

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.426/PUN/2021
निर्धारणवर्ष / Assessment Year : 2019-20

Dhanraj Switchgears P. Ltd., Flat No.7, Shushant Apartment, Mahatma Nagar, Nashik – 422007. PAN: AADCD 0115 B	Vs	The Assistant Director of Income Tax, CPC.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Deepa Khare – AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	27/06/2022
Date of pronouncement	29/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of National Faceless Appeal Centre(NFAC), Delhi under section 250 of the Income-tax Act, 1961 (hereinafter also called as ‘the Act’) in relation to the Assessment Year 2019-20 dated 30.07.2021.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.7,92,540/- made by the Assessing Officer (AO) under section 36(1)(va) of the Act on account of late deposit of the Employees’ share of EPF and ESI etc.

3. Briefly stated the facts of the case are that the Id.Assistant Director of Income Tax(CPC) AO made disallowance of Rs.7,92,540/- in the intimation under section 143(1) of the Act on

the ground that the assessee late deposited the employees' share of EPF and ESI etc. The Id.CIT(A) affirmed the disallowance.

4. We have heard both the sides. It is seen as an admitted position from the impugned order as well as the statement of facts before the Id. 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 under section 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 under section 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed under section 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.

4.1 The ITAT Pune Bench in ITA No.112/PUN/2022 Sunita Suresh Jadhav vs. ITO order dated 21.03.2022 has held that no disallowance is warranted as the amounts were deposited before due date under section 139(1) of the Act.

5. 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 under section 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 2019-20, which is anterior to the amendment carried out with effect from Assessment Year 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 under section 139(1) of the Act. The addition is therefore, directed to be deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 29th June, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.