

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**BEFORE SHRI S.S. GODARA, JM
AND
SHRI G.D. PADMAHSHALI, AM**

I.T.A. No. 602/PUN/2021 : A.Y. 2019-20

Swach Plus Sahakari Sanstha
Maryadit, 3 Pleasant Apartment, 80/2/2 Baner
PUNE – 411 045
PAN: AAIAS 6737 P

: Appellant

Vs.

The Dy. Commissioner of Income-tax,
CPC Bangaluru

Respondent

Appellant by : Shri Kiran Sanmane
Respondent by: Shri M.G. Jasnani
Date of hearing : 04-10-2022
Date of pronouncement : 10-10-2022

ORDER

PER BENCH

This assessee's appeal for A.Y. 2019-20 arises against the National Faceless Appeal Centre (NFAC), Delhi's DIN & Order No. ITBA/NFAC/S/250/21-22/1036297528(1) dated 11-10-2021 in proceedings u/s 250 of Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. Suffice to say, it emerges during the course of hearing that the assessee's sole substantive grievance challenges correctness of both the lower authorities' action invoking sec. 36(1)(va) disallowance of ESI/PF involving the amount of Rs. 2,53,366/- for the sole reason that it had failed to deposit the same before the due date prescribed under the corresponding statute(s).

3. We have given our thoughtful consideration to the rival pleadings. It is the case of the assessee that as per various decisions of Pune Tribunal it has been held that if the employees' contribution to provident fund is paid before the due

date of filing of return of income, then it is deductible as per provisions of section 43B of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) and the amendment made by the Finance Act, 2021 inserting Explanation 2 to section 43B is applicable prospectively i.e. from A.Y. 2021-22. Admittedly, in the case before us, the payment of impugned employee’s’ contribution to provident fund was before the due date of filing of return of income u/s 139(1) of the Act.

4. We find the issue is squarely covered by the decision of Pune Tribunal in the case of Prashant Arun Sangai Vs. ADIT, CPC, Bangaluru in ITA No. 466/PUN/2021 for A.Y. 2019-20, order dated 22-06-2022 as well as in the case of SIP Moulds Pvt. Ltd. Vs. ITO Ward 2(1) Nashik in ITA No. 551/PUN/2021 for A.Y. 2019-20, order dated 28-06-2022. There is a consolidated order passed by the Tribunal in ITA No. 538/PUN/2021 and others in the case of Tilokchand Bhabutmal Shah Vs. ADCIT, CPC Bangaluru, etc., order dated 28-06-2022, where the facts before the Tribunal were that the A.O made disallowance on the ground that the assessee had not deposited the employee’s’ share of EPF and ESI etc. within due date prescribed under respective Statutes, but paid before due date for filing Return of Income under the provisions of section 139(1) of the Act. On appeal the Id. CIT(A), confirmed the said disallowance. The Tribunal held as follows:

6. *When the matter was called on none appeared on behalf of the appellants listed at Sl. No.2 to 6 of above cause title, despite due service of notice of hearing, except in the case of Tilokchand Bhabutmal Shah (listed at Sl. No.1 of the above cause title). Therefore, we proceed to dispose of all the appeals on merits after hearing the Id. CIT-DR.*

7. *We heard the Id. CIT-DR and perused the material on record. The only issue raised through various grounds of appeal in this appeal is against the confirmation of disallowance of Rs.1,46,592/- made by the Assessing Officer u/s 36(1)(va) of the Act on account of late deposit of the Employees’ share of EPF and ESI etc.*

8. *At the outset, Id. AR appearing on behalf of the appellant Tilokchand Bhabutmal Shah listed at Sl. No.1 of above cause title filed a copy of recent decision of Co-ordinate Bench of this Tribunal in the case of Prashant Arun Sangai vs. ADIT in ITA No.466/PUN/2021 for the assessment year 2019-20 order dated 22.06.2022 stating that the identical issue was decided by the Tribunal (supra) in favour of the*

assessee. Referring to this decision of the Tribunal (*supra*), he submitted that principle of consistency should be applied to the facts of the present case. The Id. CIT-DR has expressed no objection on this submission of the assessee.

9. Considering the submission of the Id. AR and perusing the recent decision of the Tribunal (*supra*), we find that the identical issue was came up before this Tribunal in the case of Prashant Arun Sangai (*supra*) wherein the Tribunal decided the similar issue in favour of the assessee relying on the decision of the Hon'ble Himachal Pradesh High Court in the case of CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP). The relevant paragraphs of the said decision of the Tribunal (*supra*) are extracted herein under :-

"4. We have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. We are, therefore, proceeding to dispose of the appeal *ex parte* qua the assessee on merits.

