

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2426/MUM/2021
(ASSESSMENT YEAR: 2018-19)

The Estate Investment Company
Pvt. Ltd.,
4th Floor, 139, Seksaria Chambers,
Nagindas Master Road, Fort,
Mumbai - 400001
[PAN: AAACE2566J]

..... Appellant

Vs

ACIT 2(1)(2), Mumbai,
Aaykar Bhavan, M G Road,
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Pankaj K. Jain
For the Respondent/Department : Shri B.K. Bagchi

Date of conclusion of hearing : 11.05.2022
Date of pronouncement of order : 28.07.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 03.11.2021 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the CIT(A) had dismissed the appeal filed by the Appellant/Assessee against the intimation/order, dated 01.11.2019, issued/passed by Deputy Commissioner of Income Tax, CPC under Section 143(1) of the Act.
2. The Appellant has raised Ground No. 1 and 1(a) directed against the disallowance of INR 4,02,180/- made under Section 36(1)(va) of the

Act in respect of employees' contribution to Employees' State Insurance Corporation (ESIC) and Provident Fund (PF) deposited after the due date specified in the applicable statute but before the due date of filing income tax return prescribed under Section 139(1) of the Act.

3. The brief facts are that the Appellant filed its return of income for the Assessment Year 2018-19 on 11.10.2018, which was processed under Section 143(1) of the Act by the Deputy Commissioner of Income Tax, CPC after making addition of INR 4,02,180/- under Section 36(1)(va) of the Act being aggregate employees' contribution to ESIC and PF deposited after the due date specified in the applicable statute but before the due date of filing income tax return prescribed under Section 139(1) of the Act.
4. Being aggrieved, the Appellant filed appeal against intimation/order under Section 143(1), dated 01.11.2019 before the CIT(A) which was dismissed vide order, dated 03.11.2021.
5. The Appellant/Assessee is now in appeal before us.
6. The Ld. Authorised Representative for the Appellant appearing before us submitted that the addition of INR 4,02,180/- under Section 36(1)(va) of the Act has been made without appreciating that the employee's contribution to PF and ESIC was deposited before the due date of filing return and was allowable as deduction under Section 36(1)(va) read with Section 43B of the Act as per the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Organics Chemicals Ltd. [2014] 366 ITR 1 (Bombay). Further, the Tribunal has in number of decisions held that the amendments introduced by the Finance Act, 2021 are applicable for Assessment Year 2021-22, and therefore, the CIT(A) has erred in confirming the disallowance by placing reliance on the same.

7. The Ld. Departmental Representative submitted that Circular 22 of 2015 issued by the Central Board of Direct Taxes clearly states that employee's contribution to welfare funds are governed by Section 36(l)(va) of the Act. Further, the amendments to Section 36(l)(va) made vide Finance Act 2021 are to be applied retrospectively, as the same are curative/declaratory in nature. He relied upon the order passed by the CIT(A) to support the aforesaid disallowance of INR 4,02,180/-.

8. We have considered the submissions and perused the material available on record. It is not in dispute that Appellant had deposited the employees' contribution of PF and ESIC before the due date of filing of Return under Section 139(1) of the Act, though the same were deposited belatedly beyond the due date specified under the respective statutes. The CIT(A) has sought to justify the additions/adjustments made under Section 143(1) of the Act vide order/intimation dated 01.11.2019 by placing reliance upon the amendments introduced by the Finance Act, 2021 which was passed much later on 28.03.2021 by contending that the amendments are to be interpreted as being clarificatory in nature and therefore, applicable retrospectively. We note that the date on which intimation/order under Section 143(1) of the Act was passed the issue stood decided in the favour of the Appellant by virtue of the judgment of the jurisdictional High Court in the case of CIT vs. Ghatge Patil Transporters Ltd. (2015) 53 taxmann.com 141 (Bom HC) and CIT vs. Hindustan Organics Chemicals Ltd. [2014] 366 ITR 1 (Bombay). Further, even after the introduction of amendments to Section 36(1)(va)/43B of the Act by way of Finance Act, 2021, Hyderabad Bench of the Tribunal had, vide order dated 15.06.2021, in the case of Salzgitter Hydraulics (P.) Ltd. vs ITO, Ward 3(1), Hyderabad: 189 ITD 676 (Hyderabad - Trib.) held that the aforesaid amendments are applicable from Assessment Year 2021-2022. Further, the adjustments/additions in respect of employees contribution to ESIC

and PF fell outside the scope of Section 143(1)(a)(iv) of the Act. Section 143(1)(a)(iv) provides for adjustment in the return of income filed by an assessee in case a disallowance of expenditure is indicated in the audit report but had not taken into account in computing the total income in the return. A perusal of Form 3CD, the form prescribed for filing tax audit report, would show that the tax auditor is not just required to identify and provide details of disallowance of expenditure. Form 3CD also provides for disclosures of various information/details relating to an assessee such as the nature business/profession, books of accounts maintained etc. Further, not all clauses of Form 3CD require the tax auditor to express an opinion. Some of the clauses require the tax auditor to just provide information/details. Clause 20(b) of Form 3CD falls in this category. The tax auditor is merely required to provide '*Details of contributions received from employees for various funds as referred to in section 36(1)(va)*'. This becomes clear on examining other clauses which specifically require the tax auditor to express an opinion, such as Clause 21(b) requiring disclosure of amounts inadmissible under Section 40(a) of the Act, Clause 21(d) requiring disclosure of amounts inadmissible under Section 40A(3) of the Act and Clause 21(e) requiring disclosure of amounts inadmissible under Section 40A(9) of the Act. Since Clause 20(b) of Form 3CD does not require any expression of opinion on the part of tax auditor, it cannot, in our opinion, be said that disclosure made by tax auditor in the aforesaid clause constitutes a '*disallowance of expenditure indicated in the audit report*' triggering the provisions of Section 143(1)(a)(iv) of the Act. In any case the issue stands decided in favour of the Assessee by the decision of Mumbai Bench of the Tribunal in the case of **Kalpesh Synthetics Pvt. Ltd., vs. DCIT, CPC, Bangalore: 137 taxmann.com 475.**

9. In view of the above, Ground No. 1(a) raised by the Appellant in the present appeal are allowed and addition/disallowance of INR 4,02,180/- made under Section 36(1)(va) of the Act pertaining to deposit of employees' contribution to ESIC/PF after the due date

specified in the applicable statute but before the due date of filing income tax return prescribed under Section 139(1) of the Act stands deleted. In view of the aforesaid, Ground No. 1 raised by the Appellant is disposed off as being infructuous.

10. In the result, the present appeal is allowed.

Order pronounced on 28.07.2022.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.07.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai