

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM “SMC” BENCH, VISAKHAPATNAM**

**(HYBRID HEARING)**

**श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER**

**&**

**SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER**

**आईटीए. नं. / ITA No. 160/VIZ/2025  
निर्धारणवर्ष/ Assessment Year:2018-19)**

<b>Bharath Yuva Sankshema Sangham</b> 20B-7-21/1 C/O. Ayyappa Medicals Gandhi Nagar, Eluru West Godavari District – 534002 Andhra Pradesh  [PAN:AIDPG1046K]	v.	<b>Income Tax Officer</b> Income Tax Office Eluru, West Godavari Andhra Pradesh
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	20.08.2025
घोषणा की तारीख/Date of Pronouncement	:	29.08.2025

**आदेश /O R D E R**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No.

ITBA/NFAC/S/250/2024-25/1071545008(1) dated 24.12.2024 for the A.Y.2018-19 arising out of order passed under section 143(3) of Income Tax Act, 1961 (in short 'Act') dated 21.03.2021.

2. At the outset, it is noticed from the appeal record that there is a delay of 19 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

*"1. Assessee was served with order passed u/s 250 of the IT Act dt.24.12.2024. Whereas, the assessee being aggrieved was desirous to file appeal before the Hon'ble ITAT and the appeal was filed on dt: 13.03.2025 as against the due date of filing i.e., dt. 22.02.2025, thus causing a delay of 19 days. The reasons and circumstances under which the appeal was filed belatedly are stated hereunder:*

*2. Whereas, it is stated that the assessee was go to counsel office for signing appeal papers on dt. 20.02.2025 but fallen ill effected with viral fever, therefore could not move out from the house however, after recovery signed the appeal papers which were filed on dt.13.03.2025 causing a delay of 19 days which may kindly be condoned.*

*3. I understand the importance of adhering to statutory timelines and sincerely apologize for this delay.*

*4. I humbly pray the Honourable Bench for favourable consideration of this delay."*

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 19 days. Therefore, we hereby condone the delay of 19

days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are, assessee's society is engaged in providing man power services to various government departments. During the year under consideration, the assessee's society had incurred salary expense of Rs.3,91,78,119/- and debited an expense of Rs.1,07,47,871/- as contribution to recognized Provident Fund. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

- i. Excess Contribution to Provident Fund, Superannuation or Gratuity Fund.

5. During the course of assessment proceedings, Ld. Assessing Officer [hereinafter in short "Ld. AO"] issued statutory notices under section 143(2) and 142(1) of the Act on various dates and served on the assessee. In response to the notices issued, the assessee submitted copies of Computation of income, details regarding salary expenses and Provident Fund etc. After considering the submissions of the assessee, Ld. AO noticed total salary paid by the assessee was Rs.3,91,78,119/ where 27% of the same came to Rs.1,05,78,092/- . However, the expenses claimed by the assessee in relation to the contribution made to the provident fund is Rs.1,07,47,871/-. Considering the same, the excess contribution of Rs.1,69,779/- (Rs.1,07,47,871 - Rs.1,05,78,092) was disallowed and added back to the total income of the assessee by the Ld. AO by order dated 21.03.2021. Ld.AO also erred in adopting the amount of

Rs.43,32,670/- as indicated in intimation u/s. 143(1) dated 09.08.2019 instead of adopting the returned income by the assessee. Subsequently, assessee filed a rectification petition on 20.04.2021 wherein the mistake of the Ld.AO in adopting the returned income was rectified by passing an order u/s. 154 of the Act, dated 31.05.2021. The Ld.AO while passing the rectification order dated 31.05.2021 determined the revised total income of the assessee at Rs.4,52,590/-.

6. Being aggrieved by the order of the Ld. AO dated 21.03.2021, assessee preferred an appeal before the Ld. CIT(A). After considering the submissions of the assessee, Ld. CIT(A) dismissed the appeal of the assessee.

7. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

*“1. That under the facts and circumstances of the case and in law, the order passed u/s 143(3) r.w.s.144B of the IT Act, 1961, dt.21.03.2021, as upheld by the Learned Commissioner of Income Tax (Appeals) "NFAC" vide order u/s 250 dt. 24.12.2024, is contrary to the facts of the case and the provisions of law.*

*2. The Learned CIT(A) erred in law and on facts in sustaining the total addition of Rs.42,19,631/- on the pretext that such payment is in violation of Rule 87 of the Income Tax Rules.*

*3. While sustaining the addition of Rs.42,19,631/-, the Learned CIT(A) erred in applying the provisions of section 36(1)(va) and section 43B of the IT Act, 1961, which are not relevant to the present case since the issue before him was regarding Rule 87 of IT Rules.*

*4. The Learned CIT(A) failed to take note that the appellant admitted and filed a return of income at Rs.22,82,814/-, but the same was erroneously considered by the Assessing Officer at Rs.42,32,670/-*

*5. The Learned CIT(A), under the facts and circumstances of the case, failed to appropriately consider the explanations provided. The issue involved pertains to the applicability of Rule 87 of the Income Tax Rules;*

*however, the Learned CIT(A) diverted the matter to unrelated provisions u/s 36 and 43B of the IT Act, which were not the basis of the Assessing Officer's additions. Consequently, the impugned order is arbitrary, misconceived, and liable to be set aside.*

*6. Prayer: The appellant respectfully prays that, for the reasons outlined above and additional arguments that may be advanced at the time of hearing, the order passed u/s 250 of the IT Act, 1961, be quashed, and the addition made by the Assessing Officer be deleted.*

