

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

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य

BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.176/Chd/2021

निर्धारण वर्ष / Assessment Year : 2019-20

Digital Solution Services Pvt. Ltd., SCO 61, Sector 26, Chandigarh	बनाम	The Assistant Director of Income Tax, CPC, Bengaluru ITO, Ward-5(1), Chandigarh.
स्थायी लेखा सं./PAN NO: AAGCD7856A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 26.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10.2021

(Hearing through webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), Delhi [(in short the ‘Ld. CIT(A)] National Faceless Appeal Centre dated 25.05.2021 relating to

assessment year 2019-20, passed u/s 250 of the of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The solitary issue in the present appeal relates to the addition made in the intimation made to the assessee on account of delayed payment of ESI and PF amounting to Rs.6,87,309/- by invoking the provisions of section 36(1)(v) of the Act. The Ld.CIT(A) upheld the addition holding that the amendment effected by the Finance Act, 2021 to section 43B of the Act by insertion of Explanation-5 and section 36(1)(va) of the Act by insertion of Explanation-2, both to the effect that due date for payment of employees' contribution to ESI and PF, for the purpose of claiming deduction of the said amount as per the provisions of section 36(1)(va) of the Act was not governed by section 43B stipulating the due date to be till the filing of return of income u/s 139(1) of the Act meaning thereby the employees' contribution to ESI and PF was to be paid by due date specified in their respective Acts for the purpose of claiming deduction thereof. The Ld.CIT(A) held that the said amendment though effected by the Finance Act, 2021 but when read in the background of the decision of the Hon'ble Apex Court in the case of Allied Motors Pvt. Ltd. Vs. CIT, 91

Taxman, 205 (SC), the intention of Legislature set out through memorandum through the Finance Act while introducing the Explanations to section made it clear that the said amendments would apply to all pending matters as on date. Accordingly, he brushed aside the contention of the Ld.Counsel for the assessee that the issue already stood decided in its favour by the Hon'ble Jurisdictional High Court and applying the amendments to section 43B and section 36(1)(va) of the Act disallowed the employers' contribution to ESI and pF not paid before the due date specified in the said Acts.

3. Before us Ld.Counsel for the assessee submitted that various Benches of the ITAT have already adjudicated this issue in favour of the assessee. He referred to the decision of the ITAT, Hyderabad Bench in the case of Value Momentum Software ; Vs. DCIT in ITA No.2197/Hyd/2017, dated 19.05.2021 and the decision of ITAT Chandigarh Bench in the case of Hotel Surya Vs. DCIT in ITA Nos.133 & 134/Chd/2021, dated 05.08.2021. Copy of the orders was placed before us.

4. The Ld. DR was unable to bring any contrary judgment to our notice, nor was any distinguishing facts brought to

our notice. He however relied on the order of the CIT(A).

5. We have heard both the parties. It is not denied that the employees contribution to ESI and PF was allowable and claimed as deduction by the assessee on the strength of various decisions of the jurisdictional High Court holding contributions deposited by the due date of filing of return of income u/s 139(1) of the Act as allowable. The Revenue has disallowed the same in the impugned year by applying the amendment made by Finance Act 2021 to section 36(1)(va) and 43B of the Act allowing the claim of such deduction only when paid by due dates specified in their respective Acts, holding the amendment to be applicable on all pending cases post the amendment.

6. We have gone through the orders of the coordinate Benches of the ITAT cited by the Ld.Counsel for the assessee before us and are also aware of other decisions also of the ITAT, Delhi Bench in the case of Insta Exhibition Pvt. Ltd Vs. Addl.CIT in ITA No.6941/Del/2017, dated 03.08.2021, the decision of ITAT, Hyderabad Bench in the case of Crescent Roadways Pvt. Ltd; Vs. DCIT in ITA No.1952/Hyd/2018, dated 01.07.2021, consistently holding that the amendment to section 36(1)(va) and u/s 43B of

the Act effected by the Finance Act 2021 is applicable prospectively, reading from the Notes on Clauses at the time of introduction of the Finance Act, 2021, specifically stating the amendment being applicable in relation to assessment year 2021-22 and subsequent years. Therefore the addition, we hold, cannot be made on the strength of the amendment effected by Finance Act 2021 to section 36(1)(va)/43B of the Act. Moreover it is an admitted position that the jurisdictional High Court has in various decisions held that employees contribution to ESI & PF is allowable if paid by the due date of filing return of income u/s 139(1) of the Act. The jurisdictional High Court has held so in the following cases:

- 1) CIT Vs. Nuchem Limited, ITA No.323 of 2009
- 2) CIT Vs. Hemla Embroidery Mills Pvt. Ltd.(2014), 366 ITR 167

7. In view of the above, we hold that the claim of employees contribution to ESI and PF as per section 36(1)(va) of the Act cannot be denied in the impugned year, i.e. 2019-20 on the basis of amendment made to the section by Finance Act 2021. The order of the Ld.CIT(A) upholding the said disallowance to the tune of Rs. 6,87,309/- is therefore set aside and the AO is directed to allow the claim

of the assessee..

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

Order pronounced on 4th October 2021.

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायकि सदस्य/Judicial Member

दिनांक /Dated: 4th October, 2021

रती

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

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