

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2028/M/2021  
Assessment Year: 2018-19**

|  |     |  |
|--|-----|--|
| M/s. Kalyan Gas Services,<br>Near Mamletdar Office<br>Station Road,<br>Kalyan,<br>Maharashtra-421301<br><b>PAN: AABFK2872M</b> | Vs. | CIT(A) NFAC,<br>Ashar IT Park,<br>Road No.162,<br>Wagle Estate,<br>Thane,<br>Mumbai - 400604 |
| (Appellant)  |     | (Respondent)   |

**Present for:**

Assessee by : None  
Revenue by : Shri S.K. Jain, D.R.

Date of Hearing : 12 . 05 . 2022  
Date of Pronouncement : 16 . 06 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Applicant M/s. Kalyan Gas Services by moving a petition sought to condone the delay of 5 days in filing the appeal on the ground that due to second wave of Covid-19 the business activities of the assessee got adversely affected on account of abstention of the staff and due to non availability of the transportation and local trains, the appeal could not be filed within time. Keeping in view the reasons for condonation of delay which were beyond the control of the applicant the delay of 5 days in filing the present appeal

before the Tribunal is condoned and appeal is ordered to be registered.

2. The appellant, M/s. Kalyan Gas Services (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 27.08.2021 passed by Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC) [hereinafter referred to as the CIT(A)] qua the assessment year 2018-19 on the grounds inter alia that :-

**“Ground 1**

*The addition made by Ld. AO CPC Bangalore in intimation u/s 143(1) by disallowing employee's contribution to provident fund paid before due date u/s 139(1) is invalid.*

*The appellant firm humbly submits that*

*The addition u/s 36(1 )(va) for late payment of employee's contribution to provident fund paid after due date as per Provident Fund Act but paid before due date of filing the return u/s 139(1) is a controversial issue where many judgments are in favor of assessee and few judgments are in favor of revenue in such legal controversial issues additions u/s 143(1) is not warranted because the said addition is not the adjustment prescribed 143(l)(a)(i to vi).Therefore the said addition by way of adjustment u/s 143(1) is illegal and may please be deleted.*

**Ground 2**

*The Honorable CIT appeal has erred in confirming the addition made by the LD.AO of Rs 171717/- u/s 36(l)(va) for non payment of employee's contribution to PF on due date prescribed under employee Provident Fund Act even though the delay was only ranging from 2 to 9 days in 7 of the 12 months.*

**Relief Claimed**

*The appellant firm humbly requests your good honor to delete the said addition of Rs.171717/-and oblige.*

**Ground 3**

*The appellant prays for your leave to add, alter & amend the above ground of appeal, if necessary.”*

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee being a partnership firm engaged in the business of sale of gas cylinders. During the assessment proceedings the Assessing Officer (AO)-CPC, Bangalore has disallowed employees' contribution to PF and ESIC paid by the assessee during the year under consideration, after the due date prescribed under the PF/ESIC Act. Consequently, the AO made addition of Rs.1,71,717/- under section 36(1)(va) of the Income Tax Act, 1961 (for short 'the Act').

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the same. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

5. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue

Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. Undisputedly, the assessee has made payment towards the employees contribution of PF and ESIC after due date prescribed in the relevant Act which is tabulated for ready perusal as under:

| <i>Month</i>        | <i>Sum received From employees</i> | <i>Due date for payment</i> | <i>The actual amount paid</i> | <i>The actual date of payment to the concerned authorities</i> |
|---------------------|------------------------------------|-----------------------------|-------------------------------|--|
| <i>April 17</i>     | 21060                              | 15/05/2017                  | 21060                         | 11/05/2017   |
| <i>May 17</i>       | 20308                              | 15/06/2017                  | 20308                         | 17/06/2017   |
| <i>June 17</i>      | 23834                              | 15/07/2017                  | 23834                         | 22/07/2017   |
| <i>July 17</i>      | 23087                              | 15/08/2017                  | 23087                         | 12/08/2017   |
| <i>August 17</i>    | 21448                              | 15/09/2017                  | 21448                         | 14/09/2017   |
| <i>September 18</i> | 22006                              | 15/10/2017                  | 22006                         | 24/10/2017   |
| <i>October 17</i>   | 22146                              | 15/11/2017                  | 22146                         | 18/11/2017   |
| <i>November 17</i>  | 21842                              | 15/12/2017                  | 21842                         | 12/12/2017   |
| <i>December 17</i>  | 22530                              | 15/01/2018                  | 22530                         | 17/01/2018   |
| <i>January 18</i>   | 21885                              | 15/02/2018                  | 21885                         | 19/02/2018   |
| <i>February 18</i>  | 22119                              | 15/03/2018                  | 22119                         | 15/03/2018   |
| <i>March 18</i>     | 20643                              | 15/04/2018                  | 20643                         | 19/04/2018   |

So out of 12 monthly contributions 7 monthly contributions amounting to Rs.1,53,352/- were paid after the due date prescribed under the PF Act. The delay in depositing the employees contribution fund was ranging from 2 days to 9 days.

8. It is brought to the notice of the Bench that the identical issue has already been decided by the Hon'ble Bombay High Court in case of CIT V. Ghatge Patil Transporters Ltd. 368 ITR 749 by confirming the order passed by the Tribunal that deduction claimed by the assessee on account of employees contribution to PF & ESIC well before the due date of filing return of income is allowable deduction.

9. Hon'ble High Court of Bombay in case of Ghatge Patil Transporters Ltd. (supra) held that both employees' and employer's contribution are covered under amendment to section 43B and covered under judgment of Hon'ble Supreme Court in case of CIT vs. Alom Extrusions Ltd. (2009) 319 ITR 306 and such deduction claimed by the assessee is allowable.

10. Co-ordinate Bench of the Tribunal in case of M/s. Adyar Ananda Bhavan Sweets India P. Ltd. vs. ACIT (supra) also decided the identical issue in favour of the assessee by holding that the payment of employees contribution qua PF & ESIC if made before the due date of filing of return of income, the same is allowable deduction as per provisions of Section 2(24)(x) r.w.s. 36(1)(va) r.w.s. 43B of the Act.

11. In view of what has been discussed above, we are of the considered view that since the amended provisions contained under section 43B read with section 36(1)(va) of the Act are not applicable for the year under consideration i.e. A.Y. 2018-19 as the amendment will be effective from A.Y. 2021-22 and the AO/ Ld. CIT(A) have erred in disallowing the same. Consequently,

impugned order passed by the Ld. CIT(A) is set aside and appeal filed by the assessee is allowed.

**Order pronounced in the open court on 16.06.2022.**

**Sd/-  
(BASKARAN BR)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 16.06.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.