

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.96/CTK/2022

(निर्धारण वर्ष / Assessment Year :2018-2019)

Nikunj Bhai Rukhiyana,
C/o. M.D. & Company Gola Bidi works,
Sadar Bazar dhamtari,
Dhamtari-493773,
Chhattisgarh
PAN No.AEEPR 7113 P

.....Assessee

Versus

ITO Sambalpur/
ADIT, CPC. Bengaluru

.....Revenue

Shri M.R.Sahu, Advocate for the assessee
Shri S.C.Mohanty, Sr. DR for the Revenue

Date of Hearing : 10/10/2022
Date of Pronouncement : 10/10/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 25.03.2022, for the assessment year 2018-2019.

2. The only issue in this appeal is the confirmation of disallowance u/s.43B of the Act in respect of the delay in payment of PF & ESI under the respective Acts but paid before the due date of filing of the return. It was the submission that the disallowance has been made holding that there has been an amendment to Section 36(1)(va) by the Finance Act,

2021. It was the submission that on appeal the Id.CIT(A) has also confirmed the disallowance. It was also the submission that the amendment to Section 36(1)(va) of the Act was prospective in nature as has been held by the Delhi Bench of the Tribunal in ITA No.5204/Del/2017 in the case of T.V.Today Network Ltd. order dated 27.07.2022. It was the submission that the disallowance is not permissible in an intimation u/s.143(1) of the Act insofar as the amendment is prospective in nature.

3. In reply, Id. Sr. DR vehemently supported the orders of the AO and CIT(A). The Id. Sr. DR submitted that the amendment made by the Finance Act, 2021 had to be read retrospectively, insofar as the Hon'ble Supreme Court in the case of Podar Cement (P) Ltd., [1997] 226 ITR 625 (SC) has held that such amendment done in respect of the provisions of Section 22 to 27 of the Act was declaratory and had retrospective operation. He also placed reliance on the decision of the Hon'ble Supreme Court in the case of Gold Coin Health Food (P) Ltd. (2008) 304 ITR 308 (SC) to submit that the introduction Explanation 2 to Section 36 (va) of the I.T.Act, 1961 and Explanation (v) to Section 43B of the Act were to read retrospective. It was also submitted by the Id. Sr. DR that the memorandum itself says that the provision of amendment is operative from 01.04.2021 and that itself showed that the amendment is retrospective in nature. It was the submission that in view of the Explanation, the employees' contribution to PF & ESI paid beyond the due date under the respective Act is liable to be upheld.

4. We have considered rival submissions. In respect of retrospective/prospective operation of the amendment by the Finance Act, 2021, the issue is now settled by the decision of the Hon'ble Delhi High Court in the case of TV Today Network Ltd., in ITA No.227 of 2022, vide judgment dated 29.07.2021, wherein the Hon'ble High Court has categorically held that the amendment to section 36(1)(va) by the Finance Act, 2021 is to operate prospectively. In the present case it is noticed that the issue is with regard to allowability of PF and ESIC paid beyond the prescribed date but within the due date of filing of return, therefore, the same is allowable. This issue has also been decided by this Bench of the Tribunal in ITA No.140/CTK/2021, Odyssey Motors Pvt. Ltd., order dated 17.08.2022 in favour of the assessee. This being so, respectful following the principles laid down by the Hon'ble Delhi High Court in the case of TV Today Network Ltd., the addition as made by the AO and confirmed by the CIT(A) in this appeal stands deleted.

5. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 10/10/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 10/10/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Nikunj Bhai Rukhiyana,
C/o. M.D. & Company Gola Bidi works,
Sadar Bazar dhamtari,
Dhamtari-493773,
Chhattisgarh
2. प्रत्यर्थी / The Respondent-
ITO Sambalpur/
ADIT, CPC. Bengaluru
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack