

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 159/Asr/2022
Assessment Year: 2017-18

Smt. Gurinder Kaur,
C/o Sudhir Mehra,
Advocate, 12, Park Lane,
Rani Ka Bagh, Amritsar

Vs.

Income Tax Officer,
Ward 2(1), Amritsar

[PAN: AHTPK 2763L]

(Appellant)

(Respondent)

Appellant by : Sh. Sudhir Mehra, Adv.
Respondent by: Sh. S. M. Surendranath, Sr. DR

I.T.A. Nos. 37 & 38/Asr/2022
Assessment Years: 2018-19 & 2019-20

Tilak Utpadan Pvt. Ltd.,
EF 48, Mandi Fenton Ganj,
Jalandhar

Vs.

DCIT, Circle-3,
Jalandhar

[PAN: AA ACT 5147J]

(Appellant)

(Respondent)

Appellant by : None (Written submission)
Respondent by: Sh. S. M. Surendranath, Sr. DR

I.T.A. No. 122/Asr/2022
Assessment Year: 2017-18

M/s Kosmo Vehicles Pvt. Ltd. Vs.
237 Moon Avenue, Majitha
Road, Amritsar
[PAN: AADCK 7910P]
(Appellant)

The Income Tax
Officer, Ward 5(3),
Amritsar
(Respondent)

Appellant by : None

Respondent by: Sh. Girish Bali, CIT DR

Date of Hearing: 30.08.2022

Date of Pronouncement: 12.09.2022

ORDER

Per Dr. M. L. Meena, A.M.:

These appeals are filed by different assesseees against the order of the Id. CIT (Appeal) regular and National Faceless Appeal Centre, (NFAC), Delhi, in respect of the Assessment Years: 2017-18 to 2019-20 as above on the common issue of claim of deduction of varying amount of employees' contribution to EPF & ESI which have been deposited prior to the due date of filing of return of income of income u/s 139(1) of the Act.

2. Since the common issue of claim of deduction of employees' contribution to EPF & ESI, on identical facts being involved, except varying

amount of deduction claim and the short delay in filing of the 2 appeals.

Therefore, these appeals are adjudicated by this common order for the sake of brevity.

3. There has been delay of 1 day and 11 days in filing appeal in ITA Nos. 122/ASR/2022 and 37&38/ASR/2022 respectively, were being explained as circumstances beyond the control of the assessee. The Ld. DR has no objection. Accordingly, the aforesaid short delay in filing these appeals is hereby condoned and the appeals are admitted for merits.

4. At the time of hearing, Shri Sudhir Mehar, the counsel for the assesses in I.T.A. No. 159/Asr/2022 explained the claim of the appellant and in other appeals written submission were received in support of their claims. Admittedly, the appellants deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return. It was argued, the Ld. CIT(A) was not justified in sustaining the adjustment made by the A.O.-CPC, on account of belated payment of employees' contribution to EPF & ESI, although before the due date of filing the return of income U/s 139(1) of the Act, ignoring the decision of the coordinate bench in the case of "Jupiter Aqua Lines P. Ltd vs. DCIT in ITA No. 83/Chd/2021 dated 27.08.2021. It was also submitted that the amendment to section 36(1)(va) and u/s 43B of the Act, by the Finance Act 2021 is

applicable prospectively and the Notes on Clauses specifically states that the amendment being applicable in relation to assessment year 2021-22 and subsequent years. Accordingly, It is prayed that on the facts and circumstances of the cases, the assesseees are entitle to deduction of employees' contribution to EPF & ESI as per principle of law laid down by the higher judicial forums granting relief to the deposits made prior to filing of return of income u/s 139(1).

5. The Ld. Addl. CIT(DR) stands by the impugned orders.

6. In the latest decision, in ITA No. 131/Asr/2022 & Ors, in the case of Parminder Singh & Ors v. ITO, we had followed coordinated bench decision in I.T.A. No. 55/Asr/2022 M/s Royal Furnishes, Jammu, dated 11.08.2022, while granting relief to the appellants on the same issue. The relevant part of the tribunal decision in M/s Royal Furnishes, Jammu reads as under:

"8. We have heard both the sides and perused the material on record. Admittedly, the addition was made in the intimation u/s 143(1) of the act dated 01/05/2020 on account of delayed payments of Employees contribution to Provident Fund and ESI account, as per PF and ESI Act, although before the due date of filing of return of income u/s 139(1) of the Act.

9. In the case of 'Vinko Auto Industries Ltd Vs. DCIT', CPC, Bangalore in ITA No. 63 & 64/ASR/2021 dated 08/11/2021 the tribunal observed on a specific query as regards to the amendments made available on the statue vide the Finance Bill, 2021 i.e "Explanation 5" to Section 43B and "Explanation 2" to section 36(1)(va) of the Act qua the adjudication of the issue in hand, that as

both of the said amendments were prospective in nature and that were effective from 01.04.2021. Therefore, the same would not be applicable to the present case of the assessee which pertained to a period prior to the aforesaid amendments.

10. Thus, the amendments were made available on the statute vide the Finance Act, 2021 i.e "Explanation 5" to Section 43B and "Explanation 2" to Section 36(1)(va) were clarificatory in nature and would be applicable to the earlier years, as was claimed by the department, or, were applicable prospectively, as claimed by the assessee, had exhaustively been deliberated upon and answered in favour of the assessee by the tribunal.

11. The Id. CIT(A) has merely stated that the issue has been highly contentious and different High Courts have taken divergent views on the same issue, out of which some are in favour of the assessee and some are against the assessee. The Id. CIT(A) further observed that the judgments and orders relied upon by the assessee have been rendered before the clarificatory amendments made in the Finance Act, 2021 and the Finance Act, 2021 has put an end to this controversy.

12. Admittedly, there are plethora of judgments in favour of the Assessee's contention and of the Revenue. The controversy with regard to divergent views of different High Courts, has been settled by the Hon'ble Apex Court in the case of CIT Vs. M/s. Vegetables Products Ltd. (88 ITR 192) by laying the dictum that if two reasonable constructions of a taxing provision are possible that construction which favours the Assessee must be adopted. The Hon'ble jurisdictional High Court in the case of CIT Vs. M/s Hemla Embroidery Mills (P) Ltd. (366 ITR 167) (P&H HC) and in the case of CIT Vs. M/s Mark Auto Industries Ltd. (358 ITR 43) (P&H HC) clearly held that the assessee is entitled to claim deduction of employee's share of ESI & PF u/s.43B of the Act, if the same has been deposited prior to the filing of return of income u/s.139(1) of the Act. Admittedly, there are no contrary judgements of the jurisdictional High Court against the assessee on the aspect under consideration hence, first determination of the Ld. CIT(A) qua non-applicability of the provisions of Section 43B of the Act to the employee's share qua PF & ESI, is unsustainable.

13. On the basis of our aforesaid deliberations, we are of the considered view, that as the amendments made available to the statute vide the Finance Act, 2021 i.e "Explanation 5" to Section 43B and "Explanation 2" to Section 36(1)(va) are applicable w.e.f 01.04.2021 i.e. from A.Y 2021-22 onwards, therefore, the same would not have any bearing on the case of the assessee before us i.e for

A.Y 2019-20. Accordingly, as per settled position of law as laid down as per the aforementioned judicial pronouncements, we, conclude, that since, the employee's contributions to PF and ESI of Rs. 6,39,490/- was deposited by the assessee before the "due date" of filing of its return of income for the year under consideration, and hence, in the instant case, the provisions of Sec. 43B of the Act are not applicable, and accordingly, the disallowance of Rs. 6,39,490/- on account of contribution of PF and ESI account not be approved.

7. Respectfully following the coordinate bench decision, we hereby set aside the orders of the Id. CIT(A)/NFAC and delete the additions made on account of late payment of employee's contribution to PF and ESI account.

8. In ITA No. 122/ASR/2022, in case of M/s Kosmo Vehicles Pvt. Ltd. the Ld. PCIT has invoked revisionary proceeding u/s 263 of the Act holding the Assessment Order erroneous and prejudicial to the interest of revenue without appreciating the facts and the submission of the assessee. In our view, the Ld. PCIT was incorrect in observing that the appellant should have shown equal amount of income to the extent of the claim of EPF and ESI deduction without pointing out any defect in the books of account and the accounting of the EPF and ESI in particular. Accordingly, such an order passed on mere presumption and assumption without support of corroborative evidence that how the assessment order is erroneous and prejudicial to the interest of revenue, the action u/s 263 of the act, can not be sustained. We, therefore, hereby quash the PCIT's order passed U/s 263 of the Act.

9. In the result, the subject appeals of the assesseees are allowed.

Order pronounced in the open court on 12.09.2022.

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order