**8.** The only issue involved in this appeal is disallowance of Rs.1,69,779/- made by the Ld.AO, which was upheld by the Ld.CIT(A). At the outset, the Ld.AR submitted that the Ld.AO made the disallowance, relying on Rule 87 of Income Tax Rules, 1962. The Ld.CIT(A) also erroneously confirmed the addition by considering the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Act, while observing assessee has delayed in remitting the PF/ESI. The Ld.AR further submitted that the issue of addition under section 36(1)(va) r.w.s. 2(24)(x) of the Act was addressed by way of rectification order passed by the Ld.AO u/s. 154 of the Act. The Ld.AR further submitted that the only issue now contested by the assessee is with respect to addition in accordance with the Rule 87 of the Income Tax Rules, 1962. He further pleaded that the Rule 87 of the Income Tax Rules, 1962 falls under Part XIII-‘Approved Superannuation Fund’, the word ‘annual contribution’ in the said rule refers to contribution made by the employer in a year towards Superannuation fund of the employee and it does not apply to PF contributions. The Ld.AR further submitted that the annual contribution of employer towards superannuation fund cannot exceed 27% of salary minus employer’s contribution made to Provident Fund. The

Ld.AR further submitted that the AO while applying the Rule 87, has calculated 27% on the total salary and compared the same with contribution to ESI and PF to arrive at the excess contribution, which he worked out at Rs.1,69,779/-. Taking our attention to brief note page No. 2, the Ld.AR has shown the calculation made by the AO and correct calculation as per Rule 87 in a tabulated manner and pleaded that the disallowance made by the Ld.AO deserves to be deleted. He, therefore, pleaded to set-aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee on this ground. Ld.AR relied on the decision of the Co-ordinate Bench in the case of Ours Youth Club v. ITO in ITA No. 22/VIZ/2022 dated 24.07.2023.

9. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] relied on the orders of the lower authorities.

10. We have heard both the sides and perused the material available on record. We observed that similar issue was considered and adjudicated by the Coordinate Bench in the case of Ours Youth Club v. ITO (supra) and decided the issue in favour of the assessee. While holding so the Coordinate Bench of the Tribunal held as under: -

*“7. I have heard both the parties and perused the material placed on record. In the instant case, it is undisputed fact that the assessee had made contribution of Rs.1,21,90,565/- in respect of PF and ESI 7 I.T.A. No.22/Viz/2022, A.Y.2017-18 Ours Youth Club, Vijayanagaram amounting to Rs.99,23,938/- and Rs.22,66,627/- respectively. The assessee was asked to furnish information with evidence with regard to expenditure claimed towards contribution made towards superannuation fund or provident*

*fund exceeding the statutory limit of 27% of salaries. The Ld.AR contended that no disallowance is warranted as per rule 87 of IT Rules and the disallowance made by the AO deserves to be deleted. The rule 87 of Income Tax Rules, 1962 falls under Part XIII Approved Superannuation Fund, which reads as under :*

*“The ordinary annual contribution by the employer to a fund in respect of any particular employee shall not exceed [twenty-seven]percent of his salary for each year as reduced by the employer’s contribution, if any, to any provident fund (whether recognized or not) in respect of the same employee for that year.”*

*In the instant case, it is observed that the AO applied 27% on salary without reducing PF from salary and compared with the total contribution of PF and ESI superannuation fund and arrived at the excess contribution of Rs.33,45,827/-, which is not correct. The AO ought to have reduced PF from salary while applying 27% on salary and compared with the superannuation fund. The Ld.DR also fairly conceded that rule 87 of IT Rules is not applicable to the assessee’s case. Therefore, I hold that the word “annual contribution” in the said rule refers to contribution made by the employer in a year towards Superannuation fund of the employee. I find that the AO had erroneously applied Rule 87 of IT Rules, calculated 27% on the total salary and compared with the contribution to ESI and PF to arrive at the excess contribution of Rs.33,50,827/-, which was upheld by the Ld.CIT(A). I, therefore, set aside the orders passed by the lower authorities and allow the appeal of the assessee.”*

**11.** Consistently following the view taken in ITA No. 22/VIZ/2022, we find that the Ld. AO had erroneously applied Rule 87 of IT Rules, calculated 27% on the total salary and compared with the contribution to ESI and PF to arrive at the excess contribution of Rs.1,69,779/-, which was upheld by the Ld.CIT(A). We therefore, set aside the orders passed by the lower authorities and allow the appeal of the assessee.

**12.** With respect to Ground No.3 we notice that from the submissions of the Ld.AR that the addition of Rs.42,19,631/- was not raised before the Ld.CIT(A), however, he has confirmed the additions. There is merit in the argument of the

Ld.AR that the Ld.CIT(A) has wrongly adjudicated a ground which was not raised before him. We agree with the contention of the Ld.AR and thus delete the addition made by the Ld.CIT(A) which was erroneously adjudicated.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29<sup>th</sup> August, 2025.

Sd/-  
(रवीश सूद)  
(RAVISH SOOD)  
न्यायिक सदस्य/JUDICIAL MEMBER  
Dated: 29.08.2025  
Giridhar, Sr.PS

Sd/-  
(एस बालाकृष्णन)  
(S. BALAKRISHNAN)  
लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Bharath Yuva Sankshema Sangham**  
20B-7-21/1  
C/O. Ayyappa Medicals  
Gandhi Nagar, Eluru  
West Godavari District – 534002  
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer**  
Income Tax Office  
Eluru, West Godavari  
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam