

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 102 &amp; 103/Bang/2023</b>
<b>Assessment Years : 2018-19 &amp; 2019-20</b>

M/s. Sujanix Pvt. Ltd., No. 906, Mukund Vivek Paradise, Marathahalli Main Road, Munnekolala, Bangalore – 560 037. <b>PAN: AAYCS1809G</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 4(2)(3), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	None
Revenue by	:	Shri Sankar Ganesh K. Addl. CIT (DR)

Date of Hearing	:	26-04-2023
Date of Pronouncement	:	26-04-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals are filed by assessee against the separate orders both dated 22/12/2022 u/s. 250 passed by the National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Years 2018-19 and 2019-20 on following grounds of appeal:

**Assessment Year 2018-19:**

*“1. The order of the learned authorities below in so far as it is against the appellant is opposed to law, equity, facts, weight of evidence, probabilities and circumstances of the case.*

2. The appellant denies itself to be assessed to an income over and above the returned income of Rs. 48,23,607/- on the facts and circumstances of the case.

3. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short CIT(A)), is not justified in confirming the additions of Rs. 45,57,186/- mechanically made by the Centralised Processing Centre (CPC) under the provisions of section 36(1) (va) of the Income Tax Act, 1961 (in short the Act) by holding that the Appellant had deposited the Employees' Contribution to Provident Fund after the due date is bad in law under the facts and circumstances of the case.

4. The learned Authorities below erred in mechanically disallowing the Employees Contribution to Provident Fund u/s 36(1) (va) of the Act, without appreciating the fact that the same is remitted before the due date for filing the Return of Income u/s 139(1) of the Act.

5. The learned authorities below erred in ignoring the fact that as long as the contribution is made to the PF authorities before the due date for filing of the Income Tax Returns the same is required to be allowed. This view has been taken by jurisdictional High Court of Karnataka.

6. There is plethora of decisions by the honorable Jurisdictional High Court. The NFAC is bound by the decision of Jurisdictional Karnataka High Court as the Assessee is situated within the territorial jurisdiction of Karnataka, the learned authorities below erred in not following the Judgement relied on by the appellant from the facts and circumstances of the case is against the set law.

7. The learned CIT(A) for the reasons best known to him has ignored the judgements relied on by the appellant, the learned Authorities below erred in not considering the fact that the Apex Court and the High Courts have given relief in the similar matters.

8. The learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre has failed in appreciating the fact that the Amendment to Section 36(1) (va) of the Act shall be prospective in nature and shall not retrospective effect. The authorities below without application of mind has mechanically dismissed the appeal stating the recent ament made in Finance Act 2021, the action of the authorities below is bad in law.

9. The learned authorities below failed to appreciate the fact that the Amendment is having only prospective effect and cannot be applied retrospectively, it is amply clarified in the Memorandum in para 6.2.2 of the Finance Act 2021 to Amendment to section 36(1) (va) of the Act, which is explicitly mentioned in the clear words that, the above

*amendment takes effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years. Hence the contention taken by the learned CIT(A) is bad in law.*

*10. The appellant relies on the ratio of recent decision of Honorable Income Tax Appellate Tribunal in the case of Salzgitter Hydraulics (P.) Ltd. v. Income-Tax Officer, Ward 3(1), Hyderabad [2021] 128 taxmann.com 192 (Hyderabad Trib.), where for the assessment year 2018-19 employee's contribution to ESI/PF has been deposited by assessee employer before due date of filing section 139(1) return but after due date prescribed in corresponding statutes and Assessing Officer added said amount to income of assessee as per provisions of section 36(1) (va), it was held that, since amendments in section 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect applies w.e.f. 1-4-2021 only, impugned disallowance for assessment year 2018-19 was not sustainable.*

*11. Appellant denies itself liable to be charged interest u/s 234 of the Act from the facts and circumstances of the case.*

*12. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

*13. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed and justice rendered.”*

### **Assessment Year 2019-20:**

*“1. The order of the learned authorities below in so far as it is against the appellant is opposed to law, equity, facts, weight of evidence, probabilities and circumstances of the case.*

*2. The appellant denies itself to be assessed to an income over and above the returned income of Rs. 2,26,71,180/- on the facts and circumstances of the case.*

*3. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short CIT(A)), is not justified in confirming the additions of Rs. 80,43,549/- mechanically made by the Centralised Processing Centre (CPC) under the provisions of section 36(1) (va) of the Income Tax Act, 1961 (in short the Act) by holding that the Appellant had deposited the Employees' Contribution to Provident Fund after the due date is bad in law under the facts and circumstances of the case.*

*4. The learned Authorities below erred in mechanically disallowing the Employees Contribution to Provident Fund u/s 36(1) (va) of the Act, without appreciating the fact that*

*the same is remitted before the due date for filing the Return of Income u/s 139(1) of the Act.*

*5. The learned authorities below erred in ignoring the fact that as long as the contribution is made to the PF authorities before the due date for filing of the Income Tax Returns the same is required to be allowed. This view has been taken by jurisdictional High Court of Karnataka.*

*6. There is plethora of decisions by the honorable Jurisdictional High Court. The NFAC is bound by the decision of Jurisdictional Karnataka High Court as the Assessee is situated within the territorial jurisdiction of Karnataka, the learned authorities below erred in not following the Judgement relied on by the appellant from the facts and circumstances of the case is against the set law.*

