

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

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

**ITA No.1955/M/2021  
Assessment Year: 2018-19  
&  
ITA No.1954/M/2021  
Assessment Year: 2019-20**

M/s. Pentas Landscape Pvt. Ltd., Plot No.C-484, Opp. Raheja Gardens, LBS Marg, Next to Tiptop Plaza, Thane, Maharashtra – 400604 <b>PAN: AAHCP1396C</b>	Vs.	Asst. Director of Income Tax, CPC Bengaluru, Ward 3(1), Ashar Industrial Estate, Thane
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Shailesh Bandi, A.R.  
Revenue by : Shri Ashish Pophare, D.R.

Date of Hearing : 11 . 05 . 2022

Date of Pronouncement : 16 . 06 . 2022

**O R D E R**

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

For the sake of brevity aforesaid appeals bearing common question of law and facts are being disposed of by way of composite order.

2. The appellant M/s. Pentas Landscape Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders dated 26.08.2021 & 03.09.2021 for A.Y. 2018-19 & 2019-20 respectively passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the CIT(A)] qua the assessment years 2018-19 & 2019-20 on identically worded grounds except the difference in figures inter alia that:-

***“1. On the facts and circumstances of the case and in law, the LD. CIT (A) grossly erred in confirming the adjustment made by the AO, CPC Bengaluru, in intimation U/S 143(1).***

***2. On the facts and circumstances of the case and in law, the LD. CIT (A) grossly erred in confirming the adjustment of Rs.473,228/- & Rs.3,04,624/- U/S 36(1 )(va) made by the AO, CPC Bengaluru, in intimation U/S 143 (1) for A.Y. 2018-19 & 2019-20 respectively.***

***The appellant humbly prays that the relief as prayed above may please be granted.***

***The appellant craves leave to add, to alter, to amend, to amplify, to delete, or to revise any of the ground on or before the hearing.”***

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee company is into the business of landscape development contract under the name and style of Pentas Landscape Pvt. Ltd. During the year under assessment the assessee deposited employees' contribution to PF & ESIC to the tune of Rs.3,04,624/- beyond the due date under the PF & ESIC Act but before the due date of filing the return of income under section 139(1) of the Income Tax Act, 1961 (for short 'the Act'). The Assessing Officer (AO)/CPC by invoking the provision contained under section 36(1)(va) of the Act disallowed the same.

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

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, 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 law applicable thereto.

6. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. CIT(A) contended that this issue has already been decided by the co-ordinate Bench of the Tribunal in case of CIT vs. Ghatge Patil Transporters Ltd. which has been confirmed by Hon'ble Bombay High Court cited as 368 ITR 749 (Bom.) and further contended that the amended provisions contained under section 43B read with section 36(1)(va) of the Act are not applicable to the year under consideration.

7. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

8. Undisputedly, the assessee company has deposited the employees' contribution of PF & ESIC after due date prescribed under the relevant Act well before filing the return of income.

9. We have perused the order passed by the Ld. CIT(A) who has treated the employees' contribution as well as employer's contribution differently by relying upon the amended provisions of

section 36(1) and 43B of the Act. This issue has been decided by the co-ordinate Bench of the Tribunal in case of Kalyan Gas Services vs. CIT in ITA No.2028/M/2021 for A.Y 2018-19 by returning the following findings:

**“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.”**

10. So in view of the matter following the decision rendered by the Hon’ble Bombay High Court in case of Ghatge Patil Transporters Ltd. (supra) and the order passed by the co-ordinate Bench of the Tribunal in case of Kalnay Gas Services (supra) contribution made by the assessee on account of PF & ESI contribution of employees after the due date prescribed under the Act but before the due date of filing the return of income under section 139 of the Act is allowable deduction. So the impugned order passed by the Ld. CIT(A) is not sustainable, hence set aside and appeals filed by the assessee are hereby 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.