

आयकर अपीलीय अधिकरण “A” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं/ ITA No.502/PUN/2021

निर्धारण वर्ष / Assessment Year : 2019-20

Eknath Dhondiram Mithe Flat No.1, Shraddha Residency, 198 Samarth Nagar, Aurangabad – 431001 PAN : ABYPM6431G	Vs.	ACIT/DCIT, Circle – 1, Aurangabad
(Appellant)		Respondent)

Assessee by : None  
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 22.09.2022

घोषणा की तारीख / Date of Pronouncement: 22.09.2022

**आदेश / ORDER**

**PER R.S.SYAL, VP:**

This appeal by the assessee is directed against the order passed by the National Faceless Appeal Centre (NFAC), Delhi on 31-08-2021 in relation to the assessment year 2019-20.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.8,51,670/- made by the Assessing Officer (AO) u/s.36(1)(va) of the Act on account of late deposit of the Employees' share of EPF and ESI etc.

3. Briefly stated, the facts of the case are that the AO made disallowance of Rs.8,51,670/- in the assessment completed u/s.143(1) of the Act on the ground that the assessee late deposited the employees' share of EPF and ESI etc. The ld. CIT(A) affirmed the disallowance.

4. We have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, we are proceeding to dispose of the appeal *ex parte qua* the assessee but on merits.

5. It is an admitted position that the assessee did deduct employees' share of EPF and ESI and paid the same after the due date under the respective legislations but before the time stipulated for filing return u/s 139(1) of the Act for the year under consideration. This fact has been acknowledged in the assessment order. The issue of disallowance in such circumstances is no more *res integra* in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The Hon'ble Himachal Pradesh High Court in *CIT vs.*

*Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP)* has held that there exists no difference between employees or employer's contribution and both are to be allowed as deduction if deposited before the due date.

6. At this juncture, it is relevant to mention that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01.04.2021. The effect of this amendment is that if the amount of employees' contribution towards EPF, ESI, etc is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1<sup>st</sup> April, 2021 and will, accordingly apply in relation to assessment year 2021-2022 and subsequent assessment years. Since the assessment year under consideration is 2019-20, which is anterior to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as settled by various

Hon'ble High Courts including the one in *CIT vs. Nipso Polyfabriks Ltd. (supra)* squarely applies to the facts and circumstances of the instant case, thereby not warranting any disallowance since the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 22<sup>nd</sup> day of September, 2022.

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> September, 2022  
Satish

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT(Appeals) concerned
4. The Pr.CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	22-09-2022	Sr.PS
2.	Draft placed before author	22-09-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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