

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.651/PUN/2021**

**निर्धारणवर्ष / Assessment Year : 2018-19**

Sagar Shamrao Minde, Sadguru Niwas, Sadguru Nagar, A/P Mahalunge Ingale, Pune – 410501. PAN: AVCPM 6950 A	Vs	The Income Tax Officer, Ward-8(3), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri M.K.Kulkarni – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	19/07/2022
Date of pronouncement	22/07/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of National Faceless Appeal Centre(NFAC), Delhi under section 250 of the Income-tax Act, 1961 (hereinafter also called as ‘the Act’) for the Assessment Year 2018-19 dated 29.10.2021.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.19,47,848/- made by the Assessing Officer (AO), DCIT(DPC) under section 36(1)(va) of the Act on account of late deposit of the Employees’ share of EPF, in the order passed u/s.143(1) of the Act.

3. Briefly stated facts of the case are that the Id.Dy.CIT(CPC) [AO] made disallowance of Rs.19,47,848/- in the intimation under

section 143(1) of the Act on the ground that the assessee late deposited the employees' share of EPF. The ld.CIT(A) affirmed the disallowance.

4. We have heard both the sides. It is seen as an admitted position from the impugned order as well as the statement of facts before the ld. first appellate authority that the assessee did deduct employees' share of EPF and paid the same after the due date under the respective legislations but before the time stipulated for filing return under section 139(1) of the Act for the year under consideration. In our opinion, this issue is no more *res integra* in view of several judgments allowing deduction under section 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed under section 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 of filing Return of Income.

5. The ITAT Pune Bench in ITA No.112/PUN/2022 Sunita Suresh Jadhav vs. ITO order dated 21.03.2022 has held that no disallowance is warranted as the amounts were deposited before due date under section 139(1) of the Act.

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 under section 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1<sup>st</sup> April, 2021 and will, accordingly apply in relation to Assessment Year 2021-2022 and subsequent assessment years. Since the assessment year under consideration is 2018-19, which is anterior to the amendment carried out with effect from Assessment Year 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) (2013) 350 ITR 327 (HP)* the Hon'ble Himachal Pradesh High Court 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*" 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 under section 139(1) of the Act.

7. And also, the Hon'ble Jurisdictional High Court held in the case of CIT Vs. Ghatge Patil Transports Ltd, IT APPEAL No's.1002 & 1034 of 2012 vide order dated 14/10/2014 as under :

Quote , *“ In this manner, the amendment provided by Finance Act, 2003 put on par the benefit of deductions of tax, duty, cess and fee on the one hand with contributions to various Employees' Welfare Funds on the other. All this came up for consideration before the Hon'ble Supreme Court in the case of Alom Extrusions Ltd. (supra). The Tribunal in the case at hand relied upon the said judgment. There is no reason to fault the order passed by the Tribunal. We are of the view that the decision of the Supreme Court in Alom Extrusions Ltd. (supra) applies to employees' contribution as well as employers' contribution. Question Nos.2, 3 & 4 are accordingly answered in favour of the assessee and against the revenue. ”*  
Unquote.

8. Thus, respectfully following the decisions of the Hon'ble High Court(supra) mentioned above, it is held that the payment of employee's contribution beyond the due date mentioned in the relevant statute but before the due date of filling the return of income u/s 139(1) is allowable expenditure, therefore, the addition is directed to be deleted. Accordingly, grounds of appeal raised by the assessee are allowed.

9. In the result, appeal of the Assessee is Allowed.

Order pronounced in the open Court on 22<sup>nd</sup> July, 2022.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> July, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.