

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीतसिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं.76/मुं/2022 (नि.व. 2018-19)
ITA NO.76/MUM/2022(A.Y.2018-19)

Parekhplast India Limited,
101,Shiva Plaza ,Marol Industrial
Co-operative Limited, Andheri-Kurla Road,
Andheri (East), Mumbai 400 059.
PAN: AABCP-4523-B

..... अपीलार्थी/Appellant

बनाम Vs.

NFAC,DELHI.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Tejas Sodha
प्रतिवादी द्वारा/Respondent by : Shri R.A.Dhyani
सुनवाई की तिथि/ Date of hearing : 31/05/2022
घोषणा की तिथि/ Date of pronouncement : 31/05/2022

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 17/11/2021, for the assessment year 2018-19.

2. Shri Tejas Sodha Shah appearing on behalf of the assessee submitted that the assessee has assailed disallowance of Rs.9,39,141/- in respect of delay in payment of Provident Fund and Rs.17,751/- ESI contribution under section. 36(1)(va) r.w.s. 43B of the Income Tax Act, 1961[in short 'the Act']. The Id.Authorized

Representative for the assessee submitted that the Central Processing Centre (CPC), Bengaluru vide intimation u/s. 143(1) of the Act dated 17/12/2019 disallowed aforesaid contributions u/s. 43B of the Act. The assessee filed appeal before the CIT(A) assailing the disallowance. The CIT(A) referring to the amendment to section 36(1)(va) and section 43B of the Act by the Finance Act, 2021 disallowed assessee's claim u/s. 36(1)(va) of the Act. The Id.Authorized Representative for the assessee vehemently submitted that the CIT(A) failed to follow the decision of Hon'ble Jurisdictional High Court in the case of Hindustan Organic Chemical Ltd., 366 ITR1(Bom) and CIT vs. Ghatge Patil Transport Ltd., 368 ITR 749(Bom). The Id.Authorized Representative of the assessee submitted that the Tribunal in the case of Mindcrest (India) P.Ltd. vs. Asst. DIT in ITA No.1430/Mum/2021 decided on 26/0/2022 and various other decisions has held the amendment to section 36(1)(va) and section 43B of the Act is prospective effective from 01/04/2021.

3. Per contra, ShriR.A.Dhyani representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that provisions of section 36(1)(va) of the Act has been amended by the Finance Act,2021. In amendment the phrase " shall be deemed never to have been applied" has been inserted to section 36(1)(va) and section 43B of the Act. This clearly shows that the amendment is retrospective. To support his contention Id. Departmental Representative placed reliance on the decision in the case of CIT vs. Gold Coin Food Processing Pvt.172 Taxman 386(SC).

4. Both sides heard orders of authorities below examined and the decisions on which rival sides have place reliance considered. The solitary issue in the present appeal for our consideration is whether employees contribution towards Provident Fund and ESI made by the assessee after due date as specified under the relevant Acts but before due date of filing return under section 139(1) of the Act would

enable the assessee to claim deduction on such contributions under section 36(1)(va) of the Act.

5. The contention of Revenue is that by virtue of amendment to section 36(1)(va) and section 43B of the Act by Finance Act, 2021 the deduction is not allowable as the amendment is retrospective in application. We find that Chennai Bench of the Tribunal in the case of *Adayar Ananda Bhavan Sweets India Pvt. Ltd. vs. ACIT 134 taxmann.com 56* has considered the issue of retrospective applicability of amendment to the provisions of section 36(1)(va) of the Act and also the amendment to section 43B of the Act by the Finance Act, 2021. The Co-ordinate Bench of Tribunal after considering various decisions held that the amendment to section 36(1)(va) of the Act and section 43B is prospective and would be effectively applicable from assessment year 2021-22. Similar view has been expressed by various Benches of the Tribunal. Some of the decisions holding aforesaid amendment prospective, effect from assessment year 2021-22 are as under:

- (i) *Yogi Ji Technoequip (P.) Ltd. v. Dy. CIT*, 129 taxmann.com 313 (Delhi - Trib.)
- (ii) *Mohangarh Engineers and Construction Company v. Deputy Commissioner of Income-tax*, 133 taxmann.com 172 (Jodh. -Trib.)
- (iii) *Salzgitter Hydraulics (P.) Ltd. v. Income-Tax Officer*, 128 taxmann.com 192 (Hyd.- Trib.)
- (iv) *Bizviz Technologies Ltd. v. Deputy Commissioner of Income-tax*, 134 taxmann.com 350 (Bang. - Trib.)
- (v) *Flying Fabrication v. Deputy Commissioner of Income-tax*[2021] 133 taxmann.com 84 (Delhi - Trib.)
- (vi) *Eskay Heat Transfers (P.) Ltd. v. Assistant Director of Income –tax(2022)* 134 taxmann.com 289 (Bang.Trib)
- (vii) *Bromide Chemical Industries v. Deputy Commissioner of Income-tax*, 135 taxmann.com 79 (Jabalpur- Trib.)
- (viii) *Vidhi Clothing Company v. Deputy Commissioner of Income-tax*, 135 taxmann.com 327 (Bang- Trib.)
- (ix) *Megneil Tech (P.) Ltd. v. Commissioner of Income-tax*, 135 taxmann.com 75 (Bang. - Trib.)
- (x) *Raj Kumar v. ITD, CPC, Bengaluru*, 136 taxmann.com 244 [Del-Trib]

6. Since, the amendment to section 36(1)(va) and section 43B of the Act by the Finance Act, 2021 has been held to be prospective, effective from assessment year 2021-22, ergo, the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Ghatge Patil Transport Ltd.(supra) would apply in the assessment year under appeal. Consequently, the contribution made by assessee towards ESI and Provident Fund beyond the due date as specified in the relevant Act but before due date for filing return of income u/s 139(1) of the Act would be allowable as deduction u/s. 36(1)(va) of the Act. Hence, the solitary issue raised in appeal is allowed.

7. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Tuesday the 31st day of May, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/05/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt.Registrar)ITAT, Mumbai