

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

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.217/Hyd/2022		
Assessment Year: 2019-20		
C2D Software (P) Ltd Hyderabad PAN:AAGCC3504Q	Vs.	Income Tax Officer Ward 11(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri M.V. Anil Kumar	
Revenue by:	Sri B. Sunil Kumar,DR	
Date of hearing:	05/07/2022	
Date of pronouncement:	06/07/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 10/12/2021 of the NFAC Delhi, relating to A.Y. 2019-20.

2. There is a delay of 104 days in filing of this appeal for which the assessee has filed condonation petition along with an affidavit stating the reasons therein which is due to Covid situation prevailing in the country. After considering the contents of the application and after hearing the learned DR, the delay in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the NFAC in sustaining the disallowance of Rs.3,23,096/- for the delayed

payment of employees' contribution towards ESI & PF made by the CPC Bengaluru.

4. Facts of the case, in brief, are that the assessee filed its return of income on 31.10.2019 wherein on the basis of the audit report an amount of Rs.3,23,096/- was added u/s 36(1)(va) of the I.T. Act on account of delay in payment of PF & ESI. In appeal NFAC rejected the contention of the assessee that although such amount has been paid belatedly, however, the same has been paid within the due date of filing of the return. The learned NFAC accordingly relying on various decisions upheld the action of the CPC Bengaluru.

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

6. The learned 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.

7. The learned 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. 3,23,096/-.

8. I 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. I have also considered the various decisions cited before us by both sides. I find the AO in the instant case made addition of Rs. 3,23,096/- 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. I 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. I find the coordinate 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.

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

Order pronounced in the Open Court on 6th July, 2022.

(R. K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 6th July, 2022.

Vinodan/sps

Copy to:

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1	C2D Software (P) Ltd C/o M. Anandam & Co. C.A Flat No.7A Surya Towers, SP Road, Hyderabad 500003
2	Income Tax Officer Ward 11(1) Hyderabad
3	CIT (A)-NFAC Delhi
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order