

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI B.R. BASKARAN (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1961/MUM/2021 - A.Y. 2017-18
ITA No. 1962/MUM/2021 - A.Y. 2018-19

Ace Global Solutions Private Ltd C-504, Golden Nest Phase-XI V, 100 Feet Road, New Navghar Road, Mira Road East – 401 107 PAN : AALCA7505L	vs	DCIT, CPC, Bangalore and ITO 1(1), Thane, Qureshi Mansion, Gokhale Road, Naupada, Thane West, Thane- 400 602
APPELLANT		RESPONDENT

Assessee represented by	Shri Bharat Kumar
Department represented by	Shri Manoj Sinha (SR AR)

Date of hearing	06/07/2022
Date of pronouncement	26/07/2022

ORDER

Per Kavitha Rajagopal (JM):

These appeals have been filed by the assessee as against the independent orders of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 16/09/2021 for the assessment years 2017-18 & 2018-19.

2. The issue involved in both the appeals pertains to addition under section 36(1)(va) to the tune of Rs.91,94,560/- and Rs.35,16,557/- for the assessment years 2017-18 & 2018-19, respectively, being amount deposited beyond the due date specified under the relevant Acts. As the facts and circumstances are identical, we pass a consolidated order in both these appeals.

3. It is observed that the assessee has filed appeals before the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi against the order passed under section 143(1) dated 16/10/2019 wherein the DCIT-CPC, Bangalore had disallowed the claim of the assessee under section 36(1)(va) on the ground that the employees' contribution to PF & ESIC has been deposited beyond the due date specified under the relevant Acts, but before the due date for filing of return of income under section 139(1). There was a delay in filing appeal before the Ld.CIT(A) which is categorically 349 days for A.Y. 2018-19 and 619 days for A.Y. 2017-18. The Ld.CIT(A) dismissed the appeals as time barred on the ground that the assessee has failed to explain that there was sufficient cause for filing appeals belatedly. Aggrieved by this, the assessee has filed the present appeals before the Tribunal.

4. The Ld.AR appearing for the assessee has relied on the affidavits filed by the Director and the Accountant of the assessee which state that the Accountant of the assessee had failed to file the appeal which was not brought to the knowledge of the directors of the assessee company. The Accountant of the assessee states that she was under a bonafide belief that it was only an intimation of return processing carried out by CPC and that it did not seem to be like an assessment order passed under section 143(1), which was the reason for non filing of appeal on time against the said intimation and further stated that she was of the view of filing rectification application under section 154 of the I.T. Act, 1961. The Ld.AR segregated the delay in filing of appeal as pre-covid period to be of 379 days and during the pandemic as 228 days for A.Y. 2017-18 and that for the assessment year 2018-19 it was computed as 119 days pre-covid period and 228 days during the pandemic.

3. The Assessee is in appeal before us against the order of Ld.CIT(A). During the appellate proceedings, the Ld.AR contended that the deposit of employees' contribution to PF / ESIC though made after the due date specified in the relevant Act, was made before the due date of filing of return of income. The Ld.DR had nothing to controvert the same and had relied on the order of the lower authorities. The Ld.AR submitted that the delay due to pandemic is squarely covered by the judgement of Hon'ble Apex Court. The Ld.AR further contended that the assessee has got a genuine case as the issue is squarely covered by various decisions, specifically the decision of the jurisdictional High Court in the case of CIT vs Ghatge Patil Transports Ltd 368 ITR 749 (Bom) and prayed that the delay be condoned and the matters be set aside to the Ld.CIT(A) for adjudication on merits.

4. The Ld.DR, on the other hand, opposed to the condonation of delay stating that the reasons provided by the assessee in the affidavits do not constitute sufficient cause to condone the huge delay in filing of the appeals.

5. Having heard both the learned representatives and perused the materials on record, we are of the view that the assessee's case is squarely covered by the following decisions in favour of the assessee:-

1. Flying Fabrication vs Dy.CIT in ITA Nos.1049 and 1047 (Delhi) of 2021 order dated November 17, 2021 (2021) 133 taxmann.com 84 (Delhi-Trib.)
2. Kalpesh Synthetics Pvt Ltd vs Dy.CIT in ITA No.1785/Mum/2021 order dated April 27, 2022.
3. CIT vs Ghatge Patil Transports Ltd 368 ITR 749 (Bom);
4. CIT vs Hindustan Organics Chemicals Ltd 366 ITR 1 (Bom);
5. PCIT vs Official Liquidator, High Court, Mumbai in Pranav Agro Industries Ltd ITXA No.333 of 2017 (Bombay).

6. The issue pertaining to condonation of delay has been considered by us and in order to give last opportunity to the assessee in the interest of natural justice, we condone the delay in filing the appeals before the Ld.CIT(A) and restore the matters to the file of the Ld.CIT(A) for adjudication of the same on merits.

7. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 26th July, 2022,

Sd/-

sd/-

(B.R. BASKARAN)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 26/07/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

