

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

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

**ITA No. 25/Ahd/2023
Assessment Year 2019-20**

Adani Hazira Port Ltd. (Formerly known as Adani Hazira Port Pvt. Ltd.) Adani Corporate House near Vaishno Devi Circle, Shantigran, S.G. Highway Khodiyar Ahmedabad-382421, Gujarat PAN: AAICA0970E (Appellant)	Vs	Assessing Officer (CPC), Bangalore Present Jurisdiction the DCIT, Circle-1(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Dhrunal Bhatt, A.R.
Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.**

Date of hearing : 20-06-2024
Date of pronouncement : 30-07-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the appellate order dated 18.11.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), 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 Year 2019-20.

2. The brief facts of the case are that the assessee is a Company engaged in Port activities filed its Return of Income for the Asst. Year 2019-20 on 22.11.2019 declaring total income of Rs. 71,07,71,610/- under normal provisions of the Act and Rs.5,43,45,28,957/- under book profit under section 115JB of the Act. The return was taken for prima facie adjustment and a communication was sent to the assessee as to why not disallow Rs.29,85,612/- being belated payment of Employees contribution to PF Fund. The assessee replied that it paid the employees contribution to National Pension Scheme before the due date of filing of the Return of Income u/s. 139(1) of the Act, as there is no due date prescribed under the National Pension Scheme, thus there is no delay in payment of Employees contribution and therefore not to make any disallowance u/s. 36(1)(va) of the Act. However the above reply was rejected by CPC and added Rs. 29,85,610/- as the income of the assessee and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before NFAC. Before NFAC, the assessee filed detail submission about National Pension Scheme as follows:

“National Pension System (NPS) is a pension cum investment scheme launched by Government of India to provide old age security to Citizens of India. It brings an attractive long term saving avenue to effectively plan your retirement through safe and regulated market-based return. The Scheme is regulated by Pension Fund Regulatory and Development Authority (PFRDA). National Pension System Trust (NPST) established by PFRDA is the registered owner of all assets under NPS.

The National Pension Scheme is a social security initiative by the Central Government. This pension program is open to employees from the public, private and even the unorganized sectors with the exception of those from the armed forces. The scheme encourages people to invest in a pension account at regular intervals during the course of their employment. After retirement, the subscribers can take out a certain percentage of the corpus. As an NPS account holder, you will receive the remaining amount as a monthly pension post your retirement.

Earlier, the NPS scheme covered only the Central Government employees. Now, however, the PFRDA (regulatory act for NPS) has made it open to all Indian citizens on a voluntary basis. NPS scheme holds immense value for anyone who works in the private sector and requires a regular pension after retirement. The scheme is portable across jobs and locations, with tax benefits under Section 80C and Section 80CCD.

There is a deduction of up to Rs. 1.5 lakhs to be claimed for NPS for your contribution as well as for the contribution of the employer.”

3.1. The assessee further pleaded similar disallowance made for the earlier assessment year 2018-19 which was deleted by NFAC vide Order No. CIT(A)-1,Ahmedabad/10350/2019-20 dated 19.08.2020, therefore requested to delete the addition made by CPC. However ld. NFAC dismissed the appeal filed by the assessee following Supreme Court Judgment in the case of M/s. Checkmate Services Pvt. Ltd. Vs. CIT in Civil Appeal No. 2833 of 2016 vide judgment dated 12.10.2022.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

“1. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) has failed to appreciate that the payment of contribution to NPS was not falling within the purview of Section-143(1)(a) of the Act and accordingly the adjustment made by the

CPC Authority was beyond the scope of provisions of Section-143(1)(a).

2. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) has erred in upholding the adjustment of Rs. 29,85,610/- made by the Assessing Officer in the intimation under Section-143(1)(a).

2.1 The Ld. CIT (A) has failed to appreciate the fact that as per the details given in Tax Audit Report, the payments to NPS were made before the due date and therefore, there was no justification for making the adjustment.

2.2 The Ld. CIT (A) has further failed to appreciate that there is no due date prescribed by the NPS Authorities for payments of contribution to NPS and that, therefore, there was no justification for holding that the payments was made beyond the due date. Accordingly, the adjustment made by the CPC Authority was not justified.

2.3 The Hon'ble ITAT accordingly may please direct for deleting the adjustment made to the total income in the intimation under Section-143(1)(a).

3. The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground either before or at the time of appeal hearing.

5. Ld. Counsel appearing for the assessee drawn our attention to the Right to Information Act query raised by the assessee before the Authority concerned at Page 13 of the Paper Book, wherein the assessee was informed to refer the concerned CCS, (Implementation of National Pension System) Rule 2021. The assessee also placed on record another appellate order passed in the case of Shantigram Utility Services Pvt. Ltd. wherein such disallowance made by CPC was deleted by CIT(A), Gurgaon by following decision in the case of Adani Shipping (India) Pvt. Ltd. which reads as follows:

“4.2.3 From the audit report furnished by the appellant in its reply. It is evident that the appellant has made all the payments towards NPS contribution (any other welfare it is evident that that fund) within stipulated time. Thus, I am of the view that the contention of the appellant that it had made all the payments in due time and hence eligible to get deduction on account of the same, is found to be correct. This interpretation is further supported by the order of CIT(A) NFAC in the case of Adani shipping (India) Pvt. Ltd. (AAICA8476F) for the A.Y. 2019-20 issued on 21.11.2022 vide DIN ITBA/NFAC/S/250/2022-23/1047525743(1). In this case, the facts involved are almost identical and the Ld. CIT (A) allowed relief holding as under:

The issue involved in the grounds of appeal present before me is disallowance of Rs.2,37,585/- for employees contribution to National Pension Scheme. The AO. CPC has made the disallowance u/s 36(1)(va) for Rs.2,37,585/- based upon Schedule in Tax Audit report relating to Employees payment to PF/ESIC and other funds. The disallowance is made on the ground that such remittances are made beyond the date as prescribed in the respective. On perusal of the Tax Audit report, it is seen that the contribution of Rs. 2,37,585 is not related to Employees Contribution to PF/ESIC. Infact, the same is mentioned as Contribution to any other welfare fund in point no. 20(b) of the Tax Audit report. The appellant has claimed that the said payment is towards the National Pension Scheme. The Appellant has elaborately explained the modus operadi of the NPS Scheme. It is clear that the payment to NPS is voluntary payment. Such payment can either be paid by employee directly or employee can ask employer to pay the same on his behalf. There is no due date mentioned in the scheme for making such payment The employees Contribution to NPS is not compulsory and it is voluntary payment hence such contribution cannot be subject matter of addition u/s 36(1)(va) of the Act.

In view of the above, the disallowance made by the CPC on account of late payment of employees contribution to NPS fund of Rs 2.37,585/- is hereby deleted and the ground of appeal raised by the appellant is allowed.

In view of these facts and legal position, the ground of appeal taken by the appellant is allowed and the A.O. is directed to do the needful.”

6. Per contra, the Ld.Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the Return of Income, the assessee made deposit of Rs.29,85,610/- being Employees contribution under any "other welfare fund" namely National Pension System (NPS). On perusal of the Tax audit report, it is seen that the contribution is made under NPS before due date of filing Return of Income. NPS is regulated by Pension Fund Regulatory and Development Authority and PFRDA Act, 2013. There is no due date prescribed by the PFRDA as to when the payment is required to be made to the NPS account. Further section 12[3][iii] of the PFRDA Act, 2013 clearly prohibits the provisions of this Act shall not apply to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus the impugned adjustment made on the payment under NPS by CPC is not justified as there is no due date prescribed in the respective PFRDA Act, 2013 and all the payment has been duly made before filing of the Return of Income as per section 139[1] of the Act. Therefore the amount of Rs.29,85,610/- is treated to be allowable u/s.43B[b] of the Act and **therefore the addition made by CPC is liable to be deleted.** Further we observe when the assessee had replied to the communication to the CPC and explaining the above facts, CPC is not correct in ignoring the reply and making the disallowance in the 143[1] proceedings. Thus the Grounds of Appeal raised by the assessee are hereby allowed.

8. In the result the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 30-07-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy

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

Ahmedabad : Dated 30/07/2024

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