5. It is seen as an admitted position from the impugned order as well as the statement of facts before the Id. first appellate authority that the assessee did deduct employees' share of EPF and ESI and paid the same after the due date under the respective legislations but before the time stipulated for filing return u/s 139(1) of the Act for the year under consideration. In our opinion, this issue is no more *res integra* in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after due date under the respective Acts but before the date prescribed u/s 139 of the Act. The Hon'ble Himachal Pradesh High Court in CIT vs. Nipso Polyfabriks Ltd. (2013) 350 ITR 327 (HP) has held that there exists no difference between employees or employer's contribution and both are to be allowed as deduction if deposited before the due date.

6. At this juncture, it is relevant to mention that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that 5 the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01.04.2021. The effect of this amendment is that if the amount of employees' contribution towards EPF, ESI, etc is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139 of the Act. The Memorandum explaining the provisions of the Finance Bill, 2021, provides that this amendment will take effect from 1st April, 2021 and will, accordingly apply in relation to assessment year 2021- 2022 and subsequent assessment years. Since the assessment year under consideration is 2019-20, which is anterior to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts including the one in CIT vs. Nipso Polyfabriks Ltd. (*supra*) squarely applies to the facts and circumstances of the instant case, thereby not warranting any disallowance since the amount in question was admittedly deposited before due date u/s 139(1) of the Act. The addition is therefore, directed to be deleted."

10. Similarly, the Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom.) has taken identical view as taken by the Hon'ble Himachal Pradesh High Court in the case of Nipso Polyfabriks Ltd. (*supra*) and decided the issue in favour of the assessee.

11. Respectfully following the above judicial precedents, we hold that the ratio laid down by the Hon'ble High Courts cited above is squarely applicable to the facts of the present case. Therefore, following the principle of consistency, we direct the Assessing Officer to delete the addition of Rs.1,46,592/- made u/s 36(1)(va) of the Act.

12. In the result, the appeal filed by the assessee in ITA No.538/PUN/2021 for A.Y. 2019-20 stands allowed."

5. In the aforesaid decision, the Tribunal has relied on Hon'ble Jurisdictional High Court decision in the case of CIT Vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom) which followed the decision of Hon'ble Himachal Pradesh High Court in the case of CIT Vs. Nipso Polyfabrics Ltd. (2013) 350 ITR 327 (HP). Therefore, we are of the considered view that this issue is no more res integra in view of several judgments allowing deduction u/s 36(1)(va) of employees' share of contribution deposited after the due date under the respective Statutes but before the date prescribed u/s 139(1) of the Act. In fact, it was held by Hon'ble Himachal Pradesh High Court in Nipso Polyfabrics Ltd. (supra) that there exists no difference between the employees' or employers' contribution and both are to be allowed as deduction if deposited before the due date. The relevant observations we need to mention at this juncture that the Finance Act, 2021 has inserted Explanation 2 below section 36(1)(va) providing that the provisions of section 43B shall not apply for the purpose of determining the due date under this clause w.e.f. 01-04-2021. The effect of this amendment is that if the amount of employees' contribution towards EPF, ESI, etc. is delayed by an employer beyond the due date under the respective Acts, the disallowance will be called for notwithstanding the fact that it was deposited before the due date u/s 139(1) of the Act. The Memorandum explaining the provisions of the Finance Bill 2021, provides that this amendment will take effect from 1st April 2021 and will accordingly apply in relation to assessment year 2021-22 and subsequent assessment years. Before us, the assessment year is 2019-20. Since the assessment year under consideration is earlier to the amendment carried out with effect from A.Y. 2021-22, we hold that the position of law as set out by various Hon'ble High Courts' decisions including Hon'ble Jurisdictional Bombay High Court in the case of Ghatge Patil Transports Ltd (supra) and Hon'ble Himachal Pradesh High Court in Nipso Polyfabrics Ltd (supra) squarely applies

to the facts and circumstances of the instant case thereby not warranting any disallowance since the amount in question was admittedly deposited before the due date u/s 139(1) of the Act and also pertains to assessment year prior to A.Y. 2021-22. We adopt the foregoing detailed reasoning and direct the Assessing Officer herein to delete the impugned disallowance after factual verification that the assessee had credited/paid the ESI/EPF before the due date of filing the return u/s 139(1) of the Act. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on this 10th October 2022.

Sd/-
(G.D. PADMAHALI)
ACCOUNTANT MEMBER

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 10th day of October 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The concerned CIT
4. The NAFC Delhi
5. The D.R. ITAT 'B' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune

/// TRUE COPY ///

		Date	
1	Draft dictated on	04-10-2022	Sr.PS
2	Draft placed before author	06-10-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	10-10-2022	Sr.PS/PS
7	Date of uploading of order	10-10-2022	Sr.PS/PS
8	File sent to Bench Clerk	<u>10-10-2022</u>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		