



IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 649/PUN/2020 : A.Y. 2015-16

M/s. Jyoti International Foods Pvt. Ltd.,
North Court Building,
North Avenue Road, Kalyani Nagar,
PUNE – 411 006
PAN: AADCJ 1224D

Appellant

Vs.

The Pr. Commissioner of Income-tax-6
Pune

Respondent

Appellant by : Shri Hari Krishan

Respondent by : Shri Hitendra B. Ninawe

Date of Hearing : 24-08-2022

Date of Pronouncement : 25-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the assessee emanates from the order of the Id. Pr. Commissioner of Income Tax -6 Pune, dated 11-03-2020 u/s 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year 2015-16 as per the following grounds:

“1. The revision order dated 11-3-2020 passed u/s 263 of the Income-tax Act by the Principal Commissioner of Income-tax is illegal, ab-initio and unsustainable in-law.

2. The Ld. Principal Commissioner of Income Tax has erred in holding that the assessment order dated 22-11-2017 passed by the Assessing Officer u/s 143(3) of Income Tax Act (the Act) is erroneous and prejudicial to the interest of the revenue.

3. The Ld. Principal Commissioner of Income Tax has erred in holding that the Assessing Officer did not examine the issue of allowability of the employee's contribution to provident fund amounting to Rs.19,84,130/- and has allowed without any verification.

The Ld. Principal Commissioner -of Income Tax has failed to appreciate that the fact, that the employee's contribution to the provident fund though paid to the government account beyond the due dates prescribed in the Provident Fund Act but have been paid well before the due date of filing of the return of Income u/s 139 of the Act, was duly mentioned in the para 20(b) of the Tax Audit Report filed with the Return of Income and complete information in this regard was before Assessing Officer, Thus it is to be regarded that the Assessing Officer has allowed the deduction of Rs.19,84,130/- after due examination of the issue and on due application of mind.



4. *In the following judgments it has been held that the employee's contribution to provident fund is allowable as deduction u/s 43B of the Act if it is paid to the government account before the due date of filing the return of income, even though it might have been paid after the due date prescribed under the Provident Fund Act.*

M/s. Ghatge Patil Transports Ltd. 53 taxmann.com 141 (Bombay)

M/s. Kalyani forge Ltd. – ITA No. 569/PUN/2014.

State Bank of Bikaner & Jaipur - 69 taxmann.com 365 (Jaipur - Trib.).

Mark Auto Industries Ltd. - 40 taxmann.com 482 (Punjab & Haryana).

Bihar State Warehousing Corpn. Ltd. - 393 ITR 396 (Pat).

Rajasthan State Ganganagar Sugar Mills Ltd. - 393 ITR 421 (Raj).

Majalgaon Sahakari Sakhar Karkhana Ltd. - ITA No. 308/PUN/2018.

In view of these judgements the Assessing Officer has adopted a plausible view on this issue. Therefore the assessment order cannot be regarded as erroneous and prudential to the interest of the revenue. The Ld. Principal Commissioner of Income Tax has therefore erred in holding that the assessment order dated 22-11-2017 passed by the Assessing Officer u/s 143(3) of Income Tax Act (the Act) is erroneous and prejudicial to the interest of the revenue.

5. *The Ld. Principal Commissioner of Income Tax has erred in holding that the claim of deduction relating employee's contribution to Provident Fund is governed by section 36(1)(vi)(a) and the sum of Rs.19,84,130/- needs to be disallowed u/s 36(1)(vi)(a) r.w.s 2(24)(x) of the Act. and provision of section 43B are not applicable to such deduction. This finding of the Ld. Principal Commissioner of Income Tax is contrary to the judgements referred in ground No.3 to above including the binding judgement of the Hon'ble jurisdictional High Court of Bombay in the case of Ghatge Potil Transports Ltd. 53 taxmann.com 141 (Bombay) and the judgement of the Hon'ble Pune Bench of the Tribunal in the case of M/s. Ka/yani Forge Ltd.- ITA No. 569/PUN/2014 and as such is not in law.*

The Ld. Principal Commissioner of Income Tax has failed to appreciate that an assessment order, allowing the deduction of Rs.19,84,130/- in view of the binding judgements of the Jurisdictional High Court and Jurisdictional Bench of the Tribunal, cannot be regarded as erroneous and prejudicial to the interest of the revenue even though an SLP filed by the department on this issue in some other case may be pending before the Hon'ble Supreme Court.

2. The assessee is aggrieved with assumption of revisionary jurisdiction by the Id. Pr. CIT in passing order u/s 263 of the Act. The Id. Pr. CIT has held that the A.O did not examine the issue of allowability of the employees' contribution to Provident fund amounting to Rs. 19,84,130/- and has allowed the same without any verification making the assessment order erroneous and prejudicial to the interest of revenue. However, it is the contention of the assessee that the employees' contribution to the Provident Fund though paid to



the Government account beyond the due date prescribed in the Provident Fund Act but has been paid well before the due date of filing of the return of income u/s 139 of the Act. This fact was duly mentioned in para 20 clause (b) of the Tax auditor Report filed with the Return of Income and complete information in this regard was before the A.O. Further, it is contended that Hon'ble Bombay High Court in the case of M/s. Ghatge Patil Transports Ltd. 53 taxmann.com 141 (Bombay) has held that the employees' contribution to provident fund is allowable as deduction u/s 43B of the Act if it is paid to the Government account before the due date of filing of return of income though it might have been paid after the due date prescribed under the Provident Fund Act.

3. We have perused the order of the Id. Pr. CIT u/s 263 of the Act specifically para 3 wherein the payment dates of the employees' contribution to provident fund have been mentioned and it is seen that those dates are before the due date of filing the return of income. We also find in the recent judgment of Pune Tribunal in the case of Harakchand Deoji Shah Vs. ACIT in ITA No. 154 and 155/PUN/2021 for A.Y. 2018-19 and 2019-10, order dated 29-03-2022 where the same issue has been decided in favour of the assessee by observing as follows:

4. After considering the rival submissions and perusing the relevant material on record, it is seen that the issue under consideration is no more res integra in view of the judgment of the Hon'ble Bombay High Court in CIT Vs. Ghatge Patil Transports Ltd. (2014) 368 ITR 749 (Bom.) in which it has been held that deduction for payment of employees' contribution cannot be disallowed in case the contribution of employees' share in the Welfare Funds got credited on or before the due date. ITA

5. 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, ESIC, 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 u/s 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that



this amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment year under consideration, namely, 2017- 18 is anterior to the amendment carried out with effect from A.Y. 2021-22, I hold that the position of law as set out by various Hon'ble High Courts including Ghatge Patil Transports Ltd. (supra) squarely applies to the facts and circumstances of the instant case thereby not warranting any disallowance as the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted."

4. In this judgment also the Tribunal has referred to the Hon'ble Bombay High Court in the case of Ghatge Patil Transports Ltd. (supra) wherein it has been held that deduction for payment of employees' contribution cannot be disallowed in case the contribution of employees' share in the welfare funds got credited on or before the due date. In this case before us, admittedly, the amount in question was deposited before the due date u/s 139 clause (1) of the Act. The Id. D.R also could not refute the fact that the A.O had examined all these aspects and therefore, in our considered view the assessment order is neither erroneous nor prejudicial to the interest of the revenue. Respectfully following the aforesaid judicial pronouncement, we quash the revisionary order passed u/s 263 of the Act by the Id. Pr. CIT and allow the grounds of appeal of the assessee.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on this 25th August 2022.

Sd/-

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 25th August , 2022
Ankam



ITA No.649/PUN/2020
Jyoti International Food
A.Y. 2015-16

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT – (A)-2 Aurangabad .
4. Pr. C.I.T. 2, Nashik
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,

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Sr. Private Secretary
ITAT, Pune.



	Draft dictated on	24-08-2022	Sr.PS/PS
2	Draft placed before author	24-08-2022	Sr.PS/PS
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6	Kept for pronouncement on	25-08-2022	Sr.PS/PS
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