

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 1476/Del/2021
निर्धारणवर्ष/Assessment Year: 2018-19

Shri Krishna Manpower, House No. 212, Near Signature Tower, Saini Khera, Gurgaon - 122 001. Haryana.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 4 (2) Gurgaon.
PAN No. ABFFS3412E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	N o n e;
राजस्वकीओरसे / Department by :	Shri Rajesh Kumar [CIT]-DR; & Ms. Rajeshwari R. [JCIT]-Sr.DR.
सुनवाईकीतारीख/ Date of hearing :	13.09.2022
उद्घोषणाकीतारीख/Pronouncement on :	13.09.2022

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to NFAC) dated 20.09.2021 for assessment year

2018-19 in sustaining the disallowance of employees' contribution to ESI and PF.

2. At the time of hearing of the appeal, none was present on behalf of the assessee nor any adjournment application was moved. Notice of hearing was issued at the address given by the assessee in Form No. 36. However, the hearing notice issued by Speed Post with acknowledgement due was received back un-served from the postal authorities with the remark "House locked". We dispose off the appeal on hearing the ld. DR.

3. We noticed that while processing the return under Section 143(1) of the Act the Centralized Processing Centre (CPC) Bangalore disallowed the employees' contribution to ESI and PF and the ld. CIT (Appeals) also sustained the disallowance relying on various case laws referred to in the order of the ld. CIT (Appeals). The ld. DR submits that the amendment brought in by the Finance Act, 2021 in Sections 36(1)(va) and 43B of the Act by way of inserting Explanation 2 and Explanation 5 respectively are clarificatory in nature and, therefore, have retrospective applicability. The ld. DR strongly supported the orders of the ld. CIT (Appeals) in sustaining the disallowance made under Section 36(1)(va) of the Act in respect of employees' contribution made to ESI and PF.

4. We have heard the submissions of the ld. DR and perused the orders of the authorities below. While processing the return under Section 143(1) of the Act no disallowance towards contribution to employees' PF and ESI is warranted as this issue is highly debatable in nature. Even otherwise we find that the issue in appeals is squarely covered by the decision of the jurisdictional High Court in the case of CIT Vs. AIMIL Ltd. 321 ITR 508. Ratio of this decision squarely applies to the

facts of the assessee's cases. Reliance was also placed on the decision of Hon'ble Supreme Court in the case of CIT Vs. M/s. Alom Extrusions Limited (2009) 319 ITR 306 (SC).

5. The Hon'ble Supreme Court in the case of M.M. Aqua Technologies Ltd. Vs. CIT (supra) held that retrospective provision in a Tax Act which is for the removal of doubts cannot be presumed to be retrospective even where such language is used if it alters or changes the law as it earlier stood. The Hon'ble Supreme Court also observed that this was the position as held by the apex court in the case of Sedco Forex International Drill. Inc Vs. CIT (2005) 12 SCC 717. The Amendments made to Section 36 and Section 43B by insertion of Explanations 2 and 5 respectively. In these Sections it is clarified that for the removal of doubts the provisions of these Sections were amended. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of M.M. Aqua Technologies Ltd. Vs. CIT (supra) squarely applies.

6. Further we also observe that this Tribunal in a batch of appeals in the cases of Raj Kumar Vs. ITO CPC Bangaluru in ITA. No. 1392/Del/2021 and other appeals by order dated 28.02.2022 considering various decisions rendered by various High Courts and the Tribunals held that the amendment brought in by Finance Act, 2021 is effective from 1.04.2021 and no disallowance is called for, on belated payment of employees' contribution to ESI and PF in case the assessee deposited the said contribution before due date for filing of return of income under Income Tax Act.

7. Following the above decisions, we direct the Assessing Officer/ CPC to delete the disallowance of employees' contribution to EPF and

ESI as the contributions were remitted before the due date for filing of return of income. Grounds raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on : 13/09/2022.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 13/09/2022.

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	13.09.2022
Date on which the typed draft is placed before the dictating member	13.09.2022
Date on which the typed draft is placed before the other member	13.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	13.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	13.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	13.09.2022

	Date on which the final order is uploaded on the website of ITA	13.09.2022
	Date on which the file goes to the Bench Clerk	13.09.2022
	Date on which the file goes to the Head Clerk	
	The date on which the file goes to the Assistant Registrar for signature on the order	
	Date of dispatch of the order	