of material evidence on record.

3. The assessee filed an application seeking early hearing of appeal by stating that the issue raised in the appeal is covered by the order dated

31.01.2022 passed by this Tribunal in the case of Maharashtra Light Industries vs. ITO in ITA No.458/PUN/2021.

4. On hearing the ld. DR and upon his consent, we proceed to hear the main appeal since the issue is covered in favour of the assessee. The only issue is to be decided is as to whether the National Faceless Appeal Centre (NFAC) correct in confirming the addition made on account of late payment of PF / ESIC in the facts and circumstances of the case.

5. We note that the assessee is a company engaged in the business of providing services in connection with supply of manpower and services. The return of income filed declaring total income of Rs.7,20,320/-, but however the Assessing Officer (AO) *inter-alia*, made addition on account of late payment of PF / ESIC and determined total income of the assessee at Rs.77,97,760/- vide intimation u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). Thereafter, the assessee preferred an application u/s 154 of the Act which was rejected. The NFAC confirmed the order of AO. We note that the assessee received a sum of Rs.70,77,432/- from employees as their contribution to PF / ESIC which was not credited to the accounts of employees on or before specified time contemplated u/s 36(1)(va) of the Act. The NFAC by placing reliance in the case of Singareni Collieries Co. Ltd. vs. DCIT (1995) 53 ITD 249 (Hyd) confirmed the disallowance made by the AO. An order dated 31.01.2022 passed by SMC Bench in the case of Maharashtra Light Industries (supra) referred to by the assessee, on perusal of the same, the SMC Bench while dealing on similar issue on identical facts relating to A.Y. 2018-19 held the amendment through Finance Act, 2021 by inserting Explanation below to section 36(1)(va) providing the provisions of section 43B of the Act shall not apply for the purpose of determining the due date under this clause w.e.f.

01.04.2021 is not applicable for A.Y. 2018-19 which is prior to A.Y. to the amendment. The SMC Bench held the effect of this amendment is that if the amount of employees' contribution towards PF / ESIC, etc. is delayed by the employer beyond the due date under the respective Acts, disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The ld. DR fairly conceded that this amendment will come into force from 01.04.2021 and is not applicable to the year under consideration in the present appeal. Therefore, admittedly, the assessee before us deposited employees' contribution towards PF / ESIC to their accounts before the due date for filing the return of income u/s 139 of the Act. Therefore, in our opinion, no disallowance is warranted in the year under consideration. Thus, the disallowance as confirmed by the ld. CIT(A) is deleted. Thus, the sole ground raised by the assessee is allowed.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 6th June, 2022.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 6th June, 2022.

GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The NFAC, Delhi
4. The concerned CIT, Pune
5. DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune