

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.02/Ahd/2024
(Assessment Year: 2019-20)

Adani Power Ltd., Adani Corporate House, Shantigram, Nr. Vaishnodevi Circle, S.G. Highway, Khodiyar, Ahmedabad, Khodiyar B.O., Gujarat-382421	Vs.	Deputy Commissioner of Income Tax, CPC, Bangalore (Present Jurisdiction DCIT, Circle-1(1)(1), Ahmedabad)
[PAN No.AABCA2957L]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Dhrunal Bhatt, A.R.
Respondent by:	Shri Waghe Prasad Rao, Sr. DR

Date of Hearing	16.10.2024
Date of Pronouncement	16.10.2024

O R D E R

PER DR. BRR KUMAR - ACCOUNTANT MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi, vide order dated 08.11.2023 passed for A.Y. 2019-20.

2. The Assessee has taken the following grounds of appeal:-

“1. In law and on the facts and in the circumstances of the case, the order u/s 250 of the Act passed by the ld. CIT(Appeal) NFAC is arbitrary, erroneous, contrary to the provisions of law and on facts.

2. In law and on the facts and in the circumstances of the case, the ld. CIT (Appeal) NFAC has erred in passing the appellate order without providing any opportunity of being heard. The action of Ld. CIT(A)-NFAC is against the principle of natural justice hence, the order passed by Ld. CIT(A) deserves to be quashed.

3. In law and in the facts and circumstances of the case of the Appellant, the order u/s 250 of the Income Tax Act, 1961 passed by Ld CIT(A) is without considering the facts of the case of appellant, is bad in law and deserves to be cancelled.

4. *In law and in the facts and circumstances in the case of the appellant, the Ld. CIT(A)-NFAC has grossly erred in upholding adjustment of Rs. 31,70,306/- on account of payment of employees' contribution to National Pension Scheme under section 36(1)(va) of the Act, made while passing rectification order u/s 154 of the act. The Ld. CIT(A)-NFAC ought to have appreciated that no due date of payment is prescribed for payment of such employees contribution to NPS and payment has been immediately made by appellant.*

5. *The appellant craves leave to add to alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."*

3. The issue pertains to delay payment of employees' contribution to NPS and the disallowance made under Section 36(1)(va) of the Act by the CPC.

4. We find that the issue involved in this appeal stands adjudicated by the order of the Coordinate Bench of the Tribunal in the case of Adani Electricity Mumbai Ltd. Vs. DCIT in ITA No. 543/Ahd/2024 vide order dated 14.10.2024. For the sake of ready reference, the operative portion of the said order is reproduced as under:

"5. *Before us, the Counsel for the assessee submitted that the Learned Commissioner of Income Tax (Appeals) has issued a decision based on an assumption that the issue at hand is comparable to the late payments of employees' contributions to the Provident Fund (PF) and Employee State Insurance (ESI), which is not the case. The Counsel for the assessee submitted that the CIT(A) overlooked crucial details, particularly that the National Pension Scheme (NPS) is governed by the Pension Fund Regulatory and Development Authority (PFRDA) and that the PFRDA Act, 2013 **does not specify a due date for contributions to NPS accounts.** To clarify the context, the Counsel for the assessee provided an overview of the NPS, explaining it as a pension and investment initiative by the Government of India designed to offer old-age security to citizens. It was submitted that the NPS is a regulated scheme that allows individuals, including those in the public, private, and unorganized sectors, to contribute regularly toward their pension. This program aims to create a corpus for retirement, with portions of the corpus available for withdrawal at retirement and the remaining amount disbursed as a monthly pension thereafter. The NPS has evolved to become accessible to all Indian citizens, fostering a culture of saving for retirement, and it offers tax benefits under Sections 80C and 80CCD of the Income Tax Act. The Counsel for the assessee submitted before us that contributions to the NPS can occur in two ways: individuals may contribute directly, availing deductions under sections 80CCD(1) and 80CCD(1B), or through their employer, which allows for deductions under section 80CCD(2). In the assessee's scenario, employees contribute through the assessee company, necessitating the company to make these payments, which the assessee submits were made before the filing of the return of income. This assertion of the assessee is supported by evidence from the tax audit report, indicating that all contributions were made timely before the specified due date of September 30, 2019. The*

