

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA Nos.90 & 91/Hyd/2022		
Assessment Years: 2018-19 & 2019-20		
Megha Deshpande Hyderabad PAN:ACUPP4057C	Vs.	Income Tax Officer Ward 10(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Ms. Snehal Thakkar, FAC	
Revenue by:	Sri R.S.Aravindakshan,DR	
Date of hearing:	29/06/2022	
Date of pronouncement:	30/06/2022	

ORDER

The above two appeals filed by the assessee are directed against the separate orders dated 21/12/2021 of the NFAC Delhi, relating to A.Ys 2019-20 & 2018-19 respectively. Since identical grounds have been raised by the assessee in both the appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

ITA No.90/Hyd/2022 – A.Y 2018-19

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the NFAC in confirming the addition of Rs.1,19,668/- made u/s 36(1)(va) rws 2(24)(x) and section 43B of the I.T. Act.

3. Facts of the case, in brief, are that the assessee filed return of income declaring income at Rs.17,74,770/- on 30.10.2018. The assessment was completed by issuance of

intimation u/s 143(1) by the CPC Bengaluru dated 29.04.2019 wherein an addition of Rs.1,19,668/- was made for delayed payment of PF & ESI based on the Tax Audit Report (TAR). The assessee moved a rectification application u/s 154 of the I.T. Act and the CPC Bengaluru rejected the petition filed by the assessee in sustaining the addition made due to delayed payment of PF & ESI.

4. In appeal, the NFAC confirmed the disallowance made by the Assessing Officer.

5. Before the NFAC, the assessee submitted that such payments were made before the due date of filing of the return and therefore, no adjustment should have been made. The assessee relied on various decisions to this proposition. However, the NFAC was not satisfied with the arguments advanced by the assessee and sustained the addition of Rs. 1,19,668/- made by the AO, CPC for not depositing the employees' contribution to PF and ESIC by invoking the provision of section 36(1)(va) r.w.s. 2(24)(x) of the Act.

6. Aggrieved with such order of the NFAC the assessee is in appeal before the Tribunal.

7. The Id.Counsel for the assessee referring to various decisions submitted that the co-ordinate benches of the Tribunal are taking the consistent view that where the employees' contribution to PF and ESIC are paid before the due date of filing of the return but after the statutory dates prescribed under the respective Act, no disallowance u/s. 36(1)(va) r.w.s. 2(24)(x) can be made. He accordingly submitted that this being a covered

matter in favour of the assessee, the order of the CIT(A) be set aside and the addition made by the AO and upheld by the NFAC should be deleted.

8. The Id.DR on the other hand heavily relied on the order of the NFAC. He submitted that the Finance Act, 2021 has amended the provision of section 43B, as well as section 36(1)(va) by insertion of explanation to those sections. He drew the attention of the bench to the explanatory notes to the Finance Bill, 2021 and submitted that the legislature never intended that section 43B would apply to employees' contribution. He submitted that the language of explanation 5 to section 43B, explanation 2 to section 36(1)(va) and that of the Memorandum explaining the Finance Act, 2021 make it abundantly clear that employees' contribution is out of the ambit of section 43B. Relying on various decisions, he submitted that the NFAC was fully justified in upholding the addition made by the AO on account of delayed payment of PF and ESIC amounting to Rs. 1,19,668/-.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. 1,19,668/- on account of delayed deposit of employees' contribution to PF and ESIC on the ground that the same were deposited beyond the due date prescribed in the said Act. We find the NFAC rejected the contention of the assessee that such payments though made after the stipulated dates prescribed in the said Acts, however these payments were made before the due date of filing of the

return. He accordingly, upheld the action of the AO. We find the co-ordinate benches of the Tribunal are now consistently taking the view that no disallowances u/s. 36(1)(va) r.w.s. 2(24)(x) can be made on account of delayed payment of PF and ESIC, if such payments are made before the due date of filing of the return. It has further been held in these decisions that the amendment to section 43B as well as section 36(1)(va) r.w.s. 2(24)(x) by the Finance Act, 2021 are prospective and not retrospective in nature. Since, the assessee in instant case has admittedly paid the employees' contribution to PF and ESIC before the due date of filing of the return, therefore, we set aside the order of the NFAC and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

10. In the result, the appeal filed by the assessee is allowed.

ITA No.91/Hyd/2022 A.Y 2019-20

11. After hearing both the sides I find the assessee in its grounds of appeal basically challenged the order of the NFAC in confirming the addition of Rs. Rs. 1,22,833/- u/s 36(1)(va) rws 2(24)(x) and section 43B of the I.T. Act. After hearing both the side4s I find the grounds raised by the assessee in the instant case are identical to the grounds raised in ITA No.91/Hyd/2022. I have already decided the issue and held that since the assessee has deposited ESI & PF before the due date of filing, no disallowance u/s 36(1)(va) r.w.s. 2(24)(x) should be made. I further held in that decision that the amendment to section 43B as well as 2(24)(x) by the Finance Act 2021 are perspective and not retrospective in nature. Following similar reasoning and considering the fact that the assessee has made the deposit before the due date of filing of the return, the addition made by the CPC

and sustained by the NFAC are not justified. Accordingly, grounds raised by the assessee are allowed.

12. In the result, appeals filed by the assessee are allowed.
Order pronounced in the Open Court on 30th June, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 30th June, 2022.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 10(4) Hyderabad
3	CIT (A)- NFAC Delhi
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order