

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA Nos.167,168 & 169/Hyd/2022		
Assessment Years: 2018-19 & 2019-20		
Ve Vee's Mangagerial Services D.No.9-114/2 SBI Colony, Kothapet, Dilshuk Nagar, Hyderabad-500 035 PAN : AAHFV1399L	Vs.	ACIT/DCIT,Circle-9(1) I.T.Towers, AC Guards Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:		Shri Y.V.Bhanu Narayan Rao
Revenue by:		Shri M.Narmada,CIT-DR
Date of hearing:		07.07.2022
Date of pronouncement:		18. 07.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

The above three appeals filed by the assessee are directed against the separate orders dated 09.09.2021 of the Commissioner of Income tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi relating to the AY 2018-19 & 2019-20 respectively. For the sake of convenience these three appeals were heard together and are being disposed-of by this common order.

2. It is pertinent to mention here that the assessee has filed two appeals for AY 2019-20 i.e one appeal filed against the order of the CIT(A)/NFAC, wherein the order was passed u/s. 143(1) and another appeal filed against the order passed u/s. 154 of the Act by the AO for the same assessment year.

3. There is a delay of '179' days in filing of these appeals by the assessee for which the assessee has filed condonation application along with affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit, the delay in filing of these appeals is condoned and the appeals are admitted for adjudication.

ITA No.167/Hyd/2022 (AY 2018-19)

4. Although, a number of grounds have been raised by the assessee however, these all relate to the order of the CIT(A)/NFAC in upholding the addition of Rs. 1,57,34,616/- made by the AO in the order passed u/s. 154 of the I.T.Act on account of delayed payment of PF and ESI.

5. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income on 27.09.2018 declaring taxable income of Rs. 2,06,16,504/-. The return was processed u/s. 143(1)(a) of the I.T.Act by the CPC, Bangalore, wherein the income was determined at Rs. 3,63,51,120/- by making disallowance of Rs. 1,57,34,616/- u/s. 36(i)(va) of I.T.Act on account of delayed payment of employees' contribution to PF and ESIC. The assessee filed a rectification application u/s 154 of the I.T.Act on 19.06.2020 against the intimation passed u/s. 143(1). The CPC, Bangalore vide rectification order passed u/s. 154 of the I.T.Act, dated 10.07.2020 confirmed the additions made vide earlier intimation passed u/s. 143(1) of the Act.

6. Aggrieved with such rejection of the rectification petition, the assessee filed appeal before the NFAC who dismissed the same on the ground that assessee failed to deposit the employees' contribution to PF and ESIC within the prescribed due dates as per the relevant Acts and therefore, as per provisions of section 36(1)(va), the CPC, Bangalore was justified in rejecting the rectification application filed u/s. 154 of the I.T.Act.

7. The ld. Counsel for the assessee referring to various decisions submitted that the co-ordinate benches of the Tribunal are taking the consistent view that if the employees' contribution to PF and ESIC are paid before the due date of filing of the return, no disallowance u/s. 36(1)(va) r.w.s. 2(24)(x) shall be made. He accordingly submitted that this being a covered matter in favour of the assessee, the order of the CIT(A)/NFAC be set aside and the addition made by the AO and upheld by the CIT(A)/NFAC should be deleted.

8. The ld.DR on the other hand heavily relied on the order of the CIT(A)/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 CIT(A)/NFAC was fully justified in upholding the addition made by the AO on account of delayed payment of PF and ESIC amounting to Rs. 1,57,34,616/-

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and CIT(A)/NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. 1,57,34,616/- 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. We find the NFAC rejected the contention of the assessee that such payments though made after the stipulated dates prescribed in the said Acts, however the payments were made before the due date of filing of the return and accordingly sustained addition to the tune of Rs.1,57,34,616/-. The CIT(A)/NFAC accordingly, upheld the action of the AO. We find the co-ordinate 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 the 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 CIT(A)/NFAC and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

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

ITA No.168/Hyd/2022 (AY 2019-20)

11. Although a number of grounds have been raised by the assessee, however, the same relate to the order of the CIT(A)/NFAC in upholding the addition of Rs. 1,25,73,144/- made by the AO in the information passed u/s.143(1) 9a)of the I.T.Act on account of delayed payment of PF and ESIC.

12. Facts of the case, in brief, are that the assessee filed return of income declaring total income of Rs. 2,22,17,550/- which was processed u/s. 143(1) (a) of the Act by making disallowances of

Rs.1,25,73,144/- u/s. 36(1)(va) of the I.T.Act on account of delayed deposit of employees' contribution to EF and ESIC, which was paid he after due date prescribed under the said Acts but before the due date of filing of the return of income. The assessee filed an appeal before the CIT(A)/NFAC who vide order dated 09.09.2021 dismissed the appeal filed by the assessee. Aggrieved with such order of the CIT(A)/NFAC, the assessee is in appeal before the Tribunal.

13. After hearing both sides, we find the grounds raised by the assessee in the instant appeal are identical in grounds raised in ITA No. 167/Hyd/2022. We have already decided the grounds and the appeal has been allowed. Following similar reasonings the grounds raised by the assessee are allowed.

ITA No.169/Hyd/2022 (AY 2019-20)

14. Facts of the case in brief of are that the assessee filed the return of income on 30.09.2019 declaring total income of Rs. 2,22,17,550/-. The return was processed u/s. 143(1)(a) of the I.T.Act by the CPC, Bangalore, determining the total income at Rs.3,37,90,694/- wherein disallowances of Rs. 1,25,73,154/- was made u/s. 36(1)(va) of the I.T.Act on account of delayed payment of EF and ESIC. The assessee filed a rectification application u/s. 154 of the I.T.Act on 22.06.2020 against the order passed u/s. 143(1) of the Act. The CPC, Bangalore vide order dated 10.07.2020 rejected the rectification application filed u/s. 154 of the I.T.Act against the order of the CPC, Bangalore rejecting the application u/s. 154, assessee filed an appeal before the NFAC vide order dated 09.09.2021 dismissed the appeal filed by the assessee on the ground that assessee failed to deposit the

employees' contribution PF and ESIC within the prescribed due dates in relevant acts as per provisions of section 36(1)(va) of the I.T.Act.

15. Aggrieved with such order of the NFAC, the assessee is in appeal before the Tribunal by raising the following grounds.

1. On the facts and circumstances of the case order passed by the Commissioner of Income Tax Appeals, National Faceless Appeals Centre, Delhi is erroneous and bad in law.

2. The learned CIT(appeals) erred in upholding the addition of Rs. 1,25,73,144/- made by the A.O under section 154 of the I.T. Act, 1961 on account of the amounts received towards employees' contribution to Provident Fund and Employee State Insurance and which were paid to the relevant fund before the due date filing of Income Tax Return u/s; 139(1) for AY 2019-2020.

3. The learned CIT (Appeals) National Faceless Appeals Centre Delhi ought to have not upheld the addition of Rs. 1,25,73,144/ on account of employees' contribution to Provident Fund and Employee State Insurance as the amounts were paid before the due date filing of Income Tax Return u/s. 139(1) for AY 2019-20 and hence allowable under the relevant provisions of the Income Tax Act, 1961 as per the legal position applicable to AY 2019-20 and also supported by several rulings of the Courts of the land.

4. The learned CIT(Appeals) ought to have considered the fact that the memorandum explaining the provisions of Finance Bill 2021 clearly states that the amendments with respect to deduction u/s. 36(1)(va) and 2(24)(x) shall take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years and ought to have allowed the claim of Rs. 1,25,73,144/- as stated herein above made by the Appellant for AY 2019-20.

5. The appellant prays that the above mentioned addition of Rs.1,25,73,144/- as stated herein above may kindly be deleted and the resulting demand raised including interest thereon may kindly be deleted.

16. We have heard the rival arguments made by both the sides. The grievance of the assessee has already been taken care while deciding ITA No. 168/Hyd/2022 wherein, we have held that no disallowance can be made u/s. 36(1)(va) r.w.s. 2(24)(x) where the employees' contribution to PF & ESIC are made before the due

date of filing of the return. Therefore, this appeal filed by the assessee becomes infructuous and accordingly dismissed.

17. In the result, ITA No. 167/Hyd/2022 & 168/Hyd/2022 are allowed and ITA No. 169/Hyd/2022 filed by the assessee is dismissed as infructuous.

Order pronounced in the Open Court on 18th July, 2022.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 18th July, 2022.

Thirumalesh/sps

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2	ACIT/DCIT,Circle-9(1) I.T.Towers, AC Guards Hyderabad-500 004
3	CIT(A), Hyderabad
4	NFAC,Delhi
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order