

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 69/JP/22 & 70/JP/2022
निर्धारण वर्ष / Assessment Year : 2018-19 & 2019-20

Shri Shailendra Bhardwaj Plot No. 9, M/s.Shree Nath Enterprises Opp. Vinayak Bhawan, Main Road Charbhujia Via-Kota – 323 307	बनाम Vs.	The ITO Ward 2(2), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHSPB 3905 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mohd. Azharudin CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 28/09/2022
उदघोषणा की तारीख / Date of Pronouncement: 14 /10/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals filed by the assessee are directed against two different orders of the Id. CIT(A) dated 29-04-2021 and 28-05-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19 and 2019-20 respectively. The assessee has raised following grounds in the respective appeals as under:-

ITA No. 69/JP/ 2022 –A.Y. 2018-19

1. Due to the spread of COVID-19, pandemic and in view of the Hon'ble Supreme Court judgement in Misc. Application No. 21/2022 in SMW© No. 3/2020 vide order dated 10-01-2022, there is a delay of 241 days in filing of appeal, please.

2. The impugned order dated 21-02-2020 passed by CPC u/s 154 is bad in law and on the facts of the case for want of jurisdiction and various other statutory reasons, and hence, the same may kindly be quashed and in any case, the impugned addition made therein are bad in law and on the facts for want of jurisdiction and various other statutory reasons and hence the same may kindly be deleted in full.

3. The Id CIT(A) erred in confirming the action of the CPC in making addition of Rs.18,05,083/- on account of contribution of PF/ESI vide order dated 29-04-2021. The action of the CPC and confirmation thereof is bad in law and on facts of the case for want of jurisdiction, principal of natural justice and various other statutory reasons and hence, kindly be deleted.

ITA No. 70/JP/ 2019 –A.Y. 2019-20

1. Due to the spread of COVID-19, pandemic and in view of the Hon'ble Supreme Court judgement in Misc. Application No. 21/2022 in SMW© No. 3/2020 vide order dated 10-01-2022, there is a delay of 241 days in filing of appeal, please.

2. The impugned order dated 21-02-2020 passed by CPC u/s 143(1) is bad in law and on the facts of the case for want of jurisdiction and various other statutory reasons, and hence, the same may kindly be quashed and in any case, the impugned addition made therein are bad in law and on the facts for want of jurisdiction and various other statutory reasons and hence the same may kindly be deleted in full.

3. The Id CIT(A) erred in confirming the action of the CPC in making addition of Rs.14,20,120/- on account of contribution of

PF/ESI vide order dated 28-05-2021. The action of the CPC and confirmation thereof is bad in law and on facts of the case for want of jurisdiction, principal of natural justice and various other statutory reasons and hence, kindly be deleted.”

2.1 First of all, we take up the appeal of the assessee for the assessment year 2018-19 for adjudication.

3.1 At the outset of the hearing, the Bench noted that there is delay of 241 in filing the appeal for which the ld. AR of the assessee filed an application dated 27-09-2022 for condonation of delay by taking the resort of Hon’ble Supreme Court order dated 10 JAN 2022 (Civil Original Jurisdiction – MA No. 21 of 2022 in MA No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 – In Re: Cognizance for Extension of Limitation. The ld. AR further submitted that under these circumstances, since the period between 15-03-2020 to 28-02-2022 was to be excluded and the period was to be reckoned from 01-03-2022, the appeal could be filed within 90 days from 01-03-2022 i.e. on or before 30-05-2022 whereas in the cases under consideration, the appeals has been filed on 16-02-2022 electronically (manually on 24-02-2022), accordingly the appeals are within the time of extended period of limitation as prescribed by the Hon’ble Apex Court.

3.2 On the other hand, the ld. DR objected to such delay but left the matter on the Bench to consider it as deem fit and proper in the case.

3.3 After hearing both the parties and perusing the materials available on record and also the decision of Hon'ble Apex Court 10-01-2022 (supra), the delay so made by the assessee is condoned. Thus application for condonation of delay is allowed.

4.1 Ground No. 2 of the assessee is general in nature which does not require any adjudication.

5.1 Ground No. 3 of the assessee is regarding confirming the addition of Rs.18,05,083/- by the Id. CIT(A) on account of late deposit of contribution of PF/ESI under the respective Act.

5.2 After hearing both the parties and perusing the materials available on record, it is noted from the available records that the Employees Contribution towards PF/ESI has been paid much before the due date of filing of return. The Bench observed that the issue of late deposit of PF/ESI contribution by the assessee but before filing the due date of filing of the return, is covered by the decision of ITAT, Jaipur Bench dated 22-02-2020 in the case of Pratap Technocrats Private Ltd. And another vs ADIT,CPC, Bengaluru (ITA 18/JP/2022, 33/JP/2022, 24,25, & 26/JP/2022 wherein ITAT has held as under:-

“20. By considering the totality of the facts and the judicial pronouncements, we are of the view that the amendment brought in the statute i.e. by Finance Act, 2021, the provisions of Section

36(1)(va) r.w.s. 43B of the Act amended by inserting explanation 2 is prospective and not retrospective. Hence, the amended provision of Section 43B r.w.s. 36(1)(va) of the Act are not applicable for the assessment year under consideration i.e. 2018-19 but will apply from assessment year 2021-22 and subsequent assessment years. Hence, this issue raised in assessee's appeal is allowed.''

Therefore, the Bench respectfully concurs with the findings of this Bench on the issue of PF/ESI and the order of the Id. CIT(A) is reversed. Thus the appeal of the assessee is allowed.

6.1 Now we take up the appeal of the Assessee for the Assessment year 2019-20 for adjudication.

7.1 As regards the ground No 1 of the assessee, the decision taken by the Bench on account of late filing of the appeal in assessee's own case for the assessment year 2018-19 shall apply mutatis mutandis in the assessment year 2019-20. Thus Ground No. 1 of the assessee is allowed.

8.1 Ground No. 2 of the assessee is general in nature which does not require any adjudication.

9.1 As regards Ground No. 3 of the assessee wherein the Id. CIT(A) confirmed the addition of Rs.14,20,120/- on account of late deposit of contribution of PF/ESI under the respective Act.

9.2 After hearing both the parties and perusing the materials available on record, the Bench feels that the decision taken by the Bench as to the issue of late deposit of contribution towards PF/ESI in assessee's own case for the assessment year 2018-19 shall apply mutatis mutandis in the assessment year 2019-20. Thus Ground No. 1 of the assessee is allowed.

10. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 14/10/2022

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14 /10/2022

*Mishra

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

1. The Appellant- Shri Shailendra Bhardwaj, Kota
2. प्रत्यर्थी / The Respondent- ITO, Ward 2(2), Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 69 & 70/JP/2022)