

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.292/Hyd/2021		
Assessment Year: 2018-19		
Shri Thatiparthi Mohan Reddy, Chittoor PAN:ACCPR5574Q (Appellant)	Vs.	Income Tax Officer Ward 1(3) Tirupati (Respondent)
Assessee by:	Smt. C.S.Sree Lekha	
Revenue by:	Sri Waseem-ur-Rehman, DR	
Date of hearing:	02/08/2021	
Date of pronouncement:	30/08/2021	

ORDER

This is assessee's appeal for the A.Y 2018-19 against the order, dated 26.04.2019 passed by the National Faceless Appeal Centre (NFAC), New Delhi in respect of the appeal filed by the assessee before the CIT (A) Tirupati.

2. The only issue in this appeal is the disallowance u/s 36(1)(va) of the Act of delayed deposit to PF & ESI Contribution. I find that that the A.Y before the Tribunal is 2019-20 and under the Finance Act of 2021, Explanation 5 to section 43B of the Act has been introduced and also Explanation 2 to clause (va) of section 36(1) has been introduced to the effect that the provisions of section 43B shall be deemed to never have been applied to employee's contribution to PF & ESI paid beyond the due date under the relevant Act. The applicability of this amendment retrospectively has been considered by this Tribunal in the case of Late Smt. Anjali Devi Majeti (Rep. by L/R Majeti Nagaraju) Hyderabad vs. Income Tax Officer in ITA No. 95/Hyd/2020

dated 19.5.2021 and it has been held that the amendment is applicable prospectively. For ready reference, the relevant portion of the order is reproduced as under:

“4. *Having regard to the rival contentions and the material on record, I find that the Coordinate Bench of this Tribunal in the case of Elico Ltd vs. ACIT in I.T.A. No. 1120/HYD/2016, dated 18.11.2020 (to which the JM is a signatory), has decided the issue as under:*

3. *Ground No.2 is related to sustaining of addition made by the AO of Rs.41,18,429/- and Rs.3,80,215/- being the amount of PF and ESI respectively by applying the provisions of Section 36(1)(va) of the Income Tax Act [Act].*

3.1. *In the assessment proceedings, the AO found that the assessee has remitted the sum of Rs.41,18,429/- employees contribution towards PF beyond the due date specified under the Employees Provident Fund Act, however, remitted the same before the due date of filing of return of income. Similarly, the assessee has remitted the contribution towards ESI amounting to Rs.3,80,215/- belatedly. However, both the contributions i.e., employees contribution of PF as well as the ESI were remitted to the concerned accounts before the due date of filing of returns of income u/s 139(1) of the act. The AO viewed that as the amounts were paid into the respective accounts belatedly beyond the due date specified under the provisions of the respective statutes, the AO made the addition to the returned income of the assessee.*

3.2. *Against the order of AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) in his detailed order, confirmed the addition made by the AO, holding that the assessee having not remitted the contribution to the respective accounts before the due dates specified under the Act, the same are not allowable deductions u/s.43B of the Act. Hence, the assessee preferred appeal before the Tribunal, against the order of Ld.CIT(A).*

3.3. *During the appeal hearing, Ld.AR argued that the assessee has remitted the contributions to the respective accounts before the due date of filing the return, therefore requested to set aside the order of the lower authorities and delete the addition made by the AO.*

3.4. *On the other hand, the Ld.DR submitted that the EPF is in respect of employees contribution, both the PF and ESI are required to be allowed as deductions, if the same are remitted to the respective accounts before the due dates, specified in the respective act. Since the assessee failed to remit the same before the due date of the respective accounts, as per the provisions of Section 36(1)(va) of the Act, the AO made the addition and the Ld.CIT(A) rightly sustained, hence, no interference is called-for in the order of Ld.CIT(A), hence argued that the appeal of the assessee deserved to be dismissed.*

