

आयकर अपीलिय अधिका रण, जयपुर न्यायपीठ,
जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 262/JP/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Shri Nishant Bhatnagar 140, Kishan Nagar Shyam Nagar, 302 019 (Raj)	बनाम Vs.	The ITO Ward 1(3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACGPB 3609 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित करिती की आंर से / Assessee by : Mrs.Prabha
Rana, Adv.

राजस्व की आंर से / Revenue by: Mrs. Monisha Choudhary,
JCIT

सुनवाई की तारीख / Date of Hearing :
25/08/2022

उद्घाटन की तारीख / Date of Pronouncement:
31 /08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 17-05-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19 wherein the assessee has raised the following ground of appeal.

“The ld. CIT(A) has erred in confirming the addition of Rs.6,60,592/- made by the AO representing delay in remittance of employees contribution towards provident fund”

2.1 Brief facts of the case are that the assessee filed its return of income on 31-10-2018 declaring total income of Rs.3,94,240/- which was processed u/s 143(1) of the Act and in terms of intimation order dated 26-04-2019 issued by CPC, Bangaluru, the AO made disallowance of Rs.6,60,592/- towards employee’s contribution of Provident Fund.

2.2 In first appeal, the ld. CIT(A) has confirmed the action of the AO by observing as under:-

“Under these circumstances and following the clarificatory amendments made by the Finance Act, 2021 to Section 36(1)(va) and Section 43B, the contentions made in the submissions are not found acceptable and the addition of Rs.6,60,592/- made by the AO, CPC for not depositing of employee’s contribution to the PF and ESIC covered under section 36(1)(va) r.w.s. 2(24)(x) of the Act but paid to the respective funds after the due dates as specified by rules of relevant funds are correctly held as deemed income and, therefore, the disallowance is hereby confirmed as the said late payments are not covered u/s 43B of the Act. Accordingly, these grounds of appeal are dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee filed a detailed written submission and submitted that employees’ contribution to PF and ESI collected by the assessee from its employees have been deposited well before the due date of filing of return of income u/s 139(1) of the Act and thus submitted that where such contribution has been deposited before the due date of filing of return

of income, no disallowance u/s 36(1)(va) of the Act can be made. In support of this, the ld. AR relied on following case laws.

1. CIT vs Rajasthan State Beverages Corporation Ltd. (2017) 392 ITR 2 (Raj.)
2. CIT Vs SBBJ (2014) 43 taxman.com 411 (Raj.)
3. Deeksha Bala vs DCIT (ITA No. 215/JP/2021 dated 15-11-2021)

The ld. AR invited our attention to the Memorandum of Finance Bill. 2021 in which it is explicitly mentioned that these amendments will take effect from Ist April, 2021 and will accordingly apply to the Assessment Year 2021-22 and subsequent years. Therefore, the disallowance confirmed by the ld. CIT(A) as to the issue of deposition of PF/ESI deserves to be deleted.

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. As regards the issue of late deposit of Employees contribution towards PF/ESI, it is noted from the available records that the Employees Contribution towards PF/ESI has been paid before the due date of filing of return. The Bench observed that the issue of late deposit of PF/ESI contribution by the assessee but before filing the due date of filing of the return, is covered by the decision of ITAT, Jaipur Bench dated 22-02-2020 in the case of Pratap Technocrats Private Ltd. And another vs ADIT,CPC, Bengaluru (ITA 18/JP/2022, 33/JP/2022, 24,25, & 26/JP/2022 wherein ITAT has held as under:-

“20. By considering the totality of the facts and the judicial pronouncements, we are of the view that the amendment brought in the statute i.e. by Finance Act, 2021, the provisions of Section 36(1)(va) r.w.s. 43B of the Act amended by inserting explanation 2 is prospective and not retrospective. Hence, the amended provision of Section 43B r.w.s. 36(1)(va) of the Act are not applicable for the assessment year under consideration i.e. 2018-19 but will apply from assessment year 2021-22 and subsequent assessment years. Hence, this issue raised in assessee’s appeal is allowed.”

Therefore, we respectfully concur with the findings of this Bench on the issue of PF/ESI and the order of the Id. CIT(A) is reversed. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 31/08/2022

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2022

*Mishra

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

1. The Appellant- Shri Nishant Bhatnagar, Jaipur,
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 262/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar

