

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

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

आयकर अपील सं. / ITA No.487/PUN/2021

निर्धारण वर्ष / Assessment Year : 2018-19

Pravin Joshi, Dhoolkot, Dehradun – 248 011, Uttarakhand PAN : AAYPJ2157K	Vs.	ITO, Ward-11(4), Pune
Appellant		Respondent

Assessee by None
Revenue by Shri M.G. Jasnani
Date of hearing 23-06-2022
Date of pronouncement 23-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 16-07-2021 passed by the National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2018-19.

2. This appeal is time barred by 23 days. The assessee has filed the present appeal on 07-10-2021 which was received through Post. It appears that the delay in filing the instant appeal pertains to Covid-19 pandemic. Therefore, the said delay is condoned and the instant appeal is admitted for disposal on merits

by virtue of judgment of the Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314.

3. The only issue raised in this appeal is against the confirmation of disallowance of Rs.34,29,373/- made by the Assessing Officer (AO) u/s.36(1)(va) of the Act on account of late deposit of the Employees' share of EPF and ESI etc.

4. Briefly stated, the facts of the case are that the AO made disallowance of Rs.34,29,373/- in the intimation u/s.143(1) of the Act on the ground that the assessee late deposited the employees' share of EPF and ESI etc. The ld. CIT(A) affirmed the disallowance.

5. We have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. We are, therefore, proceeding to dispose of the appeal *ex parte qua* the assessee on merits.

6. It is seen as an admitted position from the impugned order as well as the statement of facts before the ld. first appellate authority that the assessee did deduct employees' share of EPF

and ESI and paid the same after the due date under the respective legislations but before the time stipulated for filing return u/s 139(1) of the Act for the year under consideration. In our opinion, this issue is no more *res integra* in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The Hon'ble Himachal Pradesh High Court in *CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP)* has held that there exists no difference between employees or employer's contribution and both are to be allowed as deduction if deposited before the due date.

7. At this juncture, it is relevant to mention that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01.04.2021. The effect of this amendment is that if the amount of employees' contribution towards EPF, ESI, etc is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The

Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1st April, 2021 and will, accordingly apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment year under consideration is 2018-19, which is anterior to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts including the one in *CIT vs. Nipso Polyfabriks Ltd. (supra)* squarely applies to the facts and circumstances of the instant case, thereby not warranting any disallowance since the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 23rd June, 2022.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 23rd June, 2022
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. NFAC, Delhi
4. The CIT concerned
5. DR, ITAT, 'B' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-06-2022	Sr.PS
2.	Draft placed before author	23-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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