3.5. *We have heard both the parties through video conference and gone through the material placed on record. In the instant case, there is no dispute that the amounts-in-question with regard to EPF and ESI were remitted to the concerned accounts before the due date of filing the return of income u/sn139(1). This, the Tribunal has consistently taken a view that if the PF and ESI are remitted to the respective accounts, the same are required to be allowed as deduction. In the case*

of *KLR Industries Ltd., Vs. DCIT (2017) [83 taxmann.com 322] (Hyd)*, the Tribunal held as under:

"34. The A.O. disallowed the expenditure claimed by observing that the assessee has not remitted the employees contribution to PF and ESI within the prescribed date as mentioned in section 36(1)(va). Though, the assessee did not challenge the disallowance before learned CIT(A) but he raised an additional ground before us challenging the said disallowance. It is the contention of the assessee that the employees contribution to ESI and PF though, was not paid within the due date as prescribed under section 36(1)(va) but such dues having been paid before the due date of filing of return of the income as prescribed under section 139(1), the amount is allowable as a deduction as per the provisions of section 43B. We find merit in the aforesaid submissions of the assessee. There are a number of judicial precedents on this issue wherein it is held that if the employees contribution to PF and ESI is paid within the due date of filing of return of income under section 139(1), then, the amount is allowable as a deduction in view of the provision of section 43B. In view of the afore said, we delete the addition of Rs.2,07,209".

3.5.1. Similarly, Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs. Rajasthan Beverages Corporation Ltd., (2017) [84 taxmann.com 173] held that no disallowance can be made in respect of PF and ESI u/s.36(1)(va) of the Act, if the same are deposited on or before the due date of filing the return of income. For the sake clarity and convenience we extract relevant part of the order of the Hon'ble Rajasthan High as under:

"5. So far as the question relating to privilege fees amounting to Rs.26.00 Crores in the instant year as well as the deduction of claim of Rs.17,80,765/- on account of Provident Fund (PF) and ESI is concerned, this Court has extensively considered the aforesaid two questions in assessee's own case vide judgment and order dt.26.05.2016 referred to (supra) and has held that the privilege fees being a revenue expenditure, is required to be allowed as a revenue expenditure. This court in the aforesaid case has also allowed the claim of the assessee, in so far as payment of PF & ESI etc. is concerned, on the finding of fact that the amounts in question were deposited on or before the due date of furnishing of the return of income and taking in consideration judgment of this Court in CIT v. State Bank of Bikaner & Jaipur [2014] 363 ITR 70/43 taxmann.com 411/225 Taxman 6 (Mag.) (Raj.) and CIT v. Jaipur Vidhut Vitaran Nigam Ltd. [2014] 363 ITR 307/49 taxmann.com 540/[2015] 228 Taxman 214 (Mag.) (Raj.) and accordingly both the questions are covered by the aforesaid judgment and against the revenue".

*Against which the revenue has filed SLP before the Hon'ble Supreme Court, which was dismissed by the Hon'ble Apex Court in (2017) [85 taxmann.com 185]. Therefore, taking the consistent view and respectfully following the view taken by the Co-ordinate Bench of the ITAT in the case of *KLR Industries Ltd., Vs. DCIT (supra)*, we hold that no disallowance could be made in respect of employees contribution of PF and ESI if the same are deposited before the due date of filing the return of income. Accordingly, we set aside the order of Ld.CIT(A) and delete the addition made by the AO. The appeal of the assessee on this ground is allowed".*

5. Respectfully following the same, I set aside the order of the CIT (A) and delete the addition made by the Assessing Officer on this issue".

3. Respectfully following the same, I hold that since the assessee has deposited the Employees Contribution to the PF and ESI before filing the return of income, the same is not to be disallowed. Assessee's appeal is accordingly allowed.

4. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 30th August, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 30th August, 2021.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 1(3) Tirupati
3	CIT (A)-National Faceless Appeal Centre, Delhi
4	CIT (A)-Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order