

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.541/Bang/2022
Assessment year : 2019-20

People Management Services, 1017, 8 th Main, 3 rd Stage, Near Doctors Corner, Gokulam, Mysuru-570002. PAN - AAPEP 0099 M	Vs.	The Asst. Director of Income Tax, (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Bhargava, S.N
Revenue by	:	Shri K.R Narayan, Addl. CIT (DR)

Date of hearing	:	03.08.2022
Date of Pronouncement	:	04 .08.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 12.5.2022 for the asst. year 2019-20 with the following substantive grounds of appeal:-

"1. That the Intimation Order dt. 04.01.2021 passed by the Learned ADIT, CPC and confirmed by Hon 'ble FM, in so far it is prejudicial to the interest of the appellant is bad and erroneous, and is opposed to fact and law as interpreted by Jurisdictional High Court and hence goes against the various judgements cited earlier.

2. Both the learned ADIT and the Hon'ble FM have erred in NOT applying the law as interpreted by jurisdictional High court, Hon'ble Karnataka High Court in MIS Essae Teraoka Pvt Ltd Vs. Dy. Commissioner of Income Tax - (2014 366 1TR 408) and Commissioner of Income Tax vs. Sabari Enterprises - (2008 298 ITR 141).

3. The Hon'ble FAA has also erred in Retrospective application of Explanation 2 and 5 inserted by Finance Act, 2021 to sec 36(1)(va) and sec 43B respectively to Income Tax Act, 1961, thereby going beyond the intention of Finance Act, 2021 and denying the benefit of Legal interpretation by Hon 'ble High Court of Karnataka.

4. That the Appeal may be allowed on the above ground and any other grounds that the Appellant may be permitted to adduce at the time of hearing."

3. The ld.AR of the assessee said that the ld.CIT(A) failed to appreciate that CBDT Circular No.22/2015 cannot override the provisions of section 43B and the amendments made in this regard in the Finance Act 2021 is prospective in nature, consequently, there cannot be disallowance u/s 36(1)(va) of the Act. The ld.AR reiterated the submission made before the CIT(A) which is placed on record. He further submitted that the amendment made in the Finance Act 2021 is prospective in nature. He also relied on the judgment of Hon'ble jurisdictional High Court in the case of Essae

Teraoka Pvt. Ltd., Vs. DCIT [2014] 366 ITR 408/222 Taxman 170/32 taxmann.com 33 (Kar).

4. On the other hand, the ld.DR supported the order of the lower authorities and he vehemently submitted that there was clear provision in the Income-tax Act u/s 36(1)(va) in this regard. Once the assessee received the employees contribution firstly it is created as income of the assessee u/s 2(24)(x) and if the assessee deposits the concerned amount within the due date specified in the respective act then the assessee will get deduction as per sec.36(1)(va) of the Act. The employee's contribution received is under sec.36(1)(va) but not u/s 43B of the Act. The amendment made by the Finance Act 2021 is only a clarificatory in nature, therefore, the order of the lower authorities should be restored.

5. We heard both sides and perused the entire materials on record and orders of the authorities below. Coming to the substantive issue of ESI/PF with regard to additions made by the AO of Rs.62,62,905/- and the tax effect is of Rs.19,54,026/-, the assessee's plea that the same has been paid before the due date of filing of Income-tax return u/s 139(1) and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has

issued Memorandum of Explanation that the same applies w.e.f. 1.4.2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s 43B of the Act as against employee's contribution u/s 36(1)(va) of the Act; respectively. The similar issue has been decided by the Hyderabad Bench in the case of M/s Chiphercloud India Pvt. Ltd., in ITA No.1367/Hyd/2018 and also keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 1.4.2021, we hold that the impugned disallowance is not sustainable in view of all these latest developments.

6. The impugned ESI/PF disallowance is directed to be deleted therefore. Hence, we allow the appeal of the assessee.

7. In the result, the assessee's appeal is allowed in above terms.

Order pronounced in court on 4th day of Aug, 2022

Sd/-

(BEENA PILLAI)

Judicial Member

Bangalore,

Dated, 4th Aug, 2022

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
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4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the
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