

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1952/Mum/2021 (A.Y. 2018-19)

Adarsh Chamanlal Kaul
10th Floor 2, IT Park, Techniplex II,
Junction of Veer Savarkar Flyover,
Goregaon (West), Mumbai-400062

PAN: AHRPK7595A

..... Appellant

Vs.

DCIT, CPC Bangaluru
Pin-560500.

..... Respondent

Appellant by	:	Sh. Sunil G. Rohra
Respondent by	:	Sh. Mehul Jain, Sr. DR
Date of hearing	:	26/05/2022
Date of pronouncement	:	23/08/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ('NFAC') dated 26.08.2021 for the Assessment Year (AY) 2018-19. The assessee has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in the law, FAA erred in passing ex-parte order without providing a reasonable opportunity of being heard in the course of faceless hearing to the appellant without appreciating the facts that submissions couldn't be uploaded due to non- functional/ technical glitches on the income tax portal since 1st June 2021 onwards".

2. "On the facts and in the circumstances of the case and in the law, FAA erred in confirming the impugned addition made by Ld. A.O., being contribution towards PF /ESIC amounting Rs. 1, 26,938/- paid before due date of furnishing the return of the income under sub-section (1) of section 139 by invoking the provisions of section 36(1) (va) read with amendments made by the Finance Act, 2021 of I.T. Act., 1961."
2. Brief facts of the case are that the assessee has filed his return of income u/s 139(1) on 29-10-2018. Declaring total income at Rs. 1, 71, 43,960/- under the normal provisions of the I.T. Act, 1961. The said return was processed u/s 143(1) of the Act at C.P.C, Bangalore in which the adjustment of Rs 1, 26,938/- was made to the return on account of deemed income u/s 36(1) (va) of the Act for late deposit of employee's contribution to P.F. and E.S.I. in accordance with timelines as specified in statutes governing P.F. and E.S.I. respectively.
3. Against this intimation dated 16-03-2019, assessee filed an appeal before the Ld. CIT (A)-42, Mumbai on 04-04-2019. The Ld. CIT (A) (NFAC) also confirmed the intimation processed u/s 143(1). Against this order of NFAC, assessee appellant instituted an appeal before Income Tax Appellant Tribunal. Raising total 2 grounds of appeal.
4. All the grounds are interrelated hence disposed off simultaneously by common finding. We have gone through the intimation processed u/s 143(1) (a) and order passed by the Ld. CIT (A) u/s 250 of the Act. While deciding the issue we have gone through the paper book dated 25th MAY 2022 filed by the assessee before the ITAT and both the lower authorities.
5. Ld. CIT (A) while deciding this issue has relied upon the reporting of the tax auditor wherein, he simply reported about the due dates of payment under the P.F., E.S.I. and other funds vis-à-vis actual date of payment as per columns 20(b)

of form no 3CD. This reporting auditor had done keeping in view the due dates of respective acts and not as per Income Tax Act 1961. This tax audit report nowhere suggests and authorizes the department to make a disallowance, if the payments are made within the due date for filing of return u/s 139(1) of the Income Tax Act

6. We have pursued the details filed by the appellant with reference to amount and actual date of payments under the respective due dates for various employee welfare related acts.

7. In support of assessee's contention, we placed reliance on the decisions of Hon'ble Jurisdictional High Court in the case of Ghatge Patil Transport (368) ITR 749 and Hindustan Organics Ltd (366) ITR 1 and assessee placed reliance in the case of Hon'ble Delhi High Court in CIT Vs. AIMIL Ltd. (321 ITR 508).

8. We have considered the relevant decisions relied upon and facts of the case, in this regard the decision of honourable Supreme Court in the matter of C.I.T vs Raghuvir Synthetics Ltd. (394) ITR 1, is relevant. In this decision honourable Apex Court held that A.O. is duty bound by the decision of the jurisdictional High Court and any view contrary to the jurisdictional High court is a mistake.

9. Further both the lower authorities relied upon the amendment made by Finance Act, 2021 to section 36(1)(va) and 43B. As per Ld. CIT(A) this amendment is curative in nature and retrospective in application.

10. On this issue jurisdictional ITAT and various coordinated benches held that the amendment made by the Finance Act 2021 to sec 36(1)(va) and section 43B are prospective in nature, effective from assessment year 2022-23. We respectfully

follow the decision of the Hyderabad Bench of the ITAT in the case of Crescent Roadways Pvt. Ltd. vs DCIT (ITA No 952/Hyd./2018)

11. Following judgements of ITAT be considered while deciding the matter

i) PNGS India Pvt Ltd vs I.T.O (ITA no 1409/Mum. /2021)

ii) M/s Vishal Enterprises Vs DCIT (ITA no 510 and 511 /Bang. /2021)

12. Considering all the discussions, decisions and submission of the appellant we are of the considered view that A.O. and first appellant authority are duty bound to follow the decisions of jurisdictional high Court otherwise it makes their decision unsustainable in so far as applicability of amendment by the finance act 2021, the same is effective from assessment year 2022-23 thus in the light of above, we hold that the C.P.C and Ld. CIT (A) has erred in applying amended provisions of sec 36(1)(va) r.w.s 43B to disallow assessee's claim of deduction.

13. We found merit in the grounds of appeal raised by the Assessee, hence the impugned order of Ld. CIT (A) is set aside and the grounds of the Assessee are allowed.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 23rd day of August, 2022.

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 23/08/2022

SK, Sr.PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai