

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA Nos.668 & 669/PUN/2021
 निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-20**

Progressive Enterprises,
 Flat No. 1 & 2,
 Shree Sadguru Apartment,
 Near Kale Nagar No. 2,
 Ajani Nagar, Gangapur Pipeline Road,
 Anandwalli, Nashik – 422013

PAN : AAKFP0789R

.....अपीलार्थी / Appellant

बनाम / V/s.

ADIT (CPC),
 Bengaluru

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
 Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 30-08-2022
 घोषणा की तारीख / Date of Pronouncement : 01-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both these appeals by the assessee against the common order dated 25-06-2021 passed by the National Faceless Appeal Centre, Delhi ('NFAC') for assessment years 2018-19 and 2019-20.

2. We find that both these appeals were filed with a delay of 110 days. Upon hearing both the parties, we find that the delay of 110 days is saved

by the decision of Hon'ble Supreme Court passed during National Lockdown imposed on account of pandemic Covid-19. Therefore, the delay of 110 days is condoned in both the appeals.

3. The only issue emanates for our consideration in both the appeals is as to whether the CIT(A), NFAC, Delhi justified in confirming the disallowance u/s. 36(1)(va) of the Act on account of employee's contribution to ESIC/PF in the facts and circumstances of the case.

4. We note that the assessee is a partnership firm engaged in the business of service provider under the name of "M/s. Progressive Enterprises" at Nashik. The CPC, Bangalore vide intimation u/s. 143(1) of the Act made additions of Rs.17,44,225/- and Rs.12,59,043/- for A.Ys. 2018-19 and 2019-20, respectively on account of disallowance u/s. 36(1)(va) towards delayed payment of employee's contribution to provident fund. The assessee contended that the employee's contribution towards PF has been paid before the due date of filing of return of income for A.Ys. 2018-19 and 2019-20 but however the CPC, Bangalore as well as CIT(A), NFAC, Delhi did not accept the submissions of assessee and the CIT(A), NFAC held that the assessee would be entitled to deduction only if the contribution to the employee's welfare fund stood credited on or before the due date under the respective Act. We note that the NFAC by following the amendment made by Finance Act, 2021 to section 36(1)(va) of the Act found the submissions of assessee regarding deposit of employees contribution before the due date of filing return of income not acceptable. We note that the said amendment is applicable from 1st April, 2021 and since the assessment under consideration is A.Ys.2018-19 and 2019-20, the amendment is not applicable on the facts in hand. We note that the

CIT(A) did not dispute the same and it is evident from the impugned order that the assessee paid the employee's contribution towards provident fund before the due date of filing of Income Tax Return. Therefore, the order of CIT(A) is not justified and it is set aside. Thus, the assessee is entitled for deduction and grounds raised by the assessee are allowed in both the appeals.

5. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 01st September, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st September, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), NFAC, Delhi.
4. The CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune