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

BEFORESHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.1632/Mum/2021 (A.Y 2017-18)

New Consolidated Construction Co. Limited B-101, Marathon Innova, Ganpatrao Kadam Marg, Lower Parel (West) Mumbai 400 013	Vs.	DDIT, CPC Bengaluru – 560500
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACN4052E		
Appellant	..	Respondent

Appellant by :	Hiro Rai
Respondent by :	C.T. Mathews

Date of Hearing	16.03.2022
Date of Pronouncement	29.03.2022

<u>आदेश / O R D E R</u>

<u>PER AMARJIT SINGH, AM:</u>

The present appeal filed by the assessee against the order passed by the DDIT(CPC) u/s 143(1) of the I.T. Act, 1961, dated 09.03.2019 for A.Y. 2017-18. The assessee has raised the following grounds before us:

"1. The Learned CIT(A)-NFAC erred in law and as well as facts of the case in upholding the disallowance made by DCIT, CPC towards delayed payment of employee's contribution to provident fund of INR 50,47,759 under section 36(1)(va) of the Act , without appreciating the fact that the said payments were made within the due date of filing of appellant's income-tax return for the year under consideration and the same was allowed in the order passed under section 143(3) of the Act.

> 2. The Learned CIT(A)-NFAC erred in law in confirming an addition made by DCIT, CPC which is outside the scope of provisions of section 143(1) of the Act.
>
> 3. The Learned CIT(A)-NFAC erred in facts in stating that the appellant has not submitted anything further in the course of appellate proceedings."

2. The assessing officer has disallowed a sum of Rs.50,47,759/- in respect of delay in payment of employees contribution towards provident fund while processing the return of income u/s 143(1) of the Act.

3. The assessee has filed the appeal before the ld. CIT(A) and submitted that the entire contribution has been paid before due date of filing the return of income. However, the ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both sides and perused the material on record. Without retreating the facts as elaborated above, the assessee has deposited employee's contribution to PF/ESIC after due date specified in PF/ESIC Acts but before the due date of filing the return of income as prescribed in section 139(1) of the act. With the assistance of Ld. Representative, we have perused the decision of Hon'ble Jurisdiction Bombay High Court in the case of CIT v. Hindustan Organics Chemicals Ltd. 366 ITR 1 and GhatgePatil Transports Ltd. 228 taxman 340. In the case of GhatgePatil Transports Ltd. (supra), the Hon'ble jurisdictional High Court held that both employers and employee's contributions are covered under amendment to section 43B and judgment of the Hon'ble Supreme Court in CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416 and payment made was subject to benefit of section 43B. We have also gone through the decision of ITAT MavinahalliShivanajappa Vijay Kumar Vs. DCIT (ITA No. 596 & 597/Bang/2021) and AdhyarAnandBhavan Sweets India P. Ltd. Vs. ACIT (ITA No.402 & 403/Chennai/2021) on the issue of

applicability of the amended provisions of Explanation 2 to section 36(1)(va). The ITAT Bangalore vide ITA No. 596/Bang/2021 in the case of Shivanajappa Vijay Kumar (supra)after following the decision of Hon'ble High Court of Karnataka held that the amendment made to section 36(1)(va) of the Act will have prospective application. We have also perused the decision of ITAT Chennai in the case of Adhyar Anand Bhavan Sweets India P. Ltd. (supra), wherein after following the decision of Hon'ble High Court of Madras in the case of M/s Industrial Security and Intelligence India P. Ltd. in TCA No. 585/2015 held that the amendment brought in the statute by Finance Act, 2021, the provisions of section 36(1)(va) r.w.s. 43B of the Act amended by inserting Explanation 2 is prospective and not retrospective.

5. In the case of the assessee, it had remitted the employee's contribution towards PF/ESIC beyond the due date for payment as specified in PF/ESIC Act, but within the due date for filing the return of income, therefore, following the aforesaid decisions, we considered that Ld. CIT(A) is not justified in disallowing the claim of deduction of the assessee. Accordingly, we decide this issue in favour of the assessee and disallowance made by the Assessing Officer is deleted. Since we have decided the issue in favour of the assessee, therefore, ground Nos. 2 & 3 of the assessee are not required adjudication.

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

Order pronounced in the open court on 29.03.2021

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 29.03.2022
Rohit: PS

<u>आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to</u> :

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

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai