

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 57/JP/2022
निर्धारण वर्ष / Assessment Year : 2019-20

M/s. Shiv Veg Pro Private Limited SP-3, RIICO Agro Food Park Ranpur, Kota 325 003 (Raj)	बनाम Vs.	The CPC BENGALURU/ACIT Circle-1, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJCS 7629 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya, Advocate
राजस्व की ओर से / Revenue by: Smt. Runi Paul, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 06/04/2022
उद्घोषणा की तारीख / Date of Pronouncement: 12 /04/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal by the assessee is directed against the order of the Id. CIT(A) dated 28-12-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2019-20.

2. The hearing of the appeal was concluded through video conference by both the parties in view of the prevailing situation of Covid-19 Pandemic.

3. The grounds of appeal raised by the assessee are as under:-

“1. The impugned disallowance made in the order u/s 143(1) dated 4-06-2020 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. Rs.39,81,357: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of expenditure made by AO, on account of employees contribution towards PF/ESI payment of Rs.39,81,357/- by invoking the provisions of Section 36(1)(va) of the Act. The disallowance so made being contrary to the provisions of law and facts of the case. Hence, the same kindly be deleted in full.

4. The Ground No. 1 of the assessee is general in nature which does not require any adjudication.

5.1 The main issue arises in this appeal of the assessee is regarding disallowance of employee's contribution of PF and ESI deposited belatedly but before due date of filing of return of income U/s 139(1) of the Income Tax Act, 1961 (in short, the Act).

5.2 The assessee filed its return of income on 15.10.2019 which was processed u/s 143(1) of the Act whereby an adjustment was made on account of disallowance of claim of deduction with respect to employees' contribution towards PF and ESIC deposited belatedly. During the course of assessment proceedings, the CPC, Bangalore confirmed the disallowance of Rs.39,81,357/- on account of late deposit of employees contribution towards PF/ESI. The assessee challenged the said adjustment before the Id. CIT(A)/NFAC and contended that as per the binding

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precedents if the payment is made in the government account before due date of filing of return of income U/s 139(1) of the Act then as per provisions of Section 43B of the Act, no disallowance is made. The Id. CIT(A)/NFAC did not accept this contention of the assessee and confirmed the disallowance by considering the amendment in Section 36(1)(va) of the Act whereby an explanation (2) as well as explanation (5) to Section 43B of the Act was inserted being retrospective in nature.

5.3. The Hon'ble Rajasthan High Court as well as other Hon'ble High Courts are consistently holding that where Assessee had paid employees contribution of PF and ESIC, though beyond due date(s) under respective Acts but prior to due date of filing the Return of income under sec. 139(1) of IT Act, the payments cannot be disallowed u/s. 43B. The assessee contended that avoiding the binding nature of judgments, the CPC, Bangalore was not justified in making addition of Rs.39,81,357/- which was paid before due date of filing of Return of Income and in rejecting application.

5.4 The matter was carried to CIT(A)/NFAC by the assessee and the appeal of the assessee is dismissed and the decision of the Jurisdictional High court is not considered while passing the order by the CIT(A)/ NFAC. The relevant paras 3.6 to 4 of CIT(A)/NFAC order dismissing the appeal of the assessee are as under:-

“3.6 It is evident from the above observations of the Hon'ble Supreme Court that the main section, the explanation and the intention of the Legislature set out through the Memorandum to the Finance Act have to be read together and harmoniously. As discussed in this order, it is evident from the language of Sec 43B(b) of the Act and the explanatory notes to Finance Act 1983, that employees' contribution was never intended to be covered by Sec 43B of the Act. This has been reiterated and reinforced through Explanation 5 to Sec 43B and Expl 2 to Sec 36(1)(va) inserted by Finance Act 2021. If such was the intention of the Legislature expressly made clear in the Finance Act 2021, through the explanatory notes, it would necessarily to be held that Expl 5 to Sec 43B & Expl 2 to Sec 36(1)(va) would apply to all pending matters as on date. On these arguments, it is held that the late payment of PF, ESI etc. are not covered by Sec 43B of the Act.

3.7 Admittedly in the present appeal, the facts indicate that the sum of Rs. 39,81,357/- being employees contribution to PF/ESI has been paid late under that Act. Based on the reasoning above, the addition made by the CPC deserves to be upheld. Therefore, the addition made of Rs. 39,81,357/- is confirmed and the grounds raised in this regard are dismissed.

4. In the result, the appeal is treated as dismissed.”

5.5 During the course of hearing, the ld. AR of the assessee prayed that ld, CIT(A) has erred in confirming the addition of Rs.39,81,357/- on account of late payment of employees PF and ESI Contribution for which the ld. AR of the assessee relied on following case laws:-

“ Covered Issue: In the case of Kamal Kishore Sarda ITA. No. 224/JP/2021 dated 28.02.2022, the bench has allowed the appeal following the judgements of Mohangarh Engineers and Construction company vs DCIT, CPC ITA No. 405/JODH/2021 dated 12.08.2021 and

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Similarly, in **M/s K.S. Automobiles Pvt. Ltd. vs ITO in ITA No. 1184-JP-2018 vide order dated 18-03-2019**, the Hon'ble Tribunal held as under:

"Thus, it is clear that the Hon'ble jurisdictional High Court has followed the earlier decisions in case of PCIT vs. Rajasthan State Seed Corporation Limited 386 ITR 267 as well as decision in case of CIT vs. State Bank of Bikaner & Jaipur (supra). All these decisions which were allowed by the Hon'ble jurisdictional High Court are in favour of the assessee however, in the conclusion in para 6 there is a typographical mistake wherein it is stated "these issues decided in favour of the Department and against the assessee". The whole decision of the Hon'ble High Court has to be considered in the contest of the decision followed and the subsequent line which says "it will be opened for the Department to recover the amount" if the decision in their favour which means that in case of further appeal before Hon'ble Supreme Court if decision is delivered in favour of the department it can recover the amount. Therefore, even the decision which is relied upon the ld. CIT(A) the same is in favour of the assessee though due to topographical mistake it was misunderstood by the ld. CIT(A) as in favour of the Revenue. Accordingly, in view of a series of decisions of the Hon'ble Jurisdictional High Court in favour of the assessee and further Hon'ble Supreme Court in case of PCIT vs. Rajasthan State Beverages Corporation Ltd. 250 taxmann 16 has dismissed the SLP filed by the Department this issue is decided in favour of the assessee and against the Revenue. Hence, disallowances-additions made by the AO on account of employees contribution to PF & ESI are deleted. In the result, both the appeals of the assessee are allowed."

2.2 In Tokeim India (P) Ltd. vs DCIT (2018) 32 TTJ 103 (Mum. Trib.)
 it was held vide para 18:

"We have heard the rival contentions and perused material on record. It is evident, the only reason for disallowance of payment made towards employees contribution to PF is, such payment was not made within the due date as provided under Expl. 2 to Sec 36(1)(va) of the Act. However, there is no dispute to the fact that such payments were made before the due date of filing of return of income for the impugned assessment year. That being the case, following the decision of Hon'ble Jurisdictional High Court in Hindustan Organic Ltd. vs CIT 366 ITR 001 we also allow assessee's claim of deduction. The addition made is deleted. Ground No. 3 is allowed"

2.3 In CIT vs. Manglam Arts (2017) 398 ITR 594 (Raj HC) it was held that

"Mr. Mathur has also contended that regarding second issue with regard to ESI and PF, however, the same is covered by the decision of this Court in the case of CIT vs. State Bank of Bikaner & Jaipur D.B. IT Appeal No. 177 of 2011 decided on 6th Jan., 2014, wherein it has been held as under

"Thus, we are of the view that where the PF and-or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under s. 139(1), cannot be disallowed under s. 43B or under s. 36(1)(va) of the IT Act. "

2.4 It is submitted that the **issue is now no more res-integra** in as much as the Hon'ble Rajasthan High Court has already taken a view that employer and employees contributions both, if paid before the due date u-s 139 no disallowance can be made u-s 36(1)(v)(a) r-w s. 2(24)(x) and s. 43B. In the case of **CIT vs. SBBJ (2014) 363 ITR 70 (Raj)**, it was held that:

"Where PF and-or EPF, CPF, GPF etc., if paid after due date under respective Act but before filing of return of income u-s. 139(1), could not be disallowed u-s. 43B or u-s. 36(1)(va). Substantial question of law answered against revenue and in favour of assessee. Revenue's appeal dismissed."

2.5 Similarly in the case of **CIT vs. Jaipur Vidyut Vitran Nigam Ltd. (2014) 363 ITR 307 (Raj)** it was held that:

"If the amount has been deposited on or before the due date of filing the return u-s 139 then the amount cannot be disallowed u-s 43B or u-s 36(1)(va) of the Act. In instant case the entire amount was deposited by the respondent-assessee at least on or before the due date of filing of the returns under Section 139 thus no disallowance could be made u-s 43B or section 36(1)(va). No substantial question of law arises out of the impugned orders of the ITAT. Commissioner of Income Tax vs. M-s State Bank of Bikaner & Jaipur (D.B. Income Tax Appeal No.177-2011); Commissioner of Income Tax vs. Jaipur Vidyut Vitaran Nigam Ltd. (D.B. Income Tax Appeal No.189-2011), followed."

2.6 The Hon'ble ITAT, Jaipur Bench has also followed the same view in the case of **ACIT v-s M-s Anil Special Steel Industries Ltd., Jaipur (2014) 52 TW 189 (JP)** Para 4 & 7 of its order.

2.7 The above decisions are binding upon the revenue even if they have filed SLP in absence of any stay granted over the operation of the said judgment.

2.8 The Hon'ble ITAT Jaipur bench, Jaipur in the case of **Zuberi Engineering Company vs. DCIT (2019) 197 TTJ (Jp) 659** has held as under (**Para 18**):

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"18. We have heard the learned Authorised Representative of the assessee as well as the learned CIT Departmental Representative and considered the relevant material on record. This issue is covered by the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Jaipur Vidyut Vitran Nigam Ltd. (2014) 98 DTR (Raj) 105: (2014) 265 CTR 62 (Raj) as under :

"6. We have considered the arguments advanced by the learned counsel for the Revenue and have also gone through the impugned orders. In our view, no substantial question of law arises out of the orders of the Tribunal as it is an admitted fact that the entire amount was deposited by the respondent-assessee at least on or before the due date of filing of the returns under s. 139 of the IT Act and being a concurrent finding of fact by the respective authorities and in the light of the judgments rendered by this Court in the case of CIT vs. State Bank of Bikaner & Jaipur (IT Appeal No. 177 of 2011) so also CIT vs. Jaipur Vidyut Vitran Nigam Ltd. (IT Appeal No. 189 of 2011) of even date wherein it has been held that if the amount has been deposited on or before the due date of filing the return under s. 139 and admittedly it was deposited on or before the due date then the amount cannot be disallowed under s. 43B of the IT Act or under s. 36(1)(va) of the Act. In fact, in the above matters one of the parties is same as in the present appeals, therefore, the issue is no more res Integra in the light of judgments of this Court, referred to supra and, in our view, no substantial question of law arises out of the impugned orders of the Tribunal, which may require attention of this Court."

Similarly in the case of CIT vs. SBBJ (2014) 99 DTR (Raj) 131: (2014) 265 CTR (Raj) 471 : (2014) 363 ITR 70 (Raj), the Hon'ble Jurisdictional High Court has held as under :

"21. A conjoint reading of the proviso to s. 43B which was inserted by the Finance Act, 1987 made effective from 1st April, 1988, the words numbered as cls. (a), (c), (d), (e) and (f), are omitted from the above proviso and, furthermore second proviso was removed by Finance Act, 2003, therefore, the deduction towards the employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the Explanation appended to s. 36(1)(va) of the Act further envisages that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under s. 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that s. 43B starts with a notwithstanding clause and would thus override s. 36(1)(va) and if read in isolation s. 43B would become obsolete. Accordingly, contention of counsel for the Revenue is not tenable for the reason aforesaid that deduction out of the gross income for payment of tax at the time of submission of return under s. 139 is permissible only if the statutory liability of payment of PF or other contributions referred to in cl (b) are paid within the due date under the respective enactments by the assesseees and not under the due date of filing of return."

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22. *We have already observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assessee though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment of interest and other consequences and to get benefit under the IT Act, an assessee ought to have actually deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub s. (1) of s. 139 of the IT Act.*

23. *Thus, we are of the view that where the PF and-or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under s. 139(1), cannot be disallowed under s. 43B or under s. 36(1)(va) of the IT Act."*

Accordingly, in view of the binding precedent of the Hon'ble jurisdictional High Court, the disallowance made by the AO and confirmed by the learned CIT(A) is deleted.

2.9 The Hon'ble Courts and Tribunals have followed the decision in the case of **CIT v-s Alom Extrusions Ltd. (2009) 319 ITR 306 (SC)-227 CTR 417 (SC)-32 DTR 49 (SC).**

3. In the case of **CIT v-s GhatgePali Transports Ltd. (2015) 112 DTR 369 (BOM)** it is held that

*"Tribunal was justified in holding that disallowance of the **employees' contribution** made on account of provident fund, ESI and pension fund on account of delay in payment of the employees' contribution was **not sustainable.**"*

4. Alternatively, it is settled law that if decisions of non-Jurisdictional High courts are in conflict with each other than decision favourable to assessee must be followed. Kindly refer **CIT v. Vegetable Products Ltd. [1972] 88 ITR 192 (SC)** Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This principle has been consistently followed by the various authorities as also by the Hon'ble Supreme Court itself.

Thus the ld. AR of the assessee prayed that in view of the above settled legal position, the disallowance so made kindly be deleted.

5.6 On the other hand, the ld. DR supported the orders of the lower authorities.

5.7 We have heard both the parties and perused the materials available on record. The Bench noted during the course of hearing that the AO made an addition of Rs.39,81,357/- on account of late deposit of employees PF & ESI by the assessee. However, the assessee deposited the employees PF & ESI contribution before due date of filing of return of income u/s 139 of the Act. It is further observed that the ld. CIT(A) has confirmed the action of the AO holding that the sum of Rs.39,81,357/- being employees contribution to PF/ESI has been paid late under that Act and thus the addition made by the CPC deserves to be upheld. The Bench has taken into consideration its various orders wherein similar issue has been decided in favour of the assessee on the issue in question. Recently, the similar issue of late deposit of employees PF/ESI contribution by the assessee but paid the same before due date of filing of return of income in the case of Sanjay Agarwal vs CPC, Bengaluru/ITO, Ward 6(4), Jaipur (ITA NO.63/JP/2022) vide order dated 06-04-2022 has been disposed off by observing as under:-

“ 4.7. We have considered the rival submissions as well as the relevant material on record. There is no dispute that prior to the amendment brought by the Finance Bill, 2021 in Section 36(1)(va) as well as Section 43B of the Act, the issue of allowability of employees contribution towards PF and ESI and depositing the same in the

M/s. Shiv Veg Pro Pvt. Ltd. vs CPC, Bengaluru/ ACIT, Circle-1, Kota government account before the due date of filing of return of income U/s 139(1) of the Act was settled and decided in favour of the assessee by various binding precedents of Hon'ble High Courts including the Jurisdictional High Court. The limited controversy is whether the amendment brought to Section 36(1)(va) as well as 43B of the Act is applicable retrospective or from assessment year 2021-22 as it is specifically stated in the memorandum of Finance Bill, 2021. At the outset, it is noted that the Coordinate Bench of this Tribunal in the case of M/s Kogta Financial (India) Ltd. Vs CPC (supra) has considered this issue in para 5 to 7 as under:

“5. We have heard the rival contentions and perused the material available on record. In case of Mohangarh Engineers and Construction Company vs DCIT, CPC (Supra), speaking through one of us, we have extensively dealt with the identical matter relating to employee's contribution towards ESI/PF and our findings therein read as under:-

“13. We have heard the rival contentions and perused the material available on record. On perusal of the details submitted by the assessee as part of its return of income, it is noted that the assessee has deposited the employees's contribution towards ESI and PF well before the due date of filing of return of income u/s 139(1) and the last of such deposits were made on 16.04.2019 whereas due date of filing the return for the impugned assessment year 2019-20 was 31.10.2019 and the return of income was also filed on the said date. Admittedly and undisputedly, the employees's contribution to ESI and PF which have been collected by the assessee from its employees have thus been deposited well before the due date of filing of return of income u/s 139(1) of the Act.

14. The issue is no more res integra in light of series of decisions rendered by the Hon'ble Rajasthan High Court starting from CIT vs. State Bank of Bikaner & Jaipur (supra) and subsequent decisions.

15. In this regard, we may refer to the initial decision of Hon'ble Rajasthan High Court in case of CIT vs. State Bank of Bikaner & Jaipur wherein the Hon'ble High Court after extensively examining the matter and considering the various decisions of the Hon'ble Supreme Court and various other High Courts has decided the matter in favour of the assessee. In the said decision, the Hon'ble High Court was pleased to held as under:

“20. On perusal of Sec.36(1)(va) and Sec.43(B)(b) and analyzing the judgments rendered, in our view as well, it is clear that the legislature brought in the statute Section 43(B)(b) to curb the activities of such tax

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payers who did not discharge their statutory liability of payment of dues, as aforesaid; and rightly so as on the one hand claim was being made under Section 36 for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assesseees in claiming the deduction i.e. accrual basis and the same was being allowed, as the liability did exist but the said amount though claimed as a deduction was not being deposited even after lapse of several years. Therefore, to put a check on the said claims/deductions having been made, the said provision was brought in to curb the said activities and which was approved by the Hon'ble Apex Court in the case of Allied Motors (P) Ltd. (supra).

21. *A conjoint reading of the proviso to Section 43-B which was inserted by the Finance Act, 1987 made effective from 01/04/1988, the words numbered as clause (a), (c), (d), (e) and (f), are omitted from the above proviso and, furthermore second proviso was removed by Finance Act, 2003 therefore, the deduction towards the employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the explanation appended to Section 36(1)(va) of the Act further envisage that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under Section 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that Sec.43B starts with a notwithstanding clause & would thus override Sec.36(1) (va) and if read in isolation Sec. 43B would become obsolete. Accordingly, contention of counsel for the revenue is not tenable for the reason aforesaid that deductions out of the gross income for payment of tax at the time of submission of return under Section 139 is permissible only if the statutory liability of payment of PF or other contribution referred to in Clause (b) are paid within the due date under the respective enactments by the assesseees and not under the due date of filing of return.*

22. *We have already observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assesseees though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment of interest and other consequences and to get benefit under the Income Tax Act, an assessee ought to have actually deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub-section (1) of Section 139 of the IT Act.*

23. *Thus, we are of the view that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under Section 139(1), cannot be disallowed under Section 43B or under Section 36(1)(va) of the IT Act."*

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16. The said decision has subsequently been followed in *CIT vs. Jaipur Vidyut Vitran Nigam Ltd. (supra)*, *CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. (supra)*, and *CIT vs Rajasthan State Beverages Corporation Limited (supra)*. In all these decisions, it has been consistently held that where the PF and ESI dues are paid after the due date under the respective statutes but before filing of the return of income under section 139(1), the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act.

17. We further note that though the ld. CIT(A) has not disputed the various decisions of Hon'ble Rajasthan High Court but has decided to follow the decisions rendered by the Hon'ble Delhi, Madras, Gujarat and Kerala High Courts. 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 Rajasthan High Court, in our considered view, the ld CIT(A) ought to have considered and followed the decision of the jurisdictional Rajasthan 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 Rajasthan.

18. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs 4,38,530/- so made by the CPC towards the delayed deposit of the employees' contribution towards ESI and PF though paid well before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted as the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act in view of the binding decisions of the Hon'ble Rajasthan High Court."

6. In the instant case, admittedly and undisputedly, the employees' contribution to ESI and PF collected by the assessee from its employees have been deposited well before the due date of filing of return of income u/s 139(1) of the Act. Further, the ld D/R has referred to the explanation to section 36(1)(va) and section 43B by the Finance Act, 2021 and has also referred to the rationale of the amendment as explained by the Memorandum in the Finance Bill, 2021, however, I find that there are express wordings in the said memorandum which says "these amendments will take effect from 1st April, 2021 and will accordingly apply to assessment year 2021-22 and subsequent assessment years". In the instant case, the impugned assessment year is assessment year 2018-19 and therefore, the said amended provisions cannot be applied in the instant case. Similar view has been taken by the Coordinate Bangalore Benches in case of *Shri Gopalkrishna Aswini Kumar vs. ACIT (supra)* wherein it has held as under:-

"7. The Hon'ble Karnataka High Court in the case of *Essae Teraoka Pvt. Ltd., (supra)* has taken the view that employee's contribution

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7. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case and following the consistent decisions taken by the various Benches of the Tribunal, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs. 37,62,586/- so made by the CPC towards the deposit of the employees's contribution towards ESI and PF though paid before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted."

Thus, it is clear from the above cited decision that this Tribunal has considered various decisions on this issue and by following decisions of the Coordinate Benches of the Tribunal, this issue was decided in favour of the assessee by holding that amendment in Section 36(1)(va) as well as Section 43B of the Act by way of inserting the explanation vide Finance Bill, 2021 are applicable only from A.Y. 2021-22 and subsequent assessment years and therefore, the said amendment is not applicable to the assessment year under consideration.

4.8. Similar view has been taken by the Delhi Benches of the Tribunal in the case of Chatru Mal Garg Vs ACIT (supra) in para 7 as under:

"7. I have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to disallowance under section 36(1)(va) of the Act. It is an undisputed fact that there has been slight delay in the deposit of employees' contribution of PF and ESI by the assessee and the contribution have been deposited beyond the due date prescribed by the relevant

M/s. Shiv Veg Pro Pvt. Ltd. vs CPC, Bengaluru/ ACIT, Circle-1, Kota authorities but at the same time it is also a fact that the amounts have been deposited with the appropriate authorities by the assessee before filing the return of income for the relevant assessment year. I find that Hon'ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (supra) has held that no disallowance under section 36(1)(va) of the Act is called for when the amounts are deposited before filing the return of income. Similar view has also been taken by the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Hemla Embroidery Mills (P) Ltd (supra) and Indian Geotechnical Services (supra). As far as the applicability of amendment made by Finance Act 2021 is concerned, I find that the Co-ordinate Bench of Tribunal in the case of Indian Geotechnical Services (supra) has held that amendment made by Finance Bill 2021 shall take effect from 1st April 2021 and will accordingly apply to A.Y. 2021-11 and subsequent years. In the present case assessment year involved is 2018-19 and therefore following the aforesaid decision in the case of Indian Geotechnical Services (supra), I am of the view that the amended provisions would have no application to the case under consideration. Before me, Learned DR has relied on the decision of Co-ordinate Bench of Tribunal in the case of Vedvan Consultants Pvt. Ltd. (supra). It is settled law that when two judgments are available giving different views then the judgment which is in favour of the assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court. I therefore following the decision of High Courts cited hereinabove and the decision of the Co-ordinate Bench of Tribunal, I am of the view that no addition u/s 36(1)(va) of the Act is called for in the present case. Therefore I direct the AO to delete the addition. Thus the ground of assessee is allowed.''

Thus, it is clear that the Delhi Benches of the Tribunal has considered the earlier decision of the Tribunal in the case of Vadvan Consultants Pvt. Ltd. (supra) which was relied upon by the ld. CIT(A) as well as the ld. DR and the issue was decided by following the decisions of Hon'ble Delhi High Court and Hon'ble Punjab & Haryana High Court and the decisions of the Division Bench of the Delhi Tribunal in the case of Indian Geotechnical Services in ITA No. 622/Del/2018 order dated 27/08/2021. Accordingly, in view of the above discussions as well as following the decisions of the Coordinate Benches of the Tribunal, this issue is decided in favour of the assessee and consequently, the disallowance made on account of employees contribution towards PF & ESIC deposited before due date of filing of return of income U/s 139(1) of the Act amounting to Rs. 2,90,435/- is deleted.

5.0. In the result, the appeal of the assessee is allowed.''

5.8 Respectfully following the order of this Bench in the case of Sanjay Porwal vs CPC Bengaluru/ITO, Ward 6(4), Jaipur (supra), the disallowance made on account of employees contribution towards PF & ESI deposited before due date of filing of return of income u/s 139(1) of the Act amounting to Rs.39,81,357/- is deleted.

6.0. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12 /04/2022

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/04/2022

*Mishra

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

1. The Appellant- M/s. Shiv Veg Pro Private Ltd., Kota ,.
2. प्रत्यर्थी / The Respondent- The CPC, Bengaluru ./ ACIT, Circle-1, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 57/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar