

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.672/PUN/2021
निर्धारण वर्ष / Assessment Year: 2019-20

Seam Engineers, 95/8, 19 Street, Trimbak Road, Nashik- 422007. PAN : AAJFS1685A	Vs.	Asst.DIT, CPC, Benguluru
Appellant		Respondent

आयकर अपील सं. / ITA No.674/PUN/2021
निर्धारण वर्ष / Assessment Year: 2019-20

Zinco Lab Pvt. Ltd., S4, Jaldhara Complex, Nashik Road, Nashik-422101. PAN : AAACZ1032C	Vs.	Asst.DIT, CPC, Benguluru
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani
Date of hearing : 13.09.2022
Date of pronouncement : 15.09.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the different assessee directed against the respective orders of Id. Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre, Delhi ['the CIT(A)'] for the assessment year 2019-20.

2. Since the identical facts and common issues are involved in both the appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.672/PUN/2021 for the assessment year 2019-20 are stated herein.

ITA No.672/PUN/2021 :

4. Briefly, the facts of the case are that during the course of proceedings for the assessment year under consideration, the Asst. Director of Income Tax, CPC, Bengaluru made disallowance of Rs.11,80,623/- in the intimation u/s 143(1) of the Income Tax Act, 1961 ('the Act') dated 06.03.2020 on the ground that the appellant had not deposited the employees' share of PF and ESIC etc within due date prescribed under respective Statutes, but paid before due date for filing Return of Income under the provisions of section 139(1) of the Act. On appeal before the ld. CIT(A), the ld. CIT(A) confirmed the said disallowance.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. When the matter was called on, none appeared on behalf of the appellant-assessee despite due service of notice of hearing.

7. We heard the ld. CIT-DR and perused the material on record. The only issue relates to the confirmation of disallowance of Rs.11,80,623/- made by the Asst. Director of Income Tax, CPC, Bengaluru u/s 36(1)(va) of the Act on account of late deposit of the Employees' share of PF and ESIC etc. We find that an identical issue has been decided in recent decision of Co-ordinate Bench of this Tribunal in the case of Prashant Arun Sangai vs. ADIT in ITA No.466/PUN/2021 for the assessment year 2019-20 order dated 22.06.2022, wherein, the Tribunal decided the issue in favour of the assessee. On perusal of the recent decision of the Tribunal (supra), we find that the identical issue was came up before this Tribunal in the case of Prashant Arun Sangai (supra) wherein the Tribunal decided the similar issue in favour of the assessee relying on the decision of the Hon'ble Himachal Pradesh High Court in the case of CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP). The relevant paragraphs of the said decision of the Tribunal (supra) are extracted herein under :-

“4. We have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. We are, therefore, proceeding to dispose of the appeal ex parte qua the assessee on merits.

5. It is seen as an admitted position from the impugned order as well as the statement of facts before the ld. first appellate authority that the assessee did deduct employees' share of EPF and ESI and paid the same after the due date under the respective legislations but before the

time stipulated for filing return u/s 139(1) of the Act for the year under consideration. In our opinion, this issue is no more res integra in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The 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.

6. *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 u/s 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 2019-20, which is anterior to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts including the one in CIT vs. Nipso Polyfabriks Ltd. (supra) squarely 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 u/s 139(1) of the Act. The addition is therefore, directed to be deleted."*

8. Similarly, the Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom.) has taken identical view as taken by the Hon'ble Himachal Pradesh High Court in the case of Nipso Polyfabriks Ltd. (supra) and decided the issue in favour of the assessee.

9. Respectfully following the above judicial precedents, we hold that the ratio laid down by the Hon'ble High Courts cited above

(supra) is squarely applicable to the facts of the present case. Therefore, following the principle of consistency, we direct the Asst. Director of Income Tax, CPC, Bengaluru ('the Assessing Officer') to delete the addition of Rs.11,80,623/- made u/s 36(1)(va) of the Act.

10. In the result, the appeal filed by the assessee in ITA No.672/PUN/2021 stands allowed.

ITA No.674/PUN/2021 :

11. Since the facts and issues involved in both the above appeals are identical, therefore, our decision in ITA No.672/PUN/2021 for A.Y. 2019-20 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.674/PUN/2021 for A.Y. 2019-20 respectively. Accordingly, the appeal of the assessee in ITA No.674/PUN/2021 for A.Y. 2019-20 stands allowed.

12. To sum up, both the above appeals filed by the different assessee stands allowed.

Order pronounced on this 15th day of September, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th September, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-NFAC, Delhi.
4. The Pr. CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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