

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 550/Mum/2022 (A.Y. 2017-18)

Khosla Profil Private Ltd.
2, Laxmi Tower, A-Wing,
6th Floor, Bandra Kurla Complex,
Bandra (East)-400051

PAN: AAACK1791K

..... Appellant

Vs.

Commissioner of Income Tax (Appeals)
Mumbai.

..... Respondent

Appellant by	:	Sh. Rahul Hakani, Adv.
Respondent by	:	Sh. Tejinder Pal Singh, Sr. DR
Date of hearing	:	11/07/2022
Date of pronouncement	:	07/10/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ('NFAC') dated 28.12.2021 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for the Assessment Year (AY) 2017-18. The assessee has raised the following grounds of appeal:

“1. That in the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, (CIT (A) erred in confirming the adjustment made u/s 143(1) (a) resulting into disallowance of Rs. 1,24,862/- in respect of club expenses made by the learned Assessing Officer made under the Income Tax Act-1961

2. That in the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (CIT (A) erred in confirming the adjustment made u/s 143(1) (a) resulting into addition of Rs. 4,74,405/- in respect of any sum received from employees as contribution to any PF or ESIC Fund to the extent not credited to the employees account on or before the due date) made by the learned Assessing Officer of the Income Tax Act-1961

3. That in the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) -National Faceless Appeal Centre (CIT (A) erred in confirming the addition made u/s 143(1) (a) resulting into wrongful addition of Rs. 4,74,405/- in respect of any Sum received from employees as contribution to any PF or ESIC Fund to the extent not credited to the employees account on or before the due date, including the extended date as mentioned in respective legislation) made by the learned assessing officer of the Income Tax Act-1961

4. That the appellant craves leave to add, amend, modify, rescind supplement or alter any of the grounds stated here- in- above either before or at the time of hearing of the appeal.”

2. Brief facts of the case are that the assessee is a Private Limited Company engaged in the business of Manufacturing Industrial Fabrics has filed its return of income u/s 139(1) on 31-10-2017 declaring total income at Rs. 6,95,43,050/-. The assessee-company had also filed its revised IT Return on 05.07.2018 declaring total income of Rs. 6,96,04,160/- under the normal provisions and income of Rs. 9,30,63,805/- under the provisions of section 115JB of the I.T. Act, 1961. The said return was processed u/s 143(1) of the Act at C.P.C, Bangalore in which the adjustment of Rs. 5,99,267/- (Rs. 1,24,862/- + Rs. 4,74,405/-) was made to the return on account of disallowance of Rs. 1,24,862/- in respect of Club Expenses and deemed income of Rs. 4,74,405/- u/s 36(1) (va) r.w.s. 2(24) (x) of the Act for

late deposit of employee's contribution to P.F. and E.S.I. in accordance with timelines as specified in statutes governing P.F. and E.S.I. respectively.

3. Against this intimation dated 10-01-2019, assessee filed an appeal before the Ld. CIT (A), Mumbai on 08-02-2019. The Ld. CIT (A)(NFAC) also confirmed the intimation processed u/s 143(1). Against this order of NFAC, assessee appellant instituted an appeal before Income Tax Appellant Tribunal raising total 4 grounds of appeal. Ground No. 1 not pressed by the assessee, Ground No. 2 & 3 are interrelated, hence, disposed in a consolidated manner. Ground No. 4 is general in nature and required no separate adjudication.

4. As the Ground No. 2 & 3 are interrelated, hence disposed off simultaneously by common finding. We have gone through the intimation processed u/s 143(1)(a) and order passed by the Ld. CIT(A) u/s 250 of the act. While deciding the issue we have gone through the paper book dated 4th July 2022 filed by the assessee before the ITAT and both the lower authorities.

5. Ld. CIT (A) while deciding this issue has relied upon the reporting of the tax auditor wherein, he simply reported about the due dates of payment under the P.F., E.S.I. and other funds vis-à-vis actual date of payment as per columns 20(b) of form no 3CD. This reporting auditor had done keeping in view the due dates of respective acts and not as per Income Tax Act 1961. This tax audit report nowhere suggests and authorizes the department to make a disallowance, if the payments are made within the due date for filing of return u/s 139(1) of the Income Tax Act

6. We have pursued the details filed by the appellant with reference to amount and actual date of payments under the respective due dates for various employee welfare related acts.

7. On perusal of the order of Ld. CIT (A), he himself admitted that issue is a debatable one. It's an established position of law, no debatable issue can be considered while doing adjustment u/s 143(1)(a). The Ld. CIT (A) has relied upon the decision of following Hon'ble High Court as under:

i) C.I.T vs Gujrat State Road Transport Corporation (2014) 366 ITR 170(GUJ.)

8. In support of assessee's contention, we placed reliance on the decisions of Hon'ble Jurisdictional High Court in the case of Ghatge Patil Transport (368) ITR 749 and Hindustan Organics Ltd (366) ITR 1 and assessee placed reliance in the case of Hon'ble Delhi High Court in CIT Vs. AIMIL Ltd. (321 ITR 508). The schedule of actual date of payment as verified by us is as under and confirms the law laid down by Ghatge Patil Transport and CIT Vs. AIMIL Ltd. (supra):

20. b Details of contributions received from employees for various funds as referred to in section 36(1)(va):					
Sr.No.	Nature of Fund	Sum received from the employees	Due date for payment	The actual amount paid	The actual date of payment to concerned authorities
1	Provident Fund	394753	15.05.2016	394753	13.05.2016
2	Provident Fund	388953	15.06.2016	388953	13.06.2016
3	Provident Fund	403685	15.07.2016	403685	14.07.2016
4	Provident Fund	433707	15.08.2016	433707	12.08.2016

5	Provident Fund	431164	15.09.2016	431164	15.09.2016
6	Provident Fund	454079	15.10.2016	454079	15.10.2016
7	Provident Fund	457784	14.11.2016	457784	14.11.2016
8	Provident Fund	473300	15.12.2016	473300	15.12.2016
9	Provident Fund	438341	15.01.2017	438341	18.01.2017
10	Provident Fund	455260	15.02.2017	455260	15.02.2017
11	Provident Fund	447445	15.03.2017	447445	14.03.2017
12	Provident Fund	444284	15.04.2017	444284	14.04.2017
13	Any Fund set up under the provisions of ESI Act, 1948	36064	21.09.2016	36064	15.10.2016
14	Any Fund set up under the provisions of ESI Act	23438	21.10.2016	23438	21.10.2016
15	Any Fund set up under the provisions of ESI Act	23771	21.11.2016	23771	21.11.2016
16	Any Fund set up under the provisions of ESI Act	24859	21.12.2016	24859	21.12.2016
17	Any Fund set up under the provisions of ESI Act	25273	21.01.2017	25273	21.01.2017
18	Any Fund set up under the provisions of ESI Act	74118	21.02.2017	74118	21.02.2017
19	Any Fund set up under the provisions of ESI Act	74289	21.03.2017	74289	21.03.2017
20	Any Fund set up under the provisions of ESI Act	387156	21.04.2017	387156	21.04.2017

9. We have considered the decisions relied upon by both the parties and facts of the case, in this regard the decision of honourable Supreme Court in the matter of C.I.T vs. Raghuvir Synthetics Ltd. (394) ITR 1, is relevant. In this decision honourable apex court held that A.O. is duty bound by the decision of the

jurisdictional High Court and any view contrary to the jurisdictional High court is a mistake.

10. Further both the lower authorities relied upon the amendment made by Finance Act, 2021 to section 36(1)(va) and 43B as per Ld. CIT(A) this amendment is curative in nature and retrospective in application.

11. On this issue jurisdictional ITAT and various coordinated benches held that the amendment made by the Finance Act 2021 to sec 36(1)(va) and section 43B are prospective in nature, effective from assessment year 2022-23. We respectfully follow the decision of the Hyderabad Bench of the ITAT in the case of Crescent Roadways Pvt. Ltd. Vs. DCIT (ITA no 952/Hyd./2018)

12. Following judgements of ITAT be considered while deciding the matter

i) PNGS India Pvt. Ltd. Vs. I.T.O (ITA no 1409/Mum. /2021)

ii) M/s Vishal Enterprises Vs DCIT (ITA no 510 and 511 /Bang. /2021)

13. **Considering all the discussions, decisions and submission of the appellant we are of the considered view that A.O. and first appellant authority are duty bound to follow the decisions of jurisdictional high Court otherwise it makes their decision unsustainable in so far as applicability of amendment by the finance act 2021, the same is effective from assessment year 2022-23 thus in the light of above, we hold that the C.P.C and Ld. CIT (A) has erred in applying amended provisions of sec 36(1)(va) r.w.s 43B to disallow assessee's claim of deduction.**

14. We found merit in the grounds of appeal raised by the Assessee, hence the impugned order of Ld. CIT (A) is set aside and the grounds of the Assessee are allowed.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 7th day of October, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 07/10/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai