

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**CHANDIGARH BENCH ‘A, CHANDIGARH**  
**BEFORE: SHRI SUDHANSHU SRIIVASTAVA, JUDICIAL MEMBER**  
**AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA Nos. 185 & 193/Chd/2021**  
(Assessment Years: 2018-19 & 2019-20)

Sh. Jagmohan Singh, Plot No.76, Thana, Solan Himachal Pradesh.	बनाम	D.C.I.T., CPC, Bengaluru.
स्थायी लेखा सं./PAN NO: AKNPS4042H		

निर्धारिती की ओर से/Assessee by: Shri Parikshit Aggarwal, CA

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

सुनवाई की तारीख/Date of Hearing: 08.12.2021

उद्घोषणा की तारीख/Date of Pronouncement: 15.12.2021

**(Hearing through Webex)**

**आदेश/ORDER**

**Per Vikram Singh Yadav, Accountant Member:**

These are two appeals filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre Delhi [in short the ‘Ld. CIT(A), NFAC’] Delhi, passed u/s 250 of the Income Tax Act, 1961 (in short ‘the Act’) dated 06.07.2021 for assessment year 2018-19 and dated 28.07.2021 for assessment year 2019-20 respectively.

2. Since common issues are involved in both the appeals, these were heard together and are being disposed off by this consolidated order. For the purpose of present discussion with the consent of both the parties, the case of the assessee in ITA No.185/Chd/2021 is taken as the lead case.

**ITA No.185/Chd/2021(A.Y.2018-19)**

3. Briefly, the facts of the case are that the assessee filed his return of income on 18.10.2018 declaring total income of Rs.39,37,750/- which was processed u/s 143(1) of the Act and in terms of intimation u/s 143(1) dated 17.05.2019 issued by CPC, it made disallowance of Rs.11,99,710/- towards employees' contribution towards ESI and PF.

4. On appeal, the Ld.CIT(A), NFAC has confirmed the disallowance made u/s 143(1) of the Act on account of assessee's failure to pay the employees' contribution of ESI & PF within the prescribed due date under the relevant Statute as per section 36(1)(va) of the Act. Against the said order, the assessee has now come in appeal before us.

5. During the course of hearing, the Ld. AR submitted that the assessee has deposited employees' contribution towards ESI and PF though with the delay of few days from

the due date mentioned in the respective Statutes, however, the same was deposited well before the due date of filing of return of income u/s 139(1) of the Act. It was submitted that the said fact is not under dispute and where such contribution has been deposited before the due date of filing of the return of income, no disallowance u/s 36(1)(va) of the Act can be made. In support, reliance was placed on decision of the Hon'ble Rajasthan High Court in the case of CIT Vs. Rajasthan State Beverages Corporation Ltd. (2017) 392 ITR 2, against which SLP filed by the Revenue has been dismissed by the Hon'ble Supreme Court, as reported in PCIT Vs. Rajasthan State Beverages Corporation Ltd. (2017) 250 Taxman 16. It was further submitted that similar view has been taken by the Hon'ble Jurisdictional Himachal Pradesh High Court in the case of CIT Vs. M/s Nipso Polyfabriks Ltd. (2008), ITA No.73 of 2008. Similarly, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Rai Agro Industries Ltd. (2011), 334 ITR 122 has taken a similar view. It was further submitted that the Jaipur Benches of the Tribunal has also taken a similar view in the case of M/s Pee Tee Turners Vs. Assistant Director of CPC, ITA No.105/JP/2021, dated 28.10.2021 wherein the relevant findings read 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 undisputed//, 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(l)(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 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 Sect/on 36 for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assesseees in claiming the deduct/on 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, further more 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 deduct/on 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(l)(va) of the IT Act."*

*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 statues but before filing of the return of income under section 139(1), the same cannot be disallowed under section 43B read with section 36(l)(va) of the Act.*

*17. We further note that though the Id.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 Id 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's*

*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(l)(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 Id D/R has referred to the explanation to section 36(l)(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, we find that there are express wordings in the said memorandum which says "these amendments will take effect from 1<sup>st</sup> 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 2019-20 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 under section 36(1)(va) of the Act would also be covered under section 43B of the Act and therefore if the share of the employee's share of contribution is made on or before due date for furnishing the return of income under section 139(1) of the Act, then the assessee would be entitled to claim deduction. Therefore, the issue is covered by the decision of the Hon'ble Karnataka High Court. The next aspect to be considered is whether the amendment to the provisions to section 43B and 36(l)(va) of the Act by the Finance Act, 2021, has to be construed as retrospective and applicable for the period prior to 01.04,2021 also. On this aspect, we find that the explanatory memorandum to the Finance Act, 2021 proposing amendment in section 36(l)(va) as well as section 43B is applicable only from 01,04.2021. These provisions impose a liability on an assessee and therefore cannot be construed as applicable with retrospective effect unless the legislature specifically says so. In the decisions*

*referred to by us in the earlier paragraph of this order on identical issue the tribunal has taken a view that the aforesaid amendment is applicable only prospectively i.e., from 1,4.2021. We are therefore of the view that the impugned additions made under section 36(l)(va) of the Act in both the Assessment Years deserves to be deleted. "*

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 6,28,972/- 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."*

6. It was further submitted that similar view has been taken by the ITAT Chandigarh Benches in number of cases and our reference was drawn to the decision in the case of M/s Citi Centre Developers Vs. CPC in ITA No.126/Chd/2021 dated 28.10.2021. It was accordingly submitted that disallowance so made may be directed to be deleted.

7. Per contra, the Ld. DR relied upon the amendment brought in by the Finance Act, 2021 wherein Explanation to section 36(1)(va) of the Act has been introduced. It was submitted that from the reading of the said amendment it is evident that the law is and has always been very clear that employees' contribution to specified fund will not be allowed as deduction u/s 36(1)(va) of the Act if there is delay in deposit even by a single day as per the due dates specified

in the respective Statutes. It was further submitted that the said amendment is only declaratory/clarificatory in nature and, is, therefore, applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The Ld. DR accordingly submitted that in view of the unambiguous wording of the now amendment provisions of sections 36(1)(va) and 43B, it is clear that the employees' contribution can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant Statutes and this position has been clarified by the aforesaid amendment. It was accordingly submitted that there is no infirmity in the order passed by the Ld.CIT(A) wherein he has sustained the disallowance made u/s 143(1) of the Act, by the CPC on account of assessee's failure to pay the employees' contribution towards ESI and PF within the prescribed due