

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

**श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM**

आयकर अपील सं./ITA No. 239/CHD/2021

निर्धारण वर्ष / Assessment Year : 2018-19

Shri Gurjant Singh Aolukh, 1146, SEcstor 67, Mohali.	बनाम VS	The ITO, Ward – 6(1), Chandigarh.
स्थायी लेखा सं./PAN No: AAWPA8638E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ajay Jain, C.A.

राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, JCIT

सुनवाई की तारीख/Date of Hearing : 01.11.2021

उद्घोषणा की तारीख/Date of Pronouncement : 02.11.2021

Hearing conducted via Webex

आदेश/ORDER

PER BENCH:

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi, (in short referred to as CIT(A) relating to A.Y 2018-19, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as “Act”) dated 30.07.2021.

2. The solitary issue in the present appeal relates to the addition made to the income of the assessee in the intimation made u/s 143(1) of the Act, by disallowing delayed payments of employees contribution to ESI and PF amounting to Rs. 8,70,211/- by invoking the provisions of section 36(l)(va) of the Act.

The Ld.CIT(A) upheld the addition relying upon various decisions of the ITAT and Hon'ble High Courts and also on the basis of the amendment effected by the Finance Act, 2021, to section 43B of the Act by insertion of Explanation-5 and to section 36(l)(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(l)(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 to be clarificatory and hence retrospective in application. Accordingly, 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 in the case of CIT vs Rai Agro Industries(2011) 334 ITR 122(P&H) &

CIT vs Hemla Embroidery Mills (P) Ltd(2014) 366 ITR 167(P&H), was brushed aside and the addition upheld.

3. At the outset itself, it was pointed out by the ld. counsel for the assessee that the issue is squarely covered by the decision of the Co-ordinate Bench in the following cases

i) Ajay Piplani Vs Assistant Director of Income Tax, CPC, Bengaluru in ITA No. 114/CHD/2021 order dated 04.10.2021

ii) M/s.Jupiter Aqua Lines Pvt. Ltd vs DCIT ,Circle 6(1) Mohali in ITA No.83/Chd/2021 dated 27th August 2021.

Copy of both the orders was placed before us.

4. The ld. DR fairly admitted that the issue stood covered by the aforesaid decision.

5. We have heard both the parties. We have also gone through the order of the ITAT in the case of Ajay Piplani (supra) wherein the issue has been adjudicated at para 5 to 7 of the order as under :

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(l)(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 have noted that it has been consistently held that the amendment to section 36(l)(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(l)(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. Hernia 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(l)(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. 18,21,088/- is therefore set aside and the AO is directed to allow the claim of the assessee.”*

6. Since the issue involved in the present appeal admittedly is identical, relating to the disallowance of employees' contribution to ESI and PF made as per the amendment made to Section 36(1)(va) of the Act by the Finance Act, 2021, though admittedly the amounts stood paid before the due date of filing

of return of income, the facts are identical to that in the case of Ajay Piplani (supra) and the issue, therefore, is squarely covered by the aforesaid decision. Following the same, the disallowance made of ESI/PF employees' contribution u/s 36(1)(va) amounting to Rs8,70,211/- is deleted.

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

Order pronounced on 02.11.2021.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

Sd/-
(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

"Poonam"

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 फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

1.	Draft dictated	01.11.2021	Sr.PS
2.	Draft first placed before author	01.11.2021	
3.	Approved draft comes to Sr.PS/PS		
4	Final draft placed before author		
5.	Order signed and pronounced on		
6	File sent to the Bench Clerk		Sr.PS
7.	Date on which file goes to the AR		
8.	Date on which file goes to the Head Clerk.		
9.	Date of dispatch of Order		