

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 No.404/PUN/2021
निर्धारणवर्ष / Assessment Year : 2019-20

Aakar Foundry P. Ltd., S.No.341/2, Thakar Vasti, Behind NHEC, Somatane Phata, Pune – 410506 PAN: AAFCA8836J	Vs	ACIT/DCIT, Central Circle 2(3), Pune
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	14/09/2022
Date of pronouncement	19/09/2022

आदेश/ ORDER

PER BENCH:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals), Pune-12 dated 28.07.2021 emanating out of proceedings under section 143(1) of the Income-tax Act, 1961 (hereinafter also called as ‘the Act’) for the Assessment Year 2019-20. The assessee has raised the following grounds of appeal:

- 1. The learned CIT(A) NFAC erred in law and on facts in confirming the addition of Rs6,67,258/- on account of delay in depositing Employee's Contribution to PF /ESI Act made by the Asst. Director of Income Tax, CPC Bangalore.*
- 2. The IT Authorities ought to have appreciated that amendment to Section 43B r.w.s 36(l)(va) r.w.s 143(l)(a)(iv) by Finance*

Act 2021 is prospective i.e. effective from April 01, 2021 and thus not applicable in the instant case.

3. *The IT Authorities ought to have appreciated that the Employee Contribution to PF/ESI is allowable as deduction U/43B of the ITA 1961 although disallowable u/s 36(1) (va) of the ITA 1961.*
4. *Appellant craves leave to add, alter, clarify, explain, modify, delete any of the grounds of appeal, and to seek any just and fair relief.*

2. In the present appeal, the question involved is allowability of employees contribution of ESIC and PF, which was deposited beyond time mentioned in the respective Statutes but before filing income tax return u/s 139(1) of the Act.

3. No one has appeared on behalf of the appellant-assessee. We heard ld. DR, perused the records. In this case, the DCIT (CPC), Bengaluru vide an order u/s 143(1) of the Act dated 07.07.2020 disallowed an amount of Rs.6,67,258/- 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)]”.

4. 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 sent to the email ID and mundadarajesh20@gmail.com. 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). The CIT(A) dismissed the appeal of assessee.

5. 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

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

7. 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.

8. In the result, the assessee's appeal is allowed.

Order pronounced in the open Court on 19th September, 2022.

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

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

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

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune-12.
4. The Pr. CIT-Central, Pune.
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			