

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI**

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

**ITA No.57/M/2022
Assessment Year: 2017-18**

M/s. Neev Infrastructure Pvt. Ltd., 1 st Floor, Neev Vitoria, Next to Sales Tax Office, Nesbit Road, Mazgaon, Mumbai – 400 010 PAN: AABCC7395N	Vs.	ACIT, Central Circle-4(2), Air India Building, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, C.A.
Revenue by : Shri C.T. Mathews, D.R.

Date of Hearing : 14 . 06 . 2022
Date of Pronouncement : 30 . 06 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Neev Infrastructure Pvt. Ltd. (hereinafter referred to as ‘the assessee company’) by filing the present appeal, sought to set aside the impugned order dated 18.11.2021 passed by Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 on the grounds inter alia that :-

“1) In the facts and circumstances of the case and in law the Assessing Officer erred in adding Rs.6,68,547/- on account of alleged

delay in payment towards Provident Fund, ESIC and any Other Welfare Fund u/s 36(l)(va) r.w.s 43B and 2(24)(x) of the Act thereby

a) Disregarding the case laws of Bombay High Court and Supreme Court etc.

b) By overlooking the fact that even though the same is paid on or before due date of filing of return.

c) By disregarding the judgement of Jurisdictional High Court of Bombay in the case of Ghatge Patil Transports Ltd. 368 ITR 749 and Hind Filter Ltd 90 taxmann.com 51 (Bombay) and Alom Extrusions Ltd. [2009] 319 ITR 306 (SC).

d) By disregarding the fact that the judgement of Jurisdictional High Court is binding even in faceless appeal and assessment as per the order of Mahadev Cold Storage 127 taxmann.com 722 (Agra) I which it is held that, "Though Centralized NFAC has been created by Notification by CBDT, it should be ensured that whenever any appellate order is passed by NFAC as per Notification either by way of draft or Final appellate order, then decision of Jurisdictional High Court having jurisdiction over Assessing Officer should be followed and applied by NFAC. Merely because there is some conflicting decision of non-jurisdictional High Court, relief should not be refused to assessee.

e) By disregarding the fact that the amendment made to section 36(l)(va) by the Finance Act, 2021 is not retrospective as is recently held in the case of M7s Crescent Roadways Private Limited (ITA No.1952/Hyd./2018).

[CI Relief Prayed:

The appellant therefore prays follows,

1. To delete the disallowance of Rs. 6,68,5477- on account of alleged delay in payment towards Provident Fund, ESIC and any Other Welfare Fund made u/s 36(l)(va) r.w.s 43B and 2(24)(x) of the Act."

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee company being into the business as builder, developer and civil contractor and manufacturer of ready mix concrete filed its return of income on 30.03.2018 at the total income of Rs.3,75,51,680/-, which was revised on 28.05.2018 & 15.03.2018 declaring total income of Rs.3,75,51,680/- & Rs.3,85,27,980/- respectively which was

subjected to scrutiny. Assessing Officer (AO) noticed from form 3CD furnished by the assessee that some payment to the tune of Rs.6,68,547/- on account of Provident Fund PF & ESIC were made late by the assessee.

3. Declining the contention raised by the assessee that the payments have been made well before the date of filing the return, AO proceeded to disallow the late payment of Rs.6,68,547/- made by the assessee on account of PF & ESIC under section 2(24)(X) read with 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 upheld the disallowance made by the AO by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

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. Undisputedly, assessee has made payment towards the employees's PF & ESIC after due date prescribed under the relevant Act which is tabulated for ready perusal as under:

Nature of Payment	Employees' Contribution	Due Date (Incl. grace period)	Date of Payment
PF	85678	15.05.2016	08.06.2016
PF	77442	15.07.2016	28.09.2016
PF	69684	15.09.2016	28.09.2016
PF	66684	15.10.2016	17.10.2016
PF	63208	15.11.2016	17.10.2017
PF	61941	15.12.2016	17.10.2017
PF	59753	15.01.2017	13.10.2017
PF	56237	15.02.2017	16.10,2017
PF	53540	15.03.2017	16.10.2017
PF	54430	15.04.2017	16.10.2017
ESIC	1265	21.06.2016	29.07.2016
ESIC	1488	21.07.2016	29.07.2016
ESIC	1482	21.08.2016	22.09.2016
ESIC	1441	21.09.2016	22.09.2016
ESIC	1289	21.12.2016	30.12.2016
ESIC	1271	21.01.2017	02.02.2017
ESIC	5857	21.02.2017	04.04.2017
ESIC	5857	21.03.2017	26.04.2017
TOTAL	6,68,547		

7. Perusal of the aforesaid table shows that contributions made by employees on account of PF & ESIC were deposited beyond the due date prescribed under the Act. But at the same time it is admitted fact on record that the said payment has been deposited well before the date of filing the return of income by the assessee company.

8. Identical issue has 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. 2017-18 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 30.06.2022.

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

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

Mumbai, Dated: 30.06.2022.

* 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.