

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.228/Bang/2022
Assessment year : 2018-19

M/s CrimsonLogic India Pvt. Ltd., 601, 6 <sup>th</sup> Floor, A Block Alpha, Kadubeesanahalli, Bengaluru-560 103. <b>PAN – AAFCS 2191 E</b>	Vs.	The Dy. Commissioner of Income Tax, (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri Sankar Ganesh K, JCIT (DR)

Date of hearing	:	07.06.2022
Date of Pronouncement	:	08.06.2022

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal by the assessee is directed against the order of the order of CIT(A)-II, Bangalore dated 16.12.2021 for the asst. year 2018-19 with the following grounds of appeal.

*“1. The Order passed by the Centralized Processing Center ('CPC'), Bangalore and as confirmed by the Learned Commissioner of Income Tax (Appeals) - ii, Bangalore [Ld.*

*CIT(A)] is bad in law based on mere conjectures, surmises and findings which are contrary to the facts of the case.*

*Disallowance of expenditure under section 6(i)(va) of the Act*

*2. On the facts and in the circumstances of the case, the CPC and the Ld. CIT(A) erred in law in disallowing the deduction claimed by the Appellant under section 36(1)(va) r.w.s 43B(b) of the Act, with respect to the employees contribution to provident fund and employees state insurance which was credited after the due date specified under the relevant law governing the fund but before the date of filing of the return of income under the Act.*

*3. On the facts and in the circumstances of the case, the CPC and the Ld. CIT(A) erred in not following the decision of the Hon'ble Supreme Court decision in case of CIT v Mom Extrusions Ltd [2009] 319 ITR 306 (SC) in this regard.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in relying on the amendments introduced by the Finance Act, 2021 to section 36(1)(va) and section 43B of the Act, without appreciating that the same were prospective in nature being effective from 01 April, 2021 and accordingly, applicable to the assessment year 2021-22 and onwards.*

*(Tax effect: INR 4,85,199)*

*Other grounds*

*5. That, on the facts and in light of provisions of the law, the CPC and Ld. CIT(A) has erred in levying interest under section 234B and section 234C of the Act in excess of amount calculated as per the return of income filed by the Company. (Tax effect: INR 1,15,634) “*

2. The sole and substantive issue involved in this appeal regarding disallowance of PF/ESI payments by the CPC, Bangalore.

3. It has been observed by the CIT(A), that there was a delay in payment of PF/ESI for the months of September and March, which was paid beyond the due date.

4. The Id.AR of the assessee reiterated the submissions made before the lower authorities and further submitted that the assessee has paid the entire dues before the due date of filing of the return of income as per sec.139(1) of the Act, therefore the disallowance u/s 43B cannot be made. He further submitted that amendment in the Finance Bill 2021 is prospective in nature therefore it cannot be applied for the earlier assessment years and he also submitted that coordinate bench of the Tribunal has decided the similar issue in favour of the assessee in many cases. The CIT(A) failed to appreciate that CBDT Circular No.22/2015 cannot override the provisions of section 43B and the amendments made in this regard in the Finance Act is prospective in nature, consequently, there cannot be disallowance u/s 36(1)(va) of the Act.

5. On the other hand, the Id.DR supported the orders of the lower authorities and he submitted that the employees contribution towards PF/ESI payments are governed by the sec.36(1)(va) of the Act but not u/s 43B of the Act. The assessee has violated the provisions of sec. 36(1)(va) of the Act.

6. We heard both sides and perused the entire materials on record and orders of the authorities below, coming to the sole substantive issue of employees contribution towards ESI/PF disallowance of Rs. 1,15,634/-, the assessee's plea that the same has been paid before the

due date of filing of Income-tax return u/s 139(1) and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 1.4.2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s 43B of the Act as against employee's contribution u/s 36(1)(va) of the Act; respectively. The similar issue has been decided by the Hyderabad Bench in the case of M/s Chiphercloud India Pvt. Ltd., in ITA No.1367/Hyd/2018 and also keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 1.4.2021, we hold that the impugned disallowance is not sustainable in view of all these latest developments.

7. The impugned ESI/PF disallowance is directed to be deleted therefore. Hence, we allow the appeal of the assessee.

8. In the result, the assessee's appeal is allowed in above terms.

Order pronounced in court on 8<sup>th</sup> day of June, 2022

Sd/-

**(BEENA PILLAI)**

Judicial Member

Bangalore,

Dated, June, 2022

/ vms /

Sd/-

**(LAXMI PRASAD SAHU)**

Accountant Member

Copy to:

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2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

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