

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.378/PUN/2021
निर्धारणवर्ष / Assessment Year : 2018-19

Aquarius Engineers Pvt Ltd., Plot No.65, Aquarius House, Off Karve Road, Sheelavihar Colony, Pune – 411038 PAN: AACCA2748L	Vs	ADIT, CPC, Bangalore
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Sarvesh Khandelwal
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), (NFAC), dated 26.08.2021 emanating out of proceedings under section 143(1) of the Income-tax Act, 1961 (hereinafter also called as ‘the Act’) for the Assessment Year 2018-19. The assessee has raised the following ground of appeal:

- 1. On the facts and circumstances prevailing in the case and as per the provisions of the Act it be held that the addition of Rs.8,686/- made and confirmed by the first appellate authority on account*

of late payment of ESIC but before filing of return u/s 139 is not in accordance with the Act and the same be deleted. Just and proper relief be granted to the appellant.

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

3. We have heard both the parties, perused the records. In this case, the AO (CPC), Bengaluru vide an order u/s 154 / 143(1) of the Act dated 17.12.2019 disallowed an amount of Rs.8,686/-. Aggrieved by the same, an appeal was filed before the CIT(A). The CIT(A) dismissed the appeal of assessee.

4. 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

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

6. 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.

7. 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 concerned CIT(A).
4. The concerned Pr. CIT.
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			