

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE MS.MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.56/Ind/2022
Assessment Year: 2018-19

Palash Badole Bhopal	vs.	ITO 5(2) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BFZPB6592P		
Assessee by	None	
Revenue by	None	

ITA No.60/Ind/2022
Assessment Year: 2018-19

M/s. SAM Streamline Systems P. Ltd., Indore	vs.	ITO-5(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAACS7527D		
Assessee by	Ruchira Singhal	
Revenue by	None	

ITA No.66/Ind/2022
Assessment Year: 2019-20

Such Media Publication (P) Ltd. Bhopal	vs.	NFAC
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAYCS6918G		
Assessee by	Nisha Lahoti, AR	
Revenue by	None	

Date of Hearing	02.08.2022 / 03.08.2022
Date of Pronouncement	23.08.2022

ORDER

PER B.M. BIYANI, A.M.:

1. These appeals are filed by different assesseees against the respective orders passed by the learned Commissioner of Income-Tax (Appeal) [**Ld. CIT(A)**] as per the following details:

S.No.	ITA No. / Assessee	Assessment Year	Date of CIT(A)'s order
1.	ITANo.56/Ind/2022 Palash Badole	2018-19	23.12.2021
2.	ITANo.60/Ind/2022 SAM Streamline Systems (P). Ltd.	2018-19	07.01.2022
3.	ITANo.66/Ind/2022 Such Media Publication Pvt. Ltd.	2019-20	16.03.2022

2. The registry has informed that the Appeal at S.No. 2 was required to be filed by 08.03.2022 but the same was actually filed on 23.03.2022, after a delay of 15 days. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

3. As the issue involved in all these appeals is same except the difference of amounts involved, we proceed to decide all these by this common order.

4. The return of income filed by assessee was processed by the Ld. AO u/s 143(1) of the Act after making disallowance on account of delayed payment of employees' contributions to Provident Fund/Employees State Insurance ("PF/ESI"). The assessee challenged these disallowances in appeal to Ld. CIT(A). However, the Ld. CIT(A) confirmed the disallowance and dismissed the appeal of the assessee. Again the order of Ld. CIT(A), the assessee has preferred appeal before us.

5. The sole controversy involved is related to the disallowance u/s 36(1)(va) of the Act in respect of delayed payment of employee's contributions to PF / ESI.

6. The Ld. AR submitted that the Ld. AO has made the disallowance without appreciating that though the assessee had not deposited the employees' contributions to PF / ESI upto the due dates prescribed under the PF / ESI laws, yet the assessee had deposited the same to the respective funds within the time permitted u/s 43B of the Act i.e. upto the due date u/s 139(1) for filing the return of income and hence no disallowance is attracted in view of numerous decisions of Hon'ble High Courts favouring the assessee. Some of the decisions relied upon by Ld. AR are mentioned below:

- (a) Hon'ble Delhi High Court in AIMIL Limited (2010) 321 ITR 508.
- (b) Hon'ble Allahabad High Court in Sagun Foundary Pvt. Ltd. Vs. CIT 145 DTR 265
- (c) Hon'ble Rajasthan High Court in CIT Vs. Rajasthan State Beverages Corporation Ltd. / Rajasthan State Ganganagar Sugar Mill (2017) 250 Taxman 32

6.1 Ld. AR further submitted that the issue is also squarely covered in favour of the assessee by several decisions of this very Bench of ITAT.

6.2 Ld. AR also submitted that even otherwise the impugned disallowance is debatable in nature and outside the scope of section

143(1)(iv) of the Act invoked by the Ld. AO and therefore also not sustainable, as held by **ITAT, Visakhapatnam Bench in M/s. S.V. Engineering Constructions India (P) Limited vs. DCIT (ITA No.130/Viz/2021) order dated 23.09.2021.**

7. Per contra, the Ld. DR relied upon the orders of lower authorities. He further submitted that in following decisions it has been held that once the employees' contributions are paid after the due dates under PF / ESI laws, disallowance is attracted even if the assessee has made payments within the time allowed u/s 43B i.e. upto the due date u/s 139(1) for filing of return:

- (a) Hon'ble Gujarat High Court in CIT vs. Gujarat State Road Transport Corporation, (2014) 41 taxmann.com 100
- (b) Hon'ble Gujarat High Court in Pr. CIT vs. M/s Suzlon Energy Ltd. (2020) 115 taxmann.com 340
- (c) Hon'ble Kerala High Court in CIT Vs. Merchem Ltd. (2015) 378 ITR 443

7.1 Ld. DR further submitted that the Finance Act, 2021 has also inserted Explanation 2 to Section 36(1)(va) and Explanation 5 to Section 43B as under:

Section 36(1)(va):

“Explanation 2.—For the removal of doubts, it is hereby clarified that the provisions of [section 43B](#) shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;

Section 43B:

“Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of [section 2](#) applies.”

7.2 Ld. DR submitted that with the introduction of these amendments, it is very much clear that the due dates specified in section 43B shall not apply. According to the Ld. DR, the impact would be such that if the employees' contributions are paid after the due dates under the PF / ESI laws, disallowance would happen. The Ld. DR further submitted that the words "... **shall be deemed never to have been applied ...**" appearing in these newly inserted Explanations clearly demonstrate that the amendments, though inserted from 01.04.2021, are clarificatory in nature and hence they would apply retrospectively. Therefore, according to the Ld. DR the amendments are applicable to the assessment-year involved in the present appeal too and hence the disallowance made by Ld. AO is very much in accordance with the law.

8. We have considered the rival contentions and submission of both sides and also perused the relevant materials available on record. Before proceeding further we would like to mention that the assessee has deposited the impugned contributions to the PF / ESI, though after due date under PF / ESI law but within the time allowed u/s 43B i.e. upto the due date u/s 139(1) for filing return of income and there is no dispute on this point by revenue.

9. Regarding the decisions relied upon by both sides, we observe that there are divergent views of Hon'ble High Courts on the allowability of employees' contributions to PF / ESI paid after due dates under the PF / ESI laws but within the time allowed u/s 43B. While the Ld. AR has relied upon various decisions favouring to the assessee, the Ld. DR has quoted the decisions against the assessee. We are also informed by both sides that there is no decision of Hon'ble jurisdictional High Court of Madhya Pradesh on this issue. In this situation, we are mindful of the decision in **Vegetable Products Ltd. 88 ITR 192** wherein the Hon'ble Supreme Court has held that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. In view of this, the decisions favouring the assessee shall get preference over the decisions against the assessee. Being so we hold that the

employees contributions paid after due date under PF / ESI law but within the time allowed u/s 43B, are allowable as deduction.

10. Regarding the amendments made through Finance Act, 2021, it is specifically mentioned by the legislature that the amendments are effective from 01.04.2021. Further the **Memorandum explaining the Provisions in the Finance Bill, 2021** clearly prescribes thus:

“These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.”

Thus, the legislature itself has categorically stated that the amendments shall apply to *the assessment year 2021-22 and subsequent assessment years*. Therefore these amendments are not applicable to the assessment-years preceding the assessment-year 2021-22 i.e. not applicable upto assessment-year 2020-21. This has also been held so in several decisions of ITAT Benches including following:

- (a) ITAT Kolkata in Harendra Nath Biswas Vs. DCIT, ITA No. 186/Kol/2021 for A.Y. 2019-20, order dated 16.07.2021
- (b) ITAT Hyderabad in Salzgitter Hydraulics Private Limited Vs. ITO, ITA No. 644/Hyd/2020 for A.Y. 2019-20, order dated 15.06.2021
- (c) ITAT Jodhpur in Akbar Mohammad Vs. ACIT, CPC, Bangalore ITA No. 108 &109 / Jodh / 2021 for A.Y. 2018-19 and 2019-20, order dated 31.01.2022

11. It is also noteworthy that this Bench has recently decided several appeals, a few mentioned hereunder, wherein the similar disallowance made by Ld. AO has been deleted:

- (a) ITA No. 175 / Ind / 2021 Shri Virendra Kumar Tiwari Vs. CIT(A), NFAC, order dated 30.03.2022

- (b) ITA No. 184 / Ind / 2021 M/s Prestige Fabricators Pvt. Ltd. Vs. ACIT-4(1), Indore order dated 30.03.2022
- (c) ITA No. 223 / Ind / 2021 Kamal Kumar Jain Vs. DCIT, CPC, Bangalore, order dated 30.03.2022

12. In view of foregoing discussion, we observe that employees' contributions to PF / ESI paid after due date under PF / ESI laws but within the time allowed u/s 43B i.e. upto the due date u/s 139(1) for filing of return is allowable as deduction in computing taxable income of business and the assessee had rightly claimed the same. Therefore the Ld. AO as well as Ld. CIT(A) were not justified in disallowing the claim of the assessee. We therefore delete the disallowance made by Ld. AO and confirmed by Ld. CIT(A).

13. In the result, these appeals are allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 23.08. 2022.

Sd/-

(MADHUMITA ROY)
Judicial Member

Indore, 23.08. 2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(B.M. BIYANI)
Accountant Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*