

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

Before Shri Vikas Awasthy (JM) & Shri Prashant Maharishi(AM)

I.T.A. No.931/Mum/2021
(Assessment year 2017-18)

<p>TML Business Services Limited (earlier known as Concorde Motors (India) Limited) 3rd Floor, Nanavati Mahalaya 18 Homi Mody Street Hutatma Chowk, Fort Mumbai-400 001 PAN : AAACM0154A</p>	vs	<p>Deputy Commissioner of Income-tax, CPC, Bangalore</p>
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(APPELLANT)

(RESPONDENT)

Appellant by	Shri Rajan Vora
Respondent by	Shri Rajesh Damor

Date of hearing	22-12-2021
Date of pronouncement	29-12-2021

ORDER

Per Prashant Maharishi(AM)

01 This is an appeal filed by the assessee against the order passed by the learned Commissioner of Income tax (Appeals), National Faceless Appeal Centre for assessment year 2017-18 on 31/03/2021. By this order the Id CIT (A) has confirmed the disallowance of delayed deposit of employees contribution to provident fund of Rs 16,87,689/- and Employees state

Insurance scheme of Rs 3,23,898/- which was disallowed by central Processing Unit while passing intimation u/s 143 (1) of the Act .

02 Briefly stated, the facts show that the assessee is a company, filed its return of income on 31/10/2017 declaring a loss of Rs.38,58,48,484/-.

03 Assessee was issued a communication by the Central Processing Unit on 16/03/2019 wherein a sum of Rs.16,87,689/- was disallowed with respect to the employees' contribution to provident fund under section 36(1)(va) of the Act and a further disallowance of employees' contribution to the employees's State insurance scheme of Rs. 3,23,898/- under that section. Response submitted to the CPC shows that assessee submitted that the above sum has been deposited with respective authorities on or before the due date of filing of the return of income. The assessee also cited several judicial precedents wherein if such sum is paid before due date of filing the return of income, cannot be disallowed. However, CPC passed an intimation on 16th March, 2019 wherein the loss of the current year to be carried forward claim by the assessee at Rs. 38,58,48,481/- was determined at Rs. 38,58,36,897/- comprising of the above two disallowances.

04 Assessee was aggrieved by the above two disallowances, preferred an appeal before the National Faceless Appeal Centre. The appellate order under section 250 of the Act was passed on 16/03/2019 ex parte wherein the learned CIT(A) dismissed the appeal of the assessee relying upon the decision of the Hon'ble Gujarat High Court in case of CIT vs State Road Transport Corporation 366 ITR 170 (Guj). Accordingly, the disallowance made by the CPC was confirmed.

- 05 Assessee is aggrieved by the above order for the reason that it is passed exparte without granting sufficient opportunity to the assessee as well as in disregard to the decision of the Hon'ble jurisdictional High Bombay High Court in case of Ghatge Patil Transport Ltd 368 ITR 749 (Bom) wherein it is held that even in case of employees' contribution, if those contributions are deposited with the respective authorities before the due date of filing of the return of income, though belatedly, as per provisions of the respective Act, disallowance under section 43B of the Act, cannot be made. Therefore, assessee is in appeal before us.
- 06 The learned authorised representative submitted that the jurisdictional High Court decision in case of Ghatge Patil Transport Ltd (supra) has not been followed by the learned CIT(A). He further referred to the fact that contribution of Rs.16,87,689/- pertaining to provident fund was required to be deposited as per Provident Fund Act by 15th January, 2017 and same has been deposited on 16th January, 2017. He also referred to the letter dated 12th January, 2017 issued by the Ministry of Labour and Employment, Government of India which has granted 05 days' grace period for depositing a contribution for the month of December, 2016 by 20th January, 2017. Therefore, he submitted that even otherwise, the provident fund contribution made by the assessee on 16th January, 2017 is not at all deposit late but in time. He, therefore, submitted that on the merits of the case, the disallowance deserves to be deleted.
- 07 The learned departmental representative vehemently supported the order of the CIT(A) and submitted that employees' provident fund, if not paid within the due date prescribed under the respective law, is not allowable as

deduction. He referred to the provisions of section 43B stating that it applies only in case of employer's contribution.

08 We have carefully considered the rival contention and perused the orders of the lower authorities. We find for the month of December, 2016 of employees' contribution towards provident fund amounting to Rs.16,87,689/- which was required to be deposited according to the respective Provident Fund Act on or before 15th January, 2017 was deposited on 16th January, 2017. The Ministry of Labour and Employment has issued a letter dated 12/01/2017 wherein as a special case due to the problems on the portal on allotment of UAN, the due date for payment of contribution for the month of December, 2016 was extended upto 20th January, 2017. Assessee has already deposited the same on 16th January 2017, therefore, there is no delay in payment of employees' contribution of provident fund for the month of December, 2016. Therefore, the disallowance of Rs.16,87,689/- is incorrectly confirmed by the learned CIT(A).

09 With respect to the employees contribution to ESIC amounting to Rs. 3,23,898/-, undisputed facts shows that though such contribution is deposited after the due date prescribed under the respective law, but before filing of the return of income. We find that identical issue has been decided by the Hon'ble Bombay High Court which is the jurisdictional High Court wherein it has been held that both employees and employer's contribution are covered under the amendment to section 43B of the Act relying on the decision of the Hon'ble Supreme Court in CIT vs Alom Extrusions Ltd 319 ITR 306 (SC) and therefore, if such payments are made

on or before the due date of filing of the return of income, same are not disallowable. We find that instead of following the decision of jurisdictional High Court, the learned CIT(A) has followed the decision of non jurisdictional High Court, that is, Gujarat High Court. As the jurisdictional High Court decision squarely covers the issue in favour of the assessee, we direct the learned assessing officer to delete the disallowance of Rs.3,23,839/- on account of delayed payment of employees' contribution to ESIC.

- 10 In view of this, we direct the assessing officer to delete both the disallowances and accordingly, grounds 3 to 7 of the assessee are allowed.
- 11 In view of our decision above, grounds 1 & 2 becomes infructuous; hence, dismissed.
- 12 Accordingly, appeal of the assessee is allowed.

Order pronounced on 29/12/2021.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dt : 29/12/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai