

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.565/Bang/2022
Assessment year : 2020-21

M/s Daxer Trading Pvt. Ltd., Sumo Sapphire, No.738, 2 nd Floor, 15 th Cross, JP Nagar, 6 th Phase, Bengaluru-560 078. PAN - AAFCD 4697 L	Vs.	The Asst. Director of Income Tax, (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shrenik Chordia, C.A
Revenue by	:	Shri K.R Narayan, Addl. CIT (DR)

Date of hearing	:	21.09.2022
Date of Pronouncement	:	.09.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 14.06.2022 for the asst. year 2020-21 with the following substantive grounds of appeal:-

“1. The order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.

2 For that the Learned Commissioner of Income Tax (Appeals) erred in, sustaining the disallowances made u/s 36(1)(va) of the Act amounting to Rs.4,27,480/- on account of delayed remittances of employees' contribution towards PF and ESI but well before the due date of filing of the Return of Income. (Tax effect Rs. 1,07,584/-).

3. For that the Learned Commissioner of Income Tax (Appeals) ought to have held that the delay in payment of employees contribution to PF beyond the due dates as prescribed u/s 36(1)(va) falls beyond the ambit of prima fade adjustments to be carried out u/s 143(1)(a)(iv) of the Act and consequently ought to have deleted the addition made by the CPC.

4 For that the Learned Commissioner of Income Tax (Appeals) erred in holding that the amendment to section 36(1)(va) and section 43B of the Act brought by Finance Act, 2021 by inserting explanation 2 & explanation 5 respectively is retrospective in nature without considering the Memorandum of Explanation that the same applies w.e.f. 01 .04.2021 only i.e. AY 2021-22 and is prospective in nature.”

2. The ld.AR of the assessee said that the ld.CIT(A) failed to appreciate that CBDT Circular No.22/2015 cannot override the provisions of section 43B and the amendments made in this regard in the Finance Act 2021 is prospective in nature, consequently, there cannot be disallowance u/s 36(1)(va) of the Act. The ld.AR reiterated the submission made before the CIT(A) which is placed on record. He further submitted that the amendment made in the Finance Act 2021 is prospective in nature. He also relied on the judgment of Hon'ble jurisdictional High Court in the case of Essae

Teraoka Pvt. Ltd., Vs. DCIT [2014] 366 ITR 408/222 Taxman 170/32 taxmann.com 33 (Kar).

3. On the other hand, the ld.DR supported the order of the lower authorities and he vehemently submitted that there was clear provision in the Income-tax Act u/s 36(1)(va) in this regard. Once the assessee received the employees contribution firstly it is created as income of the assessee u/s 2(24)(x) and if the assessee deposits the concerned amount within the due date specified in the respective act then the assessee will get deduction as per sec.36(1)(va) of the Act. The employee's contribution received is under sec.36(1)(va) but not u/s 43B of the Act. The amendment made by the Finance Act 2021 is only a clarificatory in nature, therefore, the order of the lower authorities should be restored.

4. We heard both sides and perused the entire materials on record and orders of the authorities below. Coming to the substantive issue of ESI/PF with regard to additions made by the AO of Rs.4,27,480/- and the tax effect is of Rs.1,07,584/-, the assessee's plea that the same has been paid before the due date of filing of Income-tax return u/s 139(1) and after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has

issued Memorandum of Explanation that the same applies w.e.f. 1.4.2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s 43B of the Act as against employee's contribution u/s 36(1)(va) of the Act; respectively. The similar issue has been decided by the Hyderabad Bench in the case of M/s Chiphercloud India Pvt. Ltd., in ITA No.1367/Hyd/2018 and also keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 1.4.2021, we hold that the impugned disallowance is not sustainable in view of all these latest developments.

5. The impugned ESI/PF disallowance is directed to be deleted therefore. Hence, we allow the ground of the assessee.

6. Ground No.3 is not pressed by the assessee, to this effect he filled letter dated 27.09.2022, which is placed on record. Hence, this ground is dismissed.

7. In the result, the assessee's appeal is partly allowed.

Order pronounced in court on 28th day of September, 2022

Sd/-

Sd/-

(BEENA PILLAI)

(LAXMI PRASAD SAHU)

Judicial Member

Accountant Member

Bangalore,

Dated, 28th September, 2022

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.