*7. The learned CIT(A) for the reasons best known to him has ignored the judgements relied on by the appellant, the learned Authorities below erred in not considering the fact that the Apex Court and the High Courts have given relief in the similar matters.*

*8. The learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre has failed in appreciating the fact that the Amendment to Section 36(1) (va) of the Act shall be prospective in nature and shall not retrospective effect. The authorities below without application of mind has mechanically dismissed the appeal stating the recent ament made in Finance Act 2021, the action of the authorities below is bad in law.*

*9. The learned authorities below failed to appreciate the fact that the Amendment is having only prospective effect and cannot be applied retrospectively, it is amply clarified in the Memorandum in para 6.2.2 of the Finance Act 2021 to Amendment to section 36(1) (va) of the Act, which is explicitly mentioned in the clear words that, the above amendment takes effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years. Hence the contention taken by the learned CIT(A) is bad in law.*

*10. The appellant relies on the ratio of recent decision of Honorable Income Tax Appellate Tribunal in the case of *Salzgitter Hydraulics (P.) Ltd. v. Income-Tax Officer, Ward 3(1), Hyderabad [2021] 128 taxmann.com 192 (Hyderabad Trib.)*, where for the assessment year 2019-20 employee's contribution to ESI/PF has been deposited by assessee employer before due date of filing section 139(1) return but after due date prescribed in corresponding statutes and*

*Assessing Officer added said amount to income of assessee as per provisions of section 36(1) (va), it was held that, since amendments in section 36(1)(va) as well as 43B vide Finance Act, 2021 to this effect applies w.e.f. 1-4-2021 only, impugned disallowance for assessment year 2019-20 was not sustainable.*

*11. Appellant denies itself liable to be charged interest u/s 234 of the Act from the facts and circumstances of the case.*

*12. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

*13. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed and justice rendered.”*

**2. The brief facts of the case are as follows:**

2.1 For the assessment year 2018-19, return of income was filed on 05.10.2018 declaring total income of Rs.48,23,607/-. The return was processed u/s 143(1) of the I.T.Act. In the intimation issued u/s 143(1) of the I.T.Act, the CPC disallowed the employees' contribution to PF and ESI to the tune of Rs. 45,57,186/-.

2.2 For the assessment year 2019-20, return of income was filed on 30.10.2019 declaring total income of Rs.2,26,71,180/-. The return was processed u/s 143(1) of the I.T.Act. In the intimation issued u/s 143(1) of the I.T.Act, the CPC disallowed the employees' contribution to PF and ESI to the tune of Rs. 80,43,549/-.

The reason for making the disallowance was that the assessee did not remit the employees' contribution to PF and ESI within the due date specified under the respective Act by way of intimation u/s. 143(1)(a). The assessee preferred rectification application u/s. 154. The Ld.AO rejected the same on 06.11.2020 for both A.Ys. under consideration.

**3. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A).**

3.1 Before the Ld.CIT(A), it was submitted that the assessee remitted the employees contribution to PF and ESI before the due

date of filing of the return u/s 139(1) of the I.T.Act and that the assessee is entitled to deduction of the same. The Ld.CIT(A) dismissed the appeal of the assessee by relying on decision of *Hon'ble Supreme Court* in case of *Checkmate Services (P.) Ltd. Vs CIT-1* reported in [2022] 143 taxmann.com 178 (SC). The CIT(A) noticed the difference between the employees' contribution and the employer's contribution and held insofar as the employees' contribution to ESI and PF, the same need to be remitted within the due date as mentioned in the respective Acts. The CIT(A) also relied on the amendment brought about to section 36(1)(va) and 43B of the I.T.Act.

**4.** Aggrieved, the assessee has filed these appeals before the *Tribunal*.

**4.1** The only issue that arises is disallowance on delayed payment of employee's contribution to ESI and PF made by the assessee beyond the due date by invoking the provisions of section 36(1)(va) of the Act, but within the due date for filing return of income u/s.139(1) of the Act.

4.2 On this issue, *Hon'ble Supreme Court* in the case of *CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022* held that allowability/treatment of 'delayed' Employee PF Contribution payment to be taxable in hands of assessee under provisions of Income Tax Act. *Hon'ble Supreme Court* held that Section 36(1)(va) and Section 43B(b) operate on totally different equilibriums and have different parameters for due dates, i.e., employee's contribution is linked to payment before the due dates specified in the respective Acts and employer's contribution is linked to the payment before the prescribed due date for filing of

return u/s. 139(1) of the Act. It was held that result of any failure to pay within the prescribed dates also leads to different results. *Hon'ble Supreme Court* was of the opinion that in the case of employee's contribution, any failure to pay within the prescribed due date under the respective PF Act or Scheme will result in negating employer's claim for deduction permanently forever u/s.36(1)(va) of the Act. On the other hand, delay in payment of employer's contribution is visited with deferment of deduction on payment basis u/s.43B of the Act and is therefore not lost totally. Therefore, as per the above decision, the disallowance made by the Revenue authorities, were fully justified.

**Accordingly, the grounds raised by the assessee stands dismissed.**

**Accordingly, the appeal filed by assessee for A.Y. 2018-19 stands dismissed.**

Applying the same view *mutatis mutandis*, the present appeal for A.Y. 2019-20 also stands dismissed.

**In the result, both the appeals filed by the assessee stands dismissed.**

**Order pronounced in the open court on 26<sup>th</sup> April, 2023.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 26<sup>th</sup> April, 2023.  
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore