

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos.307 & 308/Ahd/2021
Assessment Years: 2018-19 & 2019-20**

Arvind Fashions Limited,
Arvind Limited Premises,
Naroda Road, Naroda,
Ahmedabad - 380 025.
[PAN – AAOCA 0655 N]
(Appellant)

vs.

The DCIT, CPC,
Bangalore.

(Respondent)

Appellant by : Shri Biren V Shah, A.R.
Respondent by : Shri Rakesh Jha, Sr. D.R.

Date of hearing : 12.07.2022
Date of pronouncement : 15.07.2022

ORDER

PER BENCH:

These two appeals are filed by the assessee against two different orders, dated 05.10.2021 & 28.09.2021, passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years 2018-19 & 2019-20 respectively.

2. The assessee in its appeal has raised the following grounds of appeal :

ITA No.307/Ahd/2021 for Assessment Year 2018-19

- "1. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in upholding adjustment on account of late payment of contribution to Provident Fund and ESIC for Rs.1,06,72,221/-*
2. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) ought to have appreciated that adjustment made by AO, CPC, is debatable in nature hence it is beyond the scope of adjustment made while processing return of income under Section 143(1) of the Act.*
3. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) ought to have appreciated that amendment brought by*

Finance Act, 2021, relating to provisions of Section 43B r.w.s. 36(1)(va) is prospective in nature as mentioned in Memorandum issued by CBDT explaining the provisions in the Finance Bill 2021, hence it cannot be applied in year under consideration.

4. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in upholding the addition made by the AO without dealing with Judicial Pronouncement referred in written submission filed before him.*
5. *In law and on the facts and in the circumstances of the Appellant's case, the adjustment made by AO, CPC, deserves to be deleted, as AO while passing the assessment order under Section 143(3) of the Act has not made any such addition. As intimation passed under Section 143(1) is merged with Order under Section 143(3) of the Act, adjustment made while processing the return of income does not survive."*

ITA No.308/Ahd/2021 for Assessment Year 2019-20

- “1. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in upholding adjustment on account of late payment of contribution to Provident Fund and ESIC for Rs.10,61,141/-.*
2. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) ought to have appreciated that adjustment made by AO, CPC, is debatable in nature hence it is beyond the scope of adjustment made while processing return of income under Section 143(1) of the Act.*
3. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has grossly erred in making disallowance for Rs.1,06,72,221/- which pertains to A.Y. 18-19 against actual amount of Rs.10,61,141/-.*
4. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) ought to have appreciated that amendment brought by Finance Act, 2021, relating to provisions of Section 43B r.w.s. 36(1)(va) is prospective in nature as mentioned in Memorandum issued by CBDT explaining the provisions in the Finance Bill 2021, hence it cannot be applied in year under consideration.*
5. *In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in upholding the addition made by the AO without dealing with Judicial Pronouncement referred in written submission filed before him.*
6. *In law and on the facts and in the circumstances of the Appellant's case, the adjustment made by AO, CPC, deserves to be deleted, as AO while passing the assessment order under Section 143(3) of the Act has not made any such addition. As intimation passed under Section 143(1) is*

merged with Order under Section 143(3) of the Act, adjustment made while processing the return of income does not survive.”

3. As regards to Assessment Year 2018-19, the assessee has filed its return of income for A.Y. 2018-19 declaring total income of Rs.7,74,08,519/-. While processing the return of a income under Section 143(1) of the Income Tax Act, 1961 on 15.11.2019, the DCIT, CPC made an addition of Rs.1,06,72,221/- on account of late payment of PF/ESI and levied interest under Section 234C of the Act of Rs.68,99,502/- as against interest of Rs.67,44,063/- leviable as per the return of income.

4. As regards to Assessment Year 2019-20, the assessee has filed its return of income for A.Y. 2019-20 declaring total income of Rs.20,16,33,502/-. While processing the return of income under Section 143(1) of the Income Tax Act, 1961 on 23.07.2020, the DCIT, CPC made an addition of Rs.10,61,141/- on account of late payment of PF/ESI contribution of employees.

5. Learned DR relied upon the assessment order and the order of the CIT(A) as well as the decision of the Hon'ble Gujarat High Court in identical issues in case of CIT vs. Gujarat State Road Transport Corporation reported in (2014) 41 taxmann.com 100 (Guj) & Pr. CIT vs. M/s Suzlon Energy Limited, R/Tax Appeal No.860 of 2019 order dated 11.02.2020.

6. We have heard both the parties and perused all the relevant material available on record. The Hon'ble Jurisdictional High Court in case of Gujarat State Road Transport Corporation (Supra) has clearly set out that the late payment of employees' contribution to PF and ESIC before the statutory date of filing of income tax return cannot be equated with the due date under the specific statute of Employees' PF Act and Employees State Insurance Act as there are penalty to the delayed payment under those statute. The issue is decided against the assessee by the jurisdictional

High Court and hence it is covered against the assessee. Both the appeals filed by the assessee are, therefore, dismissed.

7. In the result, appeals filed by the assessee are dismissed.

Order pronounced in the open Court on this 15th day of July, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of July, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad