

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2050/Mum/2021 (A.Y. 2018-19)

Ashida Electronics Pvt. Ltd.
Plot No. A-308, Ashida House,
Road No.21, Wagle Estate,
Thane (West)-400604.

PAN: AABCA5020G

..... Appellant

Vs.

DCIT, Centralized Processing Center,
Income Tax Department,
Bengaluru-560500

..... Respondent

| | | |
|-----------------------|---|---------------------|
| Appellant by | : | Ms. Utkarsha Bhanap |
| Respondent by | : | Sh. Mehul Jain |
| Date of hearing | : | 02/06/2022 |
| Date of pronouncement | : | 30/08/2022 |

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 09.09.2021 passed under section 250 for the Assessment Year (AY) 2018-19. The assessee has raised the following grounds of appeal:

“1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of The learned Deputy Commissioner of Income Tax-CPC, Bangalore, who while processing the return of income as per provisions of Sec.143(1) of the Act, has erred in making addition of Rs 10,44,853/- on account of sum received from employees as contribution to provident fund (PF) and Employee State Insurance Scheme (ESIC) which the appellant has deposited with the PF and ESI Authorities after the due date prescribed under Provident Fund Act or rules, without considering that there was an nominal delay of 1 to 14 days in depositing the said amount and by not considering the fact that it has been paid into government account before the due date of filing of return of income as specified in Sec. 139(1) of the Act.

2. The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of The Learned DCIT, CPC Bangalore, who has erred in making the said addition of Rs 10,44,853/- while processing the return of Income u/s 143(1) of the Act, without appreciating the fact that the same was not mistake apparent from record and that the payment of employees contribution of particular fund and Employee State Insurance before the due date of filing the return of income prescribed u/s 139(1) have been held as an allowable expenditure by various judicial authorities.”

2. Brief facts of the case are that the assessee-company has filed its return of income u/s 139(1) on 31-10-2018 declaring total income at Rs. 13,75,67,241/- 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 10,44,853/- 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 01-10-2019, assessee filed an appeal before the Ld. CIT (A), Thane on 21-01-2020. 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 21st April 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 assesses 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 30th day of August, 2022.

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 30/08/2022

SK, Sr.PS

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.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai