

**N THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.495/Bang/2022
Assessment year : 2018-19

L&W Construction Pvt. Ltd., #801, 8 <sup>th</sup> Floor, Pride Hulkul, No.116 Lalbagh Road, Bengaluru-560027. <b>PAN – AABCL 1824 B</b>	Vs.	The Income Tax Officer, Ward-4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Rajgopla, C.A
Revenue by	:	Shri Narayana K.R, Addl.DIT (DR)

Date of hearing	:	20.07.2022
Date of Pronouncement	:	.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 3.8.2021 for the asst. year 2018-19 with the following substantive grounds of appeal:-

- “1. The appellant is into the business of works contract, had filed the return of income u/s 139(1) of the Income Tax Act, 1961 (Act) on 30.11.2018 for the Assessment Year 2018-19 admitting a total income of Rs. 65,38,51,550/-*
- 2. On 10.04.2020, the Learned Assessing Officer[Ld. AO] i.e. Central Processing Centre (hereinafter referred as 'CPC')*

*proposed and made the addition of Rs. 1,81,91,657/-in an intimation passed under section 143(1) of the Act towards belated remittance of Employees share of Employees' State Insurance(ESI), Provident Fund(PF) and other welfare funds under section 36(1)(va), from the Form 3CD filed along with ITR, though such Form 3CD itself reports that such payment was made before the filing the return of income.*

*3. The Appellant being aggrieved by the order of Ld. AD, preferred appeal before the learned Commissioner (Appeals), Bengaluru on merits of the case.*

*4. The case was transferred to the National Faceless Appeal Centre(NFAC),Delhi, who passed an order u/s 250 of the Act on 03.08.2021 sustaining the addition made for the towards Provident fund and ESI by using the amendment made in Finance Act 2021, though the case pertains to FY 2017-18.*

*5. The Appellant being aggrieved by order of Ld. Commissioner(Appeals) prefers this appeal before this Honourable Appellate Tribunal for the redressal of the issues in the interest of justice under the facts and circumstances.”*

3. The sole issue involved in this case is with regard to disallowance of PF/ESI by the NFC, Delhi.

3.1 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 ld.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.1,81,91,657/-. 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.

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/-

**(GEORGE GEORGE K)**

**(LAXMI PRASAD SAHU)**

Judicial Member

Accountant Member

Bangalore,

Dated, 20<sup>th</sup> July, 2022

/ vms /

Copy to:

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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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