

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad**

**Before Shri Inturi Rama Rao, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.307/Hyd/2022		
Assessment Year: 2019-20		
Seaport Cargo Logistics Private Limited, 8-2-293/82/A/379, Plot No.379, Road No. 10, Jubilee Hills, Hyderabad. PAN : AAECT6256E	Vs.	The Deputy Commissioner of Income Tax, Circle – 3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	None	
Revenue by:	Shri K.P.R.R. Murthy.	
Date of hearing:	19.09.2022	
Date of pronouncement:	20.09.2022	

ORDER

Per Laliet Kumar, J.M.

The appeal of the assessee for A.Y. 2019-20 arises from the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi’s order dated 26.05.2022 involving proceedings under section 143(1) of Income Tax Act, 1961 (in short, “the Act”).

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the NFAC in sustaining the disallowance made by the Assessing Officer u/s 36(1)(va) of the I.T. Act amounting to Rs.1,81,28,389/- for delayed payment of ESI/PF.

3. Facts of the case in brief are that the assessee filed its return of income declaring total income at Rs.2,41,91,795/-. In the course of assessment proceedings, the Assessing Officer noticed from the Tax Audit Report (TAR) (Col.20(b)) that the assessee had received a sum of Rs.1,81,28,389/- from its employees as contribution to PF and ESI which was not credited to the employees a/c on or before the due date under the respective law. Accordingly, Assessing Officer made disallowance of Rs.1,81,28,389/- on account of delayed deposit of employees contribution to the PF & ESI u/s 36(1)(va) rws 2(24)(x) of the Act.

4. Before the NFAC, the assessee submitted that such payments were made before the due date of filing of the return and therefore, no adjustment should have been made. The assessee relied on various decisions to this proposition.

5. However, the NFAC was not satisfied with the arguments advanced by the assessee and sustained the addition of Rs.1,81,28,389/- made by the Assessing Officer/CPC for not depositing the employees' contribution to PF and ESIC by invoking the provision of section 36(1)(va) r.w.s. 2(24)(x) of the Act.

6. Aggrieved with such order of the NFAC the assessee is in appeal before the Tribunal.

7. On the date of hearing, none appeared on behalf of the assessee. However, we find that co-ordinate benches of the Tribunal are taking the consistent view that where the employees' contribution to PF and ESIC are paid before the due date of filing of the return but after the statutory dates prescribed under the respective Act, no disallowance u/s. 36(1)(va) r.w.s. 2(24)(x) can be made.

8. The ld.DR on the other hand heavily relied on the order of the NFAC. He submitted that the Finance Act, 2021 has amended the provision of section 43B, as well as section 36(1)(va) by insertion of explanation to those sections. He drew the attention of the bench to the explanatory notes to the Finance Bill, 2021 and submitted that the legislature never intended that section 43B would apply to employees' contribution. He submitted that the language of explanation 5 to section 43B, explanation 2 to section 36(1)(va) and that of the Memorandum explaining the Finance Act, 2021 make it abundantly clear that employees' contribution is out of the ambit of section 43B. Relying on various decisions, he submitted that the NFAC was fully justified in upholding the addition made by the AO on account of delayed payment of PF and ESIC amounting to Rs.1,81,28,389/-.

9. We have heard the ld.DR, perused the orders of the AO and NFAC. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.1,81,28,389/- on account of delayed deposit of employees' contribution to PF and ESIC on the ground that the same were deposited beyond the due date prescribed in the said Act. We find the NFAC rejected the contention of the assessee that such payments though made after the stipulated dates prescribed in the said Acts, however these payments were made before the due date of filing of the return. He accordingly, upheld the action of the AO. We find the co-ordinate benches of the Tribunal are now consistently taking the view that no disallowances u/s. 36(1)(va) r.w.s. 2(24)(x) can be made on account of delayed payment of PF and ESIC, if such payments are made before the due date of filing of the return. It has further been held in these decisions that the amendment to section 43B as well as section 36(1)(va) r.w.s. 2(24)(x) by the Finance Act, 2021 are prospective and not retrospective in nature. Since, the assessee in instant case has admittedly paid the employees' contribution to PF and ESIC before the due date of filing of the return, therefore, we set aside the order of the NFAC and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 20th September, 2022.

Sd/- (INTURI RAMA RAO) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th September, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Seaport Cargo Logistics Private Limited, 8-2-293/82/A/379, Plot No.379, Road No. 10, Jubilee Hills, Hyderabad.
2	The DCIT, Circle 3(1), Hyderabad.
3	Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order