

**3IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.373/Bang/2022
Assessment year : 2018-19

Twigs Services Pvt. Ltd., No.201, Srinivas, 1 <sup>st</sup> Cross, Kaggadasapura, C.V Raman Nagar, Bengaluru. <b>PAN – AAFCT 3085 Q</b>	Vs.	The Director of Income Tax, (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Keerthi Kumar K, C.A
Revenue by	:	Shri K.R Narayan, Addl. CIT (DR)

Date of hearing	:	14.07.2022
Date of Pronouncement	:	20.07.2022

**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 14.3.2022 for the asst. year 2018-19 with the following substantive grounds of appeal:-

*“The orders of the authorities below in so far as they are against the appellant is opposed to the law, weight of*

*evidence, natural justice, probabilities, facts and circumstances of the case.*

*The appellant denies itself to be liable to the demand raised under section 156 of the Income Tax Act, 1961 (the Act) in the amount of Rs. 14,62,260/- under the facts and circumstances of the case.*

*The U. Asst Director of Income Tax CPC Bengaluru, is not justified in law in disallowing the payments made to ES! and PF authorities amounting to Rs.36,5,356/- tinder the facts and circumstances of the case.*

*The Ld. Asst. Director of Income Tax CPC Bengaluru, has failed to follow the binding precedent(s) as pronounced by the Jurisdictional High Court which is squarely applicable in the case of the Appellant and has clearly violated the principles of judicial discipline, under the facts and circumstances of the case.*

*The Ld. CIT(A), NFAC has dismissed the appeal in utter disregard for judicial discipline which is ought to be followed under the law. Ld. CIT(A) has relied upon and erroneously applied ratio Of judgment of a High court of a different jurisdiction having no binding value in the jurisdiction of the Appellant and has erroneously dismissed the appeal. This is a grave error and a travesty of justice.*

*The Ld. CIT(A) has erroneously concluded that amendment by insertion of explanation to 36(l)(va) and explanation 5 to section 4313, is retrospective in nature despite an explicit statement clarifying otherwise within the finance bill, 2021.*

*The Appellant denies itself liable to be charged to interest tinder sections 234A, 234B and 234C of the Income Tax Act, 1961, under the facts and circumstances of the case.”*

*Tax effect – 14,62,260/- “*

3. The Id.AR of the assessee said that the Id.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 2021 is prospective in nature, consequently, there cannot be disallowance u/s 36(1)(va) of the Act. The Id.AR reiterated the submission made before the CIT(A) which is placed on record. He further submitted that the amendment made in the Finance Act 2021 is prospective in nature. He also relied on the judgment of Hon'ble jurisdictional High Court in the case of Essae Teraoka Pvt. Ltd., Vs. DCIT [2014] 366 ITR 408/222 Taxman 170/32 taxmann.com 33 (Kar).

4. On the other hand, the Id.DR supported the order of the lower authorities and he vehemently submitted that there was clear provision in the Income-tax Act u/s 36(1)(va) in this regard. Once the assessee received the employees contribution firstly it is created as income of the assessee u/s 2(24)(x) and if the assessee deposits the concerned amount within the due date specified in the respective act then the assessee will get deduction as per sec.36(1)(va) of the Act. The employee's contribution received is under sec.36(1)(va) but not u/s 43B of the Act. The amendment made by the Finance Act 2021 is only a clarificatory in nature, therefore, the order of the lower authorities should be restored.

5. We heard both sides and perused the entire materials on record and orders of the authorities below. Coming to the substantive issue of ESI/PF with regard to additions made by the AO of Rs.36,85,356/-, and the tax effect of Rs.14,62,260/-, the assessee's plea that the

assessee has filed its return of income electronically on 15.11.2018 declaring a total income of Rs.79,70,089/- and paid the taxes before the due date of filing sec. 139(1) return and after the due date prescribed in the corresponding statutes; respectively. The assessee is also claiming a refund of Rs.3,950/-, 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. Ground No.7 is consequential in nature, hence does not require adjudication.

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

Order pronounced in court on 20<sup>th</sup> day of July, 2022

Sd/-

Sd/-

**(BEENA PILLAI)**

**(LAXMI PRASAD SAHU)**

Judicial Member

Accountant Member

Bangalore,

Dated, July, 2022

/ 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.

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