

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1128/Ahd/2023  
Assessment Year 2020-21**

Nexion International Pvt. Ltd. [previously known as Simpolo Emilceramica Pvt. Ltd.) 1102, 1104 and 1105, Shapath V, Opp. Karnavati Club, S.G. Highway, Ahmedabad-380051 <b>PAN: AAVCS2567C (Appellant)</b>	Vs	The ADIT-CPC, Bangaluru Present jurisdiction The DCIT, Circle-3(1)(1), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Dhinal Shah & Shri Bhadresh  
Gandhakwala, A.R.**

**Revenue Represented: Shri Urjit B Shah, Sr.D.R.**

Date of hearing : 06-03-2024

Date of pronouncement : 08-03-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 23-11-2023 passed by Addl. Commissioner of Income Tax (Appeals), NFAC, Thane [herein after referred as the Addl. CIT(A)] arising out of the Intimation order passed under section 143(1) of the Income Tax Act, 1961 [herein after referred as the Act] relating to the Assessment Year 2020-21.

2. The solitary ground raised by the assessee reads as under:

*1. The learned ACIT CPC has erred in making addition of Rs.5,08,800/- under Section 36(1)(va) on the ground that the payment of PF for the month of March, 2020 is made late by one month in as much as the assessee has paid the said amount in time since the Circular No. C-1/Misc/2019-20/Vol/II/ Part/9 dated 15-04-2020 issued PF Department stated that the payment may be made on or before 15-05-2020 due to lockdown on account of Covid-19 and that the assessee made the payment on 15-05-2020 as per Circular, therefore there is no delay.*

3. Ld. Counsel Shri Dhinal Shah appearing for the assessee submitted that this is the very same ground raised by the assessee even before NFAC, however without considering the same, confirmed the addition by passing a detailed “cut and paste order” on section 36(1)(va) of the Act by the NFAC, which is highly arbitrary and without application of mind. Ld. Counsel further submitted pursuant to the Circular dated 15.04.2020 issued by Provident Fund Department, the assessee deposited employee’s contribution of Rs.5,08,801/- on 15.05.2020 which is well within the extended period of time during the Pandemic Covid-19 period. Thus both the Lower Authorities failed to consider the same and confirmed the addition which is not justifiable.

3. Ld. Sr. D.R. appearing for the Revenue could not dispute the above facts.

4. We have given our thoughtful consideration and perused the materials available on record. Both CPC as well as the NFAC without application of mind made the disallowance u/s. 36(1)(va) of the Act and added tax liability in the hands of the assessee without

looking into the Circular dated 15.04.2020 issued by the EPFO department which reads as follows:



कर्मचारी भविष्य निधि संगठन  
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)  
**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
(Ministry of Labour & Employment, Govt. of India)  
मुख्य कार्यालय / Head Office  
भविष्य निधि भवन, 14-भौकाजी कामा प्लेस, नई दिल्ली-110 066.  
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No.C-I/Misc./2019-20/Vol.II./Part./9

Date: 15.04.2020

To,

All Addl. CPFCs in charge of Zones  
All RPFCs in charge of Regional Offices  
All OICs in charge of District Offices.

Subject: Extension of due date for payment of contributions and administrative charges/Inspection charges due for wage month March 2020 from 15.04.2020 to 15.05.2020 to establishments disbursing wages for March 2020

Sir,

Considering the unprecedented situation created by COVID-19 and lockdown announced by the Central Government from 24.03.2020 midnight onwards to prevent the spread of Covid-19, the competent authority has decided to allow grace period of 30 days (from 16.04.2020 to 15.05.2020) for filing of Electronic Challan cum Return (ECR) to the employers of those establishments which have disbursed the wages for March, 2020 to their employees.

It is clarified that that employers, who seek to avail the above relief, need to file ECR for wage month March, 2020 on or before 15.05.2020, duly certifying the disbursement of wages to employees by declaring actual date of disbursement of wages for March, 2020 in the column "Salary disbursal date" in the ECR and remit the contributions and administrative/inspection charges on or before 15.05.2020.

(This issues with the approval of the Central Provident Fund Commissioner)

Yours faithfully

(Pankaj Raman)

Addl. CPFC (Compliance)

15/4/20

4.1. Therefore in our considered view the disallowance made by the CPC and confirmed by the Addl. CIT(A) are against the provisions of

law and therefore the Intimation passed by CPC and confirmed by the Addl. CIT(A) are hereby quashed.

4.2. It is legitimately expected that the CPC ought to have taken note of the above Circular dated 13.04.2020 issued by EPFO, thereby the assessee's would have been avoided, this kind of unnecessary litigation up to the level of this Tribunal. The CBDT is to instruct the Assessing Officers in the regime of Faceless assessment, to pass orders after proper Application of mind and also taking note of the submissions filed by the assessee.

5. In the result, the appeal is filed by the Assessee is allowed.

Order pronounced in the open court on 08-03-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 08/03/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद