

**IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE**

**SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHUR, JM**

**ITA No. 485, 514 and 515/PUN/2022  
A.Y. 2017-18, 2018-19 and 2019-20**

Tukaram Mahadev Suryavanshi  
210 Ruby Industrial Premises Society Ltd.,  
Chincholi Bunder Road, Mindspace,  
Malad (West), Mumbai – 400 064  
PAN: AFOPS1105F

Appellant

Vs.

A.D.I.T., CPC-Bangaluru, Karnataka

Respondent

Appellant by : Shri Anil M. Topiwala  
Respondent by : Shri Piyush Kumar Singh Yadav

Date of Hearing : 22-07-2022  
Date of Pronouncement : 26-07-2022

**ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM**

These three Appeals preferred by the Assessee emanates from separate orders of the National Faceless Appeal Centre (NFAC) Delhi dated 06-05-2022 for the A.Y. 2017-18 , and dated 20-09-2021 for 2018-19 & 2019-20 as per the grounds of appeal on record.

2. At the outset, we find that Appeals in ITA No. 514 and 515/PUN/2022 for A.Y. 2018-19 and 2019-20 are time barred. The Id. A.R has attributed the reasons of delay to Covid-19 pandemic. Therefore, the said delay is condoned and the instant appeals are admitted for disposal on merits by virtue of judgment of the Hon'ble Supreme Court in Cognizance for Extension of Limitation, In re 438 ITR 296 (SC) read with judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314.

3. Since the issue involved and facts and circumstances being common in all these three appeals, they were heard together and are being disposed of by this consolidated order for the sake of convenience.

4. The only issue common involved in all these appeals is against the confirmation of disallowance made by the Assessing Officer u/s 36(1)(va) of the

Income-tax Act, 1961 (hereinafter referred to as "the Act) on account of late deposit of Employees' share of EPF and ESI etc.

5. Brief stated the facts of the case are that the A.O made disallowance in the intimation u/s 143(1) of the Act on the ground that the assessee deposited the employees' share of EPF and ESI etc. late.

6. We find that similar issue came up for consideration before co-ordinate Bench of Pune Tribunal in ITA No. 405/PUN/2021 for A.Y. 2019-10, order dated 22-06-2022, wherein it has been observed and held as under:

*"5. We have heard both the sides and gone through the relevant material on record. It is an admitted position that the assessee did deduct employees' share of EPF and ESI and paid the same after the due date under the respective legislations but before the time stipulated for filing return u/s 139(1) of the Act. In our opinion, this issue is no more res integra in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The Hon'ble Himachal Pradesh High Court in CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP) has held that there exists no difference between employees or employer's contribution and both are to be allowed as deduction if deposited before the due date.*

*6. At this juncture, it is relevant to mention that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01.04.2021. The effect of this amendment is that if the amount of employees' contribution towards EPF, ESI, etc is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1st April, 2021 and will, accordingly apply in relation to assessment year 2021- 2022 and subsequent assessment years. Since the assessment year under consideration is 2019-20, which is anterior to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts including the one in CIT vs. Nipso Polyfabriks Ltd. (supra) squarely applies to the facts and circumstances of the instant case, thereby not warranting any disallowance since the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted.*

7. Respectfully following the aforesaid decision we decide this issue in favour of the assessee and direct the Assessing Officer to delete the impugned addition for the years under consideration.

8. In the result, all the appeals of the assessee are allowed.

Order pronounced on this 26<sup>th</sup> day of July 2022.

**(R.S. SYAL)**  
**VICE PRESIDENT**  
 Pune; Dated, this 26<sup>th</sup> day of July 2022  
 Ankam

**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

ITA No. 485, 514 and 515/PUN/2022  
Tukaram Mahadev suryvanshi  
A.Y. 2017-18, 2018-19 and 2019-20

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. the NFAC Delhi.
4. The D.R. ITAT B' Bench, Pune.
5. Guard File

BY ORDER,

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Sr. Private Secretary  
ITAT, Pune.

		Date	
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2	Draft placed before author	26-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
6	Kept for pronouncement on	26-07-2022	Sr.PS
7	Date of uploading of order	26-07-2022	Sr.PS
8	File sent to Bench Clerk	27-07-2022	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		