

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 351/Chd/2021
(Assessment Year: 2018-19)

Arjun Yadav Prop. Arjun Yadav & Company, R-175, New Grain Market, Salem Tabri, Ludhiana. स्थायी लेखा सं./PAN NO: AATPY0543P	बनाम	Deputy Commissioner of Income Tax, CPC, Bangalore Through ITO, Ward 3(1), Ludhiana..
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निर्धारिती की ओर से/Assessee by: Shri Subhash Jain, CA
राजस्व की ओर से/ Revenue by : Smt.Priyanka Dhar, Sr.DR
सुनवाई की तारीख/Date of Hearing: 28.02.2022
उद्घोषणा की तारीख/Date of Pronouncement: 01.03.2022

(Hearing through Webex)

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short the ‘Ld. CIT(A)’] passed u/s 250 of the Income Tax Act, 1961 (in short ‘the Act’) dated 17.09.2021 for assessment year 2018-19.

2. Briefly, the facts of the case are that the assessee filed its return of income on 29.10.2018 declaring total income of

Rs.12,44,710/-, which was processed u/s 143(1) of the Act and in terms of intimation u/s 143(1) dated 15.12.2019 issued by CPC, had made disallowance of Rs.89,57,978/- towards late deposit of employees' contribution to ESI & PF.

3. On appeal, the Ld.CIT(A), NFAC has confirmed the disallowance and against the said order, the assessee has now come up in appeal before us.

4. During the course of hearing, the Ld. AR submitted that the assessee has deposited employees' contribution towards ESI and PF though with the delay of few days from the due date mentioned in the respective Statutes, however, the same was deposited well before the due date of filing of return of income u/s 139(1) of the Act. It was submitted that the said fact is not under dispute and where such contribution has been deposited before the due date of filing of the return of income, no disallowance u/s 36(1)(va) of the Act can be made. In support, reliance was placed on decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Hemla Embroidery Mills (P) Ltd., 366 ITR 117 and the decision of the Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusion Ltd., 319 ITR 306. It was further submitted that the aforesaid decisions have since been followed by the Hon'ble Punjab & Haryana High Court

in the case of CIT Vs. Mark Auto Industries Ltd., 358 ITR 43, CIT Vs. Kamal Family Trust (2013), 219 Taxman 81 and CIT Vs. Nuchem Limited, 59 Taxmann.com 455. It was submitted that the Ld.CIT(A) has relied upon the amendment brought in by the Finance Act, 2021 wherein Explanation-5 has been inserted. It was submitted that the said amendment has been inserted w.e.f. assessment year 2021-22 onwards and have to be read prospectively and not retrospectively and various Benches of the Tribunal has been taking a consistent view in this regard and our reference was drawn to the decision of the Chandigarh Benches of the Tribunal in the case of M/s Czars Faucets Limited Vs. CPC in ITA No.255/Chd/2021 dated 02.11.2021 wherein the relevant findings read as under:

“4. We have heard the submissions and perused the material available on record. It is seen that in the present appeal, the assessee has only assailed the disallowance sustained by the CIT(A) vide his order passed u/s 250(6) of the Act amounting to Rs. 4,52,231/- on the grounds that the ESI & PF payments were not made within time as per the relevant Statute. The claim of the assessee that the payments were made before the due date of filing of the return u/s 139(1) was held to be not relevant. It is seen that the said issue as far as the present Forum is concerned, stands fully covered in favour of the assessee not only by the consistent orders of the various Benches of the ITAT namely; the order dated 03.08.2021 of the Delhi Benches in the case of Insta Exhibition Pvt. Ltd. Vs ACIT in ITA 6941/Del/2017; order dated 01.07.2021 of the Hyderabad Bench in the case of Crescent

Roadways Pvt. Ltd. Vs DCIT in ITA No. 1952/Hyd/2018 but also consistent orders of the Chandigarh Bench. It is seen that all along the Co-ordinate Benches have held that the amendments to Sections 36(1)(va) and u/s 43B of the Income Tax Act effected by the Finance Act, 2021 is applicable prospectively and not retrospectively. While coming to the said conclusion, the Benches have relied upon and read from the Notes on Clauses at the time of introduction of the Finance Act, 2021 and have held that the amendment is applicable in relation to the assessment year 2021-22 and subsequent years and not retrospectively. Thus, in view of this legal position as considered by the Co-ordinate Benches and taking note of the decisions of the jurisdictional High Court in the case of CIT Vs Nuchem Limited ITA 323 of 2009 and CIT Vs Hemla Embroidery Mills Pvt. Ltd. (2014) 366 ITR 167 we are of the view that the additions cannot be made or sustained on the strength of the amendment effected by Finance Act, 2021 to Sections 36(1)(va)/43B of the Act as the legal position thereon is very clear. The departmental stand that it is clarificatory in nature has consistently been rejected. Thus, in the face of the clear legal position, as set out hereinabove, we find that the claim of the assessee is to be allowed in the year under consideration which is 2018-19 assessment year. The impugned order, accordingly, is set aside and the AO is directed to delete the disallowance. The appeal of the assessee is allowed. Said order was pronounced in the presence of the parties via Webex.”

5. Per contra, the Ld. DR relied upon the amendment brought in by the Finance Act, 2021 wherein Explanation to section 36(1)(va) of the Act has been introduced. It was submitted that from the reading of the said amendment it is evident that the law is and has always been very clear that employees' contribution to specified fund will not be allowed as deduction u/s 36(1)(va) of the Act if there is delay in

deposit even by a single day as per the due dates specified in the respective Statutes. It was further submitted that the said amendment is only declaratory/clarificatory in nature and, is, therefore, applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The Ld. DR accordingly submitted that in view of the unambiguous wording of the now amendment provisions of sections 36(1)(va) and 43B, it is clear that the employees' contribution can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant Statutes and this position has been clarified by the aforesaid amendment. It was accordingly submitted that there is no infirmity in the order passed by the Ld.CIT(A) wherein he has sustained the disallowance made u/s 143(1) of the Act, by the CPC on account of assessee's failure to pay the employees' contribution towards ESI and PF within the prescribed due dates as per section 36(1)(va) of the Act. He accordingly supported the order of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. In the instant case, it is not in dispute that employees' contribution to ESI and PF had been deposited well before the due date of filing of return of income u/s 139(1) of the Act. We further note that though the ld. CIT(A) has not disputed the various decisions of

Hon'ble Punjab & Haryana High Court but has decided to follow the decision rendered by the Hon'ble Gujarat High Court. Given the divergent views taken by the various High Courts and in the instant case, the fact that the jurisdiction over the Assessing officer lies with the Hon'ble Punjab & Haryana High Court, in our considered view, the Id CIT(A) ought to have considered and followed the decision of the jurisdictional Punjab & Haryana High Court, as evident from series of decisions referred supra, as the same is binding on all the appellate authorities as well as the Assessing officer under its jurisdiction in the State of Punjab & Haryana. We further note that the Id CIT(A) has referred to the amendment brought in by the Finance Act, 2021 wherein an explanation has been introduced to Sections 36(1)(va) and u/s 43B of the Income Tax Act. It is a consistent position across various Benches of the Tribunal including Chandigarh Benches that the amendment which has been brought in by the Finance Act, 2021 shall apply w.e.f. assessment year 2021-22 and subsequent assessment years and the impugned assessment year being assessment year 2018-19, the said amendment cannot be applied in the instant case. Therefore, considering the entirety of facts and circumstances of the case and following the decisions of various High Courts as well as Coordinate Benches of the

Tribunal referred above, the addition made by way of adjustment while processing the return of income u/s 143(1) of the Act, amounting to Rs.89,57,978/- so made by the CPC towards the deposit of employees' contribution towards ESI and PF paid before the due date of filing of the return of income u/s 139(1) of the Act, is hereby directed to be deleted.

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

Order pronounced on 01.03.2022.

Sd/-

(DIVA SINGH)

न्यायकि सदस्य/Judicial Member

Sd/-

(VIKRAM SINGH YADAV)

लेखा सदस्य/Accountant Member

Dated: 01.03.2022

रती

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar