

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 Nos.482 & 483/PUN/2021

निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-20

Vrundavan Enterprises, House No.60532, Gajanan Krupa, Shankar Chowk, Shivajinagar, Daund – 413801 PAN : AANFV1748F	Vs.	ADIT, CPC, Bengaluru
Appellant		Respondent

Assessee by Shri Pramod Shingte  
Revenue by Shri M.G. Jasnani

Date of hearing 24-06-2022  
Date of pronouncement 24-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee are directed against the orders dated 20-09-2021 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 years 2018-19 and 2019-20. These appeals involve a solitary issue of the confirmation of disallowance u/s.36(1)(va) of Act.

For the sake of convenience, we proceed to dispose them off by this consolidated order.

2. Briefly stated, the facts for the A.Y. 2018-19 are that the Assessing Officer (AO) issued intimation u/s.143(1) of the Act. Thereafter, he took recourse to the proceedings u/s 154 and made the disallowance of Rs.9,61,060/- on the ground that the assessee late deposited the employees' share of EPF/ESI. The facts for the A.Y. 2019-20 are that the AO made disallowance u/s 143(1) of the Act amounting to Rs.19,39,156/- u/s.36(1)(va) of the Act. The Id. CIT(A) sustained the disallowances. Aggrieved thereby, the assessee has come up in appeal before the Tribunal for the two assessment years under consideration.

3. We have heard both the sides and gone through the relevant material on record. It is an admitted position that the assessee did deduct EPF and ESI from the employees' share for both the years and deposited the same with exchequer a little bit late on some occasions after the due date under the respective legislations but before the time stipulated for filing returns u/s 139(1) of the Act. 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.

4. 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 1<sup>st</sup> April, 2021 and will, accordingly apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment years under consideration, namely, 2018-19 and 2019-20 are

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 appeals, thereby not warranting any disallowance since the amounts in question were admittedly deposited before due dates u/s 139(1) of the Act for both the years. The additions are, therefore, directed to be deleted.

5. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 24<sup>th</sup> June, 2022.

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

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

पुणे Pune; दिनांक Dated : 24<sup>th</sup> June, 2022  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The 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	24-06-2022	Sr.PS
2.	Draft placed before author	24-06-2022	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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