

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “B”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND SHRI G.D.PADMASHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA Nos.592/PUN/2021 & 664/PUN/2021
निर्धारणवर्ष / Assessment Years : 2018-19 & 2019-20

Sunita Engineering Corporation, D-3, MIDC Ambad, Nashik, Nashik – 422010. PAN: AAMFS 6192 F	Vs .	The ACIT, Circle-2, Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Deepa Khare – Adv.
Revenue by	Shri Arvind Desai – DR
Date of hearing	17/08/2022
Date of pronouncement	01/09/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee’s twin appeals for Assessment Year 2018-19 & 2019-20 are directed against the National Faceless Appeal Centre(NFAC), order dated 29.09.2021 passed in case no.ITBA/NFAC/S/250/2021-22/1035995635(1) and order dated 11.10.2021 passed in case no.ITBA/NFAC/S/250/2021-22/1036289794(1); respectively in proceedings u/s.250 of the Income Tax Act, 1961 [in short “the Act”].

Heard both the parties. Case files perused.

2. The assessee’s identical sole substantive ground in both these appeals lower authorities action disallowing its employees EPF and

ESIC payments of Rs.2,02,349/- and Rs.6,83,258/-; assessment year wise respectively; on the ground that the same had been paid after the “due date” prescribed in the corresponding statute(s) but before the “due date” of filing return under section 139(1) of the Act. The same is found to be no more res-integra in view of several judgments allowing deduction under section 36(1)(va) of employees’ share of contribution deposited after due date under the respective Acts but before the date prescribed under section 139 of the Act. Hon’ble Himachal Pradesh high court in *CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP)* has held that there exists no difference between employees or employer’s contribution and both are to be allowed as deduction if deposited before the due date of filing Return of Income.

3. Hon’ble Jurisdictional High Court in the case of *CIT Vs. Ghatge Patil Transports Ltd, IT APPEAL No’s.1002 & 1034 of 2012* vide order dated 14/10/2014 also decided the instant issue in assessee’s favour as under :

“ In this manner, the amendment provided by Finance Act, 2003 put on par the benefit of deductions of tax, duty, cess and fee on the one hand with contributions to various Employees' Welfare Funds on the other. All this came up for consideration before the Hon'ble Supreme Court in the case of Alom Extrusions Ltd. (supra). The Tribunal in the case at hand relied upon the said judgment. There is no reason to fault the order passed by the Tribunal. We are of the view that the decision of the Supreme Court in Alom Extrusions Ltd. (supra) applies to employees' contribution as well as employers' contribution. Question Nos.2, 3 & 4 are accordingly answered in favour of the assessee and against the revenue.”

4. 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, ESI, 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 under section 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 is 2018-19, which is anterior to the amendment carried out with effect from Assessment Year 2021-22, we hold that the foregoing proposition of law applies to the facts and circumstances of the instant case thereby not warranting any disallowance since the amount in question was admittedly deposited before "due date" under section 139(1) of the Act.

5. Respectfully following the decisions of the Hon'ble High Court(supra) mentioned above, it is held that the payment of employee's contribution beyond the due date mentioned in the

relevant statute but before the due date of filling the return of income u/s 139(1) is allowable expenditure and therefore, the addition is directed to be deleted in both assessment years. Ordered accordingly.

6. These assessee's twin appeals ITA No.592 & 664/PUN/2021 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 1st September, 2022.

Sd/-
(G.D.PADMASHALI)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 1st Sep, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.