

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI N.V VASUDEVAN, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.142/Bang/2022
Assessment year : 2019-20

M/s Elektrobot India Pvt. Ltd., Plot No.21,22,27 &28 Gold Hill Supreme Software Tech Park, 11 th Floor, Electronic City, Phase II, Bengaluru. PAN – AAECE 2605 A	Vs.	The Dy. Commissioner of Income Tax, (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Rahil Shah, C.A
Revenue by	:	Smt. Priyadarshini Basaganni, Addl. CIT (DR)

Date of hearing	:	18.05.2022
Date of Pronouncement	:	18.07.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 18.8.2021 for the asst. year 2019-20 with the following grounds of appeal.

1. CPC/AO grievously erred by disallowing employees contribution to Provident Fund to the extent of Rs.6,92,219/- u/s

36(1)(va) r.w.s2(24)(x), without appreciating that the same was remitted well before the due date of filing of return of income u/s 139(1) for AY

19-20, and that the matter in dispute is already in favour of your appellant by the jurisdictional Karnataka High Court.

2. The NFAC has erred in upholding the order of the CPC without considering that the amendment made by Finance Act, 2021 is prospective in nature.

3. For these and other grounds that may be adducted at the time of hearing, the intimation u/s 143(1) passed by CPC/AO may be set aside to the extent appealed against.

*Your appellant craves leave to add, amend, alter, vary and/ or withdraw any or all of the above grounds of - appeal.
Total tax effect – Rs.1,92,576/-“*

2. The sole and substantive issue involved in this appeal regarding disallowance of PF/ESI payments by the CPC, Bangalore.

3. The Id.AR of the assessee reiterated the submissions made before the lower authorities and further submitted that the assessee has paid the entire dues before the due date of filing of the return of income as per sec.139(1) of the Act, therefore the disallowance u/s 43B cannot be made. He further submitted that amendment in the Finance Bill 2021 is prospective in nature therefore it cannot be applied for the earlier assessment years and he also submitted that coordinate bench of the Tribunal has decided the similar issue in favour of the assessee in many cases. The CIT(A) failed to appreciate that CBDT Circular No.22/2015 cannot override the provisions of section 43B and the amendments made in this regard in the Finance Act is prospective in

nature, consequently, there cannot be disallowance u/s 36(1)(va) of the Act.

4. On the other hand, the Id.DR supported the orders of the lower authorities and he submitted that the employees contribution towards PF/ESI payments are governed by the sec.36(1)(va) of the Act but not u/s 43B of the Act. The assessee has violated the provisions of sec. 36(1)(va) of the Act.

5. We heard both sides and perused the entire materials on record and orders of the authorities below, coming to the sole substantive issue of employees contribution towards ESI/PF disallowance of Rs.1,92,576/-, the assessee's plea that the same has been paid before the due date of filing of Income-tax return u/s 139(1) and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 1.4.2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s 43B of the Act as against employee's contribution u/s 36(1)(va) of the Act; respectively. The similar issue has been decided by the Hyderabad Bench in the case of M/s Chiphercloud India Pvt. Ltd., in ITA No.1367/Hyd/2018 and also keeping in mind the fact that the same has

been clarified to be applicable only with prospective effect from 1.4.2021, we hold that the impugned disallowance is not sustainable in view of all these latest developments.

6. The impugned ESI/PF disallowance is directed to be deleted therefore. Hence, we allow the appeal of the assessee.

7. In the result, the assessee's appeal is allowed in above terms.

Order pronounced in court on 18th day of July, 2022

Sd/-

(N.V VASUDEVAN)

Vice President

Bangalore,

Dated, 18th July, 2022

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
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2. Date on which the typed draft is placed
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3. Date on which the approved draft comes to Sr.P.S
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