Counsel for the assessee submitted that CIT(A) failed to appreciate the absence of a due date set by the PFRDA for NPS payments, and thereby erroneously applied principles relevant to PF and ESI contributions. Furthermore, the Counsel for the assessee submitted that the CIT(A) disregarded the evidence and arguments presented during the appeal, which reflects a lack of thorough consideration that is deemed unacceptable in judicial proceedings. Moreover, the Counsel for the assessee relied on favorable rulings ITAT Ahmedabad in other group cases, where employee contributions to NPS were recognized as valid when made before the return filing deadline. The appellant submitted that these precedents demonstrate that the disallowance by the Assessing Officer was unjustified.

6. In response, the Ld. DR during the course of hearing, drew attention of the Bench to Central Civil Services (Implementation of National Pension System) Rules, 2021 on the issue of the date by which employees' contribution NPS has to be deposited.

7. In counter to this contention of the Ld. DR, the Counsel for the assessee reproduced an extract from above stated Rules and submitted that these rules shall only apply to the Government servants, including civilian Government servants in the Defence Services, appointed substantively to Civil Services and posts in connection with the affairs of the Union. Therefore, these are not applicable to employees of the assessee company.

8. We have heard the rival contentions and perused the material on record. We observe that in the case of **Adani Petronet (Dahej) Port (P.) Ltd. 165 taxmann.com 531 (Ahmedabad - Trib.)** the assessee-company which was engaged in port activities, filed its return of income claiming employees contribution under any other welfare fund namely National Pension System (NPS) as business expenditure. The Assessing Officer disallowed the said amount on ground that such remittances were made beyond date as prescribed in respective Pension Fund Regulatory and Development Authority Act, 2013 and the said amount was added to income of assessee and tax demanded thereon. The ITAT noted that there was no due date prescribed in respective PFRDA Act, 2013 as to when payment was required to be made to NPS account. Further, all payments were duly made before filing of return of income as per section 139(1) of the Act. The ITAT held that the impugned adjustment made on payment under NPS was not justified and amount in question was to be treated as allowable under Section 43B(b) of the Act. While passing the order, the ITAT made the following observations:

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.8,19,544/- 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.8,19,544/- 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.

9. Again in the case of Adani Hazira Port Ltd. vs. DCIT in ITA No. 25/Ahd/2023 vide order dated 30.07.2024, while dealing with the similar issue, the Tribunal made the following observations:

“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.”

10. Further, it would also be useful to reproduce the Notification dated 31.03.2021 issued by the Department of Pension and Pensioners’ Welfare which specifies that the National Pension System Rules, 2021 shall apply only to Government servant and not to public at large:

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB - SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Pension and Pensioners' Welfare)

NOTIFICATION

New Delhi, 31.03.2024

G.S.R .,227 (E). – In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor-General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules regulating the methods of implementation of National Pension System, namely:-

1. Short title and commencement:

- (1) These rules may be called the Central Civil Services (Implementation of National Pension System) Rules, 2021.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Application:

Save as otherwise provided in these rules, these rules shall apply to the Government servants, including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union on or after 1st day of January, 2004, but shall not apply to,-

- (a) Railway servants;
- (b) persons in casual and daily rated employment;
- (c) persons paid from contingencies;
- (d) members of the All India Services;

11. *In view of the above notification, we note applies specifically to Government Servants including Civilian Government Servant in Defence Services.*

12. *Accordingly, in light of the above discussion and the judicial precedents on the subject, the appeal of the assessee is allowed."*

5. In the absence of any change in the factual matrix and the legal proposition, the appeal of the assessee is hereby allowed.

6. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open Court on 16.10.2024

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 16/10/2024
TANMAY, Sr. PS

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad