

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA Nos. 73 & 74/MUM/2022 (A.Y.2018-19 & 2019-20)

Maruti Ramu Lande Flat No.5L, B Wing, 5 th Floor Siddhivinayak Towers, Near Runwal Nagar, Thane West PIN 400 601 PAN : ADJPL1772E	vs	Deputy Commissioner of Income- tax-CPC, Jurisdictional Assessing Officer, Ward 1(1), Thane
APPELLANT		RESPONDENT

Assessee represented by	Shri Pravin Jain
Department represented by	Shri Himanshu Sharma

Date of hearing	26/05/2022
Date of pronouncement	29/07/2022

ORDER

Per Kavitha Rajagopal (JM):

Both these appeals have been filed by the assessee as against the independent orders of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, both dated 18/11/2021 for the assessment years 2018-19 and 2019-20.

2. Both the appeals pertain to the same assessee and the grounds of appeal, are identical, but for the figures; therefore, a common order is passed taking appeal in ITA No.73/Mum/2022, as a lead case.

3. The grounds raised by the assessee are as follows:-

"GROUND No. I; Disallowance of Rs. 9,93,864/- on account of delay in payment of Employee's contribution to PF and ESIC u/s 36(1) (va);

1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre ("the CIT(A)") erred in upholding the action of the Deputy Commissioner of Income Tax - CPC ("the AO") of making a disallowance in Intimation u/s. 143(1) of the Act on account of employee contribution amounting to Rs. 9,93,864/- made to Provident Fund and Employees' State Insurance Fund after the due date of the relevant act but before the due date of furnishing return of income u/s. 139(1) of the Act

GROUND No. II: Not giving credit of TDS;

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not directing the AO to grant credit of Tax Deducted at Source amounting to Rs. 2,58,124/- as claimed by the Appellant in its Return of Income."

4. The brief facts of the case are that the assessee is an individual and proprietor of M/s Ram Sheela group which is engaged in the business of supply of contract labour and manpower. The assessee filed its return of income on 20-09-2018 declaring total income of Rs.15,08,100/-. The Assessing Officer at CPC has made the adjustment under section 36(1)(va) being contribution to ESI and PF apart from denying credit for TDS of Rs.2,58,124/- under section 143(1)(a) of the Income-tax Act, 1961. On appeal, the Ld.CIT(A) confirmed the addition. Further aggrieved, the assessee is in appeal before this Tribunal.
5. During the appellate proceedings, the Ld.AR of the assessee contended that the employees' contribution to PF and ESI as appearing in the audit report under section 44AB though was paid after the due date prescribed under the relevant Acts, but was deposited before the due date for filing of return of income under section 139(1) of the Act. Relying on the judgement of jurisdictional High Court in the case of CIT vs Ghatge Patil Transport Ltd (2014) 368 ITR 749 (Bom) and the Hon'ble Apex Court in the case of CIT vs Alom Extrusions Ltd (2009) 319 ITR 306 (SC), the Ld.AR submitted that PF and ESI though was paid after the due date prescribed under the relevant Acts, but was deposited before the due date for filing of return of income under section

139(1) of the Act, is an allowable deduction. The Ld.AR placed his further reliance on the following decisions:-

1. CIT vs Hindustan Organics Chemicals (2014) 366 ITR 1 (Bom)
2. Sagun Foundry (P) Ltd vs CIT (2017) 291 CTR 557 (All)
3. CIT vs Kichha Sugar Co Ltd (2013) 356 ITR 351 (Utt HC)
4. CIT vs State Bank of Bikaner & Jaipur (2014) 363 ITR 70 (Raj HC)
5. CIT vs Nipso Plyfabriks Ltd (2013) 350 ITR 327 (HP HC)
6. CIT vs AIMIL Ltd (2010) 321 ITR 508 (Del HC)
7. CIT vs Spectrum Consultants India (P) Ltd (2014) 266 CTR 241 (Kar)(HC)
8. Maksat Technologies (P) Ltd vs DCIT (2021) 130 taxmann.com 454 (Delhi Trib)
9. Kalpesh Synthetics (P) Ltd vs DCIT (CPC) (2022) 137 taxmann.com 475 (Mum Trib)
10. DCIT vs LML Ltd (2017) 88 taxmann.com 717 (Mumbai.Trib)

6. The Ld.DR, on the other hand, alleged that the said amount should have been deposited before the due date specified under the relevant Acts and that section 43B was applicable to employer's contribution and not to employees' contribution. For this proposition, the Ld.DR relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100 (Guj) and Kerala High Court judgement in the case of Popular Vehicles & Services (P) Ltd vs CIT (2018) 96 taxmann.com 13 (Kerala).

7. Having heard the rival submissions and perused the materials placed before us, we are of the considered opinion that the issue relating to delayed deposit of EPF / ESI has already been dealt with by various Hon'ble High Courts including the jurisdictional Hon'ble Bombay High Court in CIT vs Ghatge Patil

Transport Ltd (2014) 368 ITR 749 (Bom) wherein it was held that the decision of the Hon'ble Apex Court in CIT vs Alom Extrusions Ltd (2009) 319 ITR 306 (SC) that the amendment to section 43B of I.T. Act was applicable to both employer's as well as employees' contribution. Furthermore, the amendment brought out in the Finance Act, 2021 was only prospective and not retrospective thereby was applicable only to assessment year 2021-22 onwards and to subsequent years. The same has been reiterated by the decision of various Benches of the Tribunal.

8. We have also considered the decision of the co-ordinate bench in the caswe of Kalpesh Synthetics Pvt Ltd in ITA No.1785/Mum/2021 dated April 27, 2022 wherein it has been held as under:-

".....In our considered view, it cannot be open to the Assessing Officer CPC to take a view contrary to the view taken by the Hon'ble jurisdictional High Court – more so, when his attention was specifically invited to the binding judicial precedents in this regard. For this reason also, the inputs in question in the tax audit report can not be reason enough to make the impugned disallowance. The assessee must succeed for this reason as well."

Therefore, following the above judicial precedents, we are of the considered opinion that the contribution towards EPF / ESI paid after the specified due date under the relevant Acts, but nevertheless paid before the due date of filing of the return of income under section 139(1) of the Act, is allowable. The Assessing Officer is directed to allow the deduction as claimed. Ground 1 of the assessee succeeds.

8. With regard to ground 2 pertaining to not giving credit to TDS, the facts are that while processing the return of income, the Assessing Officer noticed that the claim of TDS in the return did not match with the data in Form 26AS. It is pertinent to point out that the Ld.CIT(A) in assessee's appeal has directed

the assessing Officer to verify the availability of such credit in form 26AS of the assessee for the impugned assessment year and to allow the same as per the provisions of rule 37BA.

9. From the copies of accounts furnished by the assessee, it transpires that the receipts from which the TDS was effected was considered for the impugned assessment year while computing the total income. The assessee has offered the corresponding income to tax for the impugned assessment year and the claim of TDS pertinent to the same was made in the return of income. The Ld.AR for the assessee submitted that inspite of the direction from the Ld.CIT(A), the same has not been considered by the Assessing Officer till date. We therefore, direct the learned Assessing Officer to verify the availability of such credit in Form 26AS of the assessee for the impugned year and allow the same as per the provisions of Rule 37BA.

ITA 74/Mum/2022 – 2019-20

10. Facts and circumstances and grounds of appeal in this appeal, are identical to ITA No.73/Mum/2022 which we have decided in the above paragraphs. Therefore, the decision arrived at therein shall apply mutatis mutandis to this appeal also.

11. In the result, both the appeals of the assessee are treated as allowed, for statistical purpose.

Order pronounced in the open Court on 29th July, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 29/07/2022

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