

**आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A”**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA Nos.391 & 392/PUN/2021**  
**निर्धारणवर्ष / Assessment Years : 2018-19 & 2019-20**

Aditya Enterprises S No 52/36, 52/40, Anusagar Building, Near Ashish Garden, Kothrud, Pune – 411038 PAN: AATFA9806D	Vs	Dy. Commissioner of Income-tax, CPC, Bengaluru
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Sandeep Sathe
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	14/09/2022
Date of pronouncement	19/09/2022

**आदेश/ ORDER**

**PER BENCH:**

Both the appeals were taken up for hearing together. ITA No.391/PUN/2021 is against the order of CIT(A) u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) for Assessment Year 2018-19. The appeal filed by the assessee in ITA No.392/PUN/2021 is against the order of CIT(A) (NFAC) u/s 250 of the Act for Assessment Year 2019-20.

2. The grounds of appeal in ITA No.391/PUN/2021 are as under:

1. *Learned CIT(A) erred in not deleting the addition of Rs.512956 to income of the assessee on account of delayed payment of ESIC and PF. As per section 43B these sums are allowable as deduction though the payments are made beyond due date prescribed under ESIC and PF Act, but paid*

*before the due date of filing of the return of Income. This view is upheld by Jurisdictional ITAT Pune in case of DyCIT Vs. Shri Pradeep Barku Patil ITA No. 1769PN2013 for AY 2010-11. Also Jurisdictional Bombay HC has also upheld this view in case of CIT Vs. Ghatage Patil Transports Ltd.*

- 2. The learned CIT also erred in applying amendment to Section 36 and 43B, which are applicable from A Y 2021-22. In the Memorandum of Budget, it has been mentioned that the amendment to Section 36 and 43B will apply from assessment year 2021-22 and onwards.*
- 3. The assessee preys leave to add such other evidence as maybe necessary to substantiate its case.*
- 4. The assessee prays to add, alter, amend and for withdrawal of any of the grounds of appeal as and when the occasion demands.*

3. In both the appeals, the question involved is allowability of employees contribution of ESIC and PF, which was deposited beyond time mentioned in the respective Statute but before filing income tax return u/s 139(1) of the Act. Since issue involved is common, both the appeals have been heard together and decided by this common order. For the sake of convenience, we are taking up appeal in ITA No.391/PUN/2021 as lead case.

4. We have heard both the parties, perused the records. In this case, the DCIT (CPC), Bengaluru vide an order u/s 143(1) of the Act

dated 09.08.2019 for A.Y. 2018-19 disallowed an amount of Rs.5,12,956/- by giving following reasons:

*“Any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date [36(1)(va)]”.*

5. From the plain reading of the order u/s 143(1), it is not clear whether any opportunity was provided before making the disallowance by the DCIT (CPC), Bengaluru. As it is mentioned in the order *“Please refer to this office communication dated and 22-JAN-19 sent to the email ID and info@adityaent.in. As there has been no response/the response given is not acceptable the adjustments(s) as mentioned below are being made to the total income as per the provisions of section 143(1)(a).”* Aggrieved by the same, an appeal was filed before the CIT(A) – NFAC. The CIT(A) dismissed the appeal of assessee.

6. Hon’ble Rajasthan High Court in the case of **Rajasthan State Beverages Corpn. Ltd** vide order dated 4/8/216 has held as under:

Quote “This court in the aforesaid case has also allowed the claim of the assessee, in so far as payment of PF & ESI etc. is concerned, on the finding of fact that the amounts in question were

deposited on or before the due date of furnishing of the return of income and taking in consideration judgment of this Court in CIT v. State Bank of Bikaner & Jaipur [2014] 363 ITR 70/43 taxmann.com”  
Unquote

7. The SLP filed against the said decision has been dismissed by Hon’ble SC.

8. Hon’ble Jurisdictional High Court held in the case of CIT vs Ghatge Patil Transports Ltd, IT APPEAL NOS. 1002 & 1034 OF 2012 vide order dated 14/10/2014 as under :

Quote , “ 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. ” Unquote.

Thus respectfully following the Hon’ble High Courts 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.

9. Since the facts and issue involved in ITA No.392/PUN/2021 are identical, therefore, our decision in ITA No.391/PUN/2021 for A.Y. 2018-19 shall apply *mutatis mutandis* to appeal of the assessee in ITA No.392/PUN/2021 for A.Y. 2019-20.

10. In the result, both the assessee’s appeals are allowed.

Order pronounced in the open Court on 19<sup>th</sup> September, 2022.

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

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 19<sup>th</sup> September, 2022  
GCVSR

**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, आयकरअपीलीयअधिकरण, “ए” बेंच,  
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.

S.No	Details	Date	Initials	Designation
1	Draft dictated on	15.09.2022		Sr. PS/PS
2	Final Draft placed before author	15.09.2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			