

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE
BEFORE SHRI INTURI RAMA ROAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

| Sr. No. | I.T.A No. | Asstt. Year | Appellant | Respondent |
|---------|--------------|-------------|--|--|
| 1. | 650/PUN/2021 | 2018-19 | Charan Satpal Anand C/o. M/s. Jai Durga Industrial Services, 498 Jotiba Nagar, Kalewadi, Pune-411 017 PAN: AEPDA1414A | The Asstt. Director of Income-tax, CPC, Bangaluru Nashik |
| 2. | 665/PUN/2021 | 2019-20 | M/s. Eneritech UPS P. Ltd. S.No. 399 1 2 Plot No. 5, Bhare Village Pirangut PAN: AAACE 6766 A | The Dy. CIT CPC, Bangaluru |
| 3. | 670/PUN/2021 | 2018-19 | Samarth Serv ices,Kunal Market Building, Chaphekar Chowk, Chinchwad, Pune-411 033 PAN: ACJFS 5292 B | The Dy. CIT CPC, Bangaluru |
| 4. | 673/PUN/2021 | 2019-20 | Master Mall, Shradda Complex, B/H Sona Shopping Centre, Ganjamal, Nashik PAN: AARFM 7898 M | The Dy. CIT, CPC, Bangaluru |
| 5. | 683/PUN/2021 | 2019-20 | Ishanya Msotors LLP S.No. 1, Ambegaon, Katraj By Pass, Next to Podar School, Ambegaon Budrik, Pune-411 046 PAN: AAEFI 3414 N | The Asstt. D.I.T., CPC, Bangluru |

Appellants No. 1 & 2, 4 & 5 by : None
Appellant No. 3 by : Shri Nikhil Pathak

Respondents by : Shri Ramnath P. Murkunde

Date of Hearing : 29-09-2022
Date of Pronouncement : ___-09-2022

ORDER

PER BENCH

These appeals preferred by the above-mentioned assesseees as per the captioned matter emanates from the respective orders of the NFAC for the respective assessment years as appearing hereinabove, as per the following grounds of appeal.

(1) **ITA No. 650/PUN/2021 for A.Y. 2018-19 – Charan Satpal Anand**

“1. On the facts and circumstances of the case and in law the CIT has erred in disallowing employees' contribution to PF and ESIC u/s 36(1)(va) though the same are paid before filing of return of income.

The appellant craves for leave to add, alter & amend the ground of appeal before or at the time of hearing of the appeal.

(2) **ITA No. 665/PUN/2021 for A.Y. 2019-20 – Eneritech UPS p. Ltd.**

1. On the facts and in the circumstances of the case and in law the Id. CIT has gravely erred in sustaining addition of Rs. 7,86,380/- being payment made for employees contribution to provident fund beyond the due date under P.F. ssAct but disregarding the fact that such payment was made within the assessment year and within the due date for filing of the return u/s 139(1) as governed by sec. 43B. Such addition may kindly be deleted.

2. The appellant would like to leave, add alter, amend, modify, delete, above grounds of appeal before or during the course of hearing in the interest of natural justice.

(3) **ITA No. 670/PUN/2021 for A.Y. 2018-19 – Sasmarth Service**

1] The learned CIT(A) has erred in confirming the disallowance of Rs.27,66,085/- u/s 36(1)(va) made in the intimation passed u/s 143(1) without appreciating that no such addition could be made in the intimation passed u/s 143(1) and accordingly, the addition made should be deleted.

2] The learned CIT(A) erred in confirming the disallowance of Rs. 27,66,085/- u/s 36(1)(va) on account of employee's contribution to provident fund on the ground that there was a delay in depositing the dues within the time limit specified under the PF Act.

3] The learned CIT(A) erred in holding that the amendment made by Finance Act, 2021 to section 36(1)(va) is retrospective in nature and therefore, the learned A.O. was justified in disallowing an amount of Rs.27,66,085/- u/s 36(1)(va) of the Act.

4] The learned CIT(A) erred in not appreciating that the amendment to section 36(1)(va) by Finance Act, 2021 is prospective in nature and not applicable to the year under consideration hence, there was no reason to disallow the amount u/s 36(1)(va).

5] The learned CIT(A) failed to appreciate that the assessee had deposited the amount payable under the PF Act within the due date of filing the return u/s. 139(1) and hence, no disallowance u/s 36(1)(va) could be made.

6] The learned CIT(A) failed to appreciate that the provisions of section 43B are applicable to employer's as well as employee's contribution to PF and since the assessee had paid the amount within the due date of filing the return, no disallowance u/s 36(1)(va) was warranted.

7] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

(4) **ITA No. 673/PUN/2021 for A.Y. 2019-20 – Master Mall, Nashik**

1. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of Rs.3,86,100/- u/s 36(1)(va) of the Act; ignoring the factual and legal position that appellant had made the contribution towards EPF and ESI before the due date specified under section 139 (1) of the Income Tax Act, 1961 and

Without considering the judgment of Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transports Ltd.

Without considering the judgment of co-ordinate benches in the case of Mahadev Cold Storage vs. Assessing Officer and Vijai Electricals vs. DCIT wherein it is held that the amendment made to Section 43B by the Finance Act 2021 is prospective in nature and cannot be applied for the period prior to 01.04.2021.

2. *The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.*

(5) **ITA No. 683/PUN/2021 for A.Y. 2019-20 – Ishanya Motors LLP**

- “1. *On the facts and in the circumstances of the case and in law, the CIT has erred in disallowing employees contribution to PF and ESIC u/s 36(1)(va) thought he same are paid before filing of return of income.*
3. *The appellant craves for leave to add, alter, to add and amend the ground of appeal before or at the time of hearing of the appeal.*

2. The facts and circumstances and the issues involved in all these appeals are absolutely identical and similar. Therefore, these cases were heard together and are disposed of by this consolidated order.

3. The only issue involved in all these appeals is the disallowance of employees' contribution to Provident Fund as well as ESIC. It is the case of the assesseees that as per various decisions of Pune Tribunal it has been held that if the employees' contribution to provident fund is paid before the due date of filing of return of income, then it is deductible as per provisions of section 43B of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) and the amendment made by the Finance Act, 2021 inserting Explanation 2 to section 43B is applicable prospectively i.e. from A.Y. 2021-22. Admittedly, in all the present cases before us, the payment of employees' contribution to provident fund was before the due date of filing of return of income u/s 139(1) of the Act.

4. We find the issue is squarely covered by the decision of Pune Tribunal in the case of Prashant Arun Sangai Vs. ADIT, CPC, Bangaluru in ITA No. 466/PUN/2021 for A.Y. 2019-20, order dated 22-06-2022 as well as in the case of SIP Moulds Pvt. Ltd. Vs. ITO Ward 2(1) Nashik in ITA No. 551/PUN/2021 for A.Y. 2019-20, order dated 28-06-2022. There is a consolidated order passed

by the Tribunal in ITA No. 538/PUN/2021 and others in the case of Tilokchand Bhabutmal Shah Vs. ADCIT, CPC Bangaluru, etc., order dated 28-06-2022, where the facts before the Tribunal were that the A.O made disallowance on the ground that the assessee had not deposited the employees' share of EPF and ESI etc. within due date prescribed under respective Statutes, but paid before due date for filing Return of Income under the provisions of section 139(1) of the Act. On appeal before the Id. CIT(A), confirmed the said disallowance. The Tribunal held as follows:

“6. When the matter was called on none appeared on behalf of the appellants listed at Sl. No.2 to 6 of above cause title, despite due service of notice of hearing, except in the case of Tilokchand Bhabutmal Shah (listed at Sl. No.1 of the above cause title). Therefore, we proceed to dispose of all the appeals on merits after hearing the Id. CIT-DR.

7. We heard the Id. CIT-DR and perused the material on record. The only issue raised through various grounds of appeal in this appeal is against the confirmation of disallowance of Rs.1,46,592/- made by the Assessing Officer u/s 36(1)(va) of the Act on account of late deposit of the Employees' share of EPF and ESI etc.

8. At the outset, Id. AR appearing on behalf of the appellant Tilokchand Bhabutmal Shah listed at Sl. No.1 of above cause title filed a copy of recent decision of Co-ordinate Bench of this Tribunal in the case of Prashant Arun Sangai vs. ADIT in ITA No.466/PUN/2021 for the assessment year 2019-20 order dated 22.06.2022 stating that the identical issue was decided by the Tribunal (supra) in favour of the assessee. Referring to this decision of the Tribunal (supra), he submitted that principle of consistency should be applied to the facts of the present case. The Id. CIT-DR has expressed no objection on this submission of the assessee.

9. Considering the submission of the Id. AR and perusing the recent decision of the Tribunal (supra), we find that the identical issue was came up before this Tribunal in the case of Prashant Arun Sangai (supra) wherein the Tribunal decided the similar issue in favour of the assessee relying on the decision of the Hon'ble Himachal Pradesh High Court in the case of CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP). The relevant paragraphs of the said decision of the Tribunal (supra) are extracted herein under :-

“4. We have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. We are, therefore, proceeding to dispose of the appeal ex parte qua the assessee on merits.

5. It is seen as an admitted position from the impugned order as well as the statement of facts before the Id. first appellate authority 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. In our opinion, this issue 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 5 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 1st 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 set out 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."*

10. *Similarly, the Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom.) has taken identical view as taken by the Hon'ble Himachal Pradesh High Court in the case of Nipso Polyfabriks Ltd. (supra) and decided the issue in favour of the assessee.*

11. *Respectfully following the above judicial precedents, we hold that the ratio laid down by the Hon'ble High Courts cited above is squarely applicable to the facts of the present case. Therefore, following the principle of consistency, we direct the Assessing Officer to delete the addition of Rs.1,46,592/- made u/s 36(1)(va) of the Act.*

12. *In the result, the appeal filed by the assessee in ITA No.538/PUN/2021 for A.Y. 2019-20 stands allowed."*

5. In the aforesaid decision, the Tribunal has relied on Hon'ble Jurisdictional High Court decision in the case of CIT Vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom) which followed the decision of Hon'ble Himachal Pradesh High Court in the case of CIT Vs. Nipso Polyfabrics Ltd. (2013) 350 ITR 327 (HP). Therefore, we are of the considered view that this issue is no more res integra in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after the due date under the respective Statutes but before the date prescribed u/s 139(1) of the Act. In fact, it was held by Hon'ble Himachal Pradesh High Court in Nipso Polyfabrics Ltd. (supra) that there exists no difference between the employees' or employers' contribution and both are to be allowed as deduction if deposited before the due date. The relevant observations we need to mention at this

junction 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(1) of the Act. The Memorandum explaining the provisions of the Finance Bill 2021, provides that this amendment will take effect from 1st April 2021 and will accordingly apply in relation to assessment year 2021-22 and subsequent assessment years. Before us, in ITA No. 650/PUN//2021 the assessment year is 2018-19, in ITA No. 665/PUN/2021 the assessment year is 2019-20, in ITA No. 670/PUN/2021 the assessment years is 2018-19, in ITA No. 673/PUN/2021 the assessment year is 2019-20 and in ITA No. 683/PUN/2021 the assessment year is 2019-20. Since the assessment years under consideration are earlier to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts' decisions including Hon'ble Jurisdictional Bombay High Court in the case of Ghatge Patil Transports Ltd (supra) and Hon'ble Himachal Pradesh High Court in Nipso Polyfabrics Ltd (supra) squarely applies to the facts and circumstances of the instant cases thereby not warranting any disallowance since the amounts in question were admittedly deposited before the due date u/s 139(1) of the Act and also pertains to prior assessment years prior to A.Y. 2021-22. We direct the A.O to delete the additions made u/s 36(1)(va) of the Act from the hands of the above mentioned assesseees as appearing in the above captioned matters.

6. In the result, all the appeals filed by the assesseees in ITA No. 650/PUN/2021 for A.Y. 2018-19 in the case of Charan Satpal Anand, in ITA

No. 665/PUN/2021 for A.Y. 2019-20 in the case of Enersteck UPS P. Ltd. in
ITA No. 670/PUN/2021 for A.Y. 2018-19 the case of Sasmarth Servicesd, in
ITA No. 673/PUN/2021 for A.Y. 2019-20 in the case of Master Mall, and in ITA
No. 683/PUN/2021 for A.Y. 2019-20 in the case of Ishanya Motors LLP stands
allowed.

Order pronounced in the open Court on this 30th September 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTGANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 30th day of September 2022
Ankam

Copy of the Order forwarded to :

1. The Appellants
2. The Respondent.
3. The Respective CITs
4. The Respective CIT(A)NAFC
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

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BY ORDER,
Sr. Private Secretary
ITAT, Pune

| | | Date | |
|----|--|------------|----------|
| 1 | Draft dictated on | 29-09-2022 | Sr.PS |
| 2 | Draft placed before author | 30-09-2022 | Sr.PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 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 | | |