

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

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

**ITA Nos. 393 & 394/Ahd/2022  
Asst Years. 2018-19 & 2019-20**

Newgen Industrial Security (Gujarat) Pvt.Ltd. B-3 Green Wood Complex, Makrpura Road, Vadodara, Gujarat-390009  <b>PAN: AAECN2517N</b>  <b>(Appellant)</b>	Vs	The ACIT, Circle-2(1)(2), Vadodara.     <b>(Respondent)</b>
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**Assessee Represented: Ms. Kinjal Shah, A.R.**  
**Revenue Represented: Shri Purushottam Kumar, Sr-DR**

Date of hearing : 22-04-2024  
Date of pronouncement : 24-04-2024

**आदेश/ORDER**

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

These two appeals are filed by the Assessee as against separate appellate orders both dated 27.08.2022 passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi arising out of the intimation passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2018-19 and 2019-20.

2. The solitary issue involved in these appeals are disallowance made u/s.36(1)(va)of the Act on late payment of Employee's PF & ESI funds. ITA No.394/Ahd/2022 for the Asst. Year 2019-20 is taken as the lead case .

3. The brief facts of the case is that the assessee is a Private Limited Company engaged in the business of providing Man Power Security Services. For the Asst. Year 2019-20, the assessee filed its Return of Income on 19.10.2019 declaring total income of Rs.74,92,808/-. The assessee in its Audit Report claimed that Rs.54,15,201/- was paid belatedly on Employees ESI & PF as against the total payment of Rs.1,19,96,811/-. However, the Central Processing Centre, Bangalore while processing the above Return of Income treated the entire payment of ESI & PF as belated payments and added the entire Rs.1,19,96,811/- as the income of the assessee u/s.36(1)(va) of the Act.

4. Aggrieved against the addition, the assessee filed an appeal before the NFAC. The Ld.NFAC, had given six hearing opportunities between 10.11.2021 to 14.17.2022 to the assessee. However, for various technical reasons the assessee could not response to the hearing notices, resulting in confirming the addition made by the CPC on late payment of ESI & PF funds.

5. Aggrieved against the appellate orders the assessee are in appeal before us.

6. The Ld.Counsel Ms. Kinjal Shah, appearing for the assessee submitted before us details of payment made by the assessee on account of PF and other welfare fund made by the assessee well within the statutory time limit as well as belated payment. As per the Ld.Counsel the assessee made belated payment of Rs.64,04,249/- wherein the CPC has treated entire payment of Rs.1,19,79,966/- as belated payment and added as the income of the assessee u/s.36(1)(va) of the Act. The Ld.Counsel submitted entry-wise break-up amount with statutory due dates and actual date of payments. Thus, the Ld.Counsel pleaded to delete the entire addition made by the CPC.

7. Per Contra, Ld.Sr-DR Shri Purushottam Kumar, appearing for the Revenue supported the order passed by the lower authorities and the assessee failed to response to the notices issued u/s.143(1)(a) of the Act by the CPC, as well as six opportunities given by the Ld-NFAC. However, the assessee for the first time providing details before this Tribunal, which can be set-aside back to the file of Jurisdictional Assessing Officer for verification of the same and allow if it is in-accordance with Law.

8. We have given our thoughtful consideration and perused the materials available on record including the break-ups of the ESI & PF payments made date-wise by the assessee. The assessee itself admitted that late payment of PF and ESI were to the extent of Rs.64,04,249/- as against the payment of Rs.1,19,79,966/-. Thus, the lower authorities are not correct in holding the entire payment as belated payment and making addition u/s.36(1)(va) of the Act.

As the assessee failed to submit the required details before the lower authorities and for the first time submitting the details before this Forum, we thought it fit to set-aside the matter back to file of the Jurisdictional Assessing Officer for verification of the details and make disallowance in-accordance with Law. Needless to say, the assessee should co-operate by providing all the required details before the Jurisdictional Assessing Officer for passing appropriate order. **Thus the ground no.1 filed by the assessee is allowed for the statistical purposes.**

9. The other grounds raised by the assessee are charging interest u/s.234(A), 234(B) & 234(C) of the Act, which are consequential in nature and does not required any separate adjudication. **Thus, the ground no. 2 raised by the assessee is hereby dismissed.**

**Coming to the ITA No.393/Ahd/2022 for Asst. Year 2018-19**

10. The solitary issue raised by the assessee is disallowance of Rs.45,03,135/- made u/s.36(1)(va) of the Act on late payment of Employee's PF & ESI funds by the assessee.

11. The assessee could not place on record any discrepancy made in the intimation made u/s.143(1) of the Act as well as the appellate order passed by Ld.CIT(A). In the absence of any fresh material before us, we do not find any merit in the grounds raised by the assessee. Thus, the appeal filed by the **assessee is devoid of merit and same is hereby dismissed.**

**12. In the combined result, the appeals filed by the assessee bearing ITA No.394/Ahd/2022 for Asst.Year 2019-20 is partly allowed for the statistical purposes whereas ITA No.393/Ahd/2022 for Asst. Year 2018-19 is dismissed.**

Order pronounced in the open court on 24-04-2024
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**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

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

**Ahmedabad : Dated (True Copy)  
24/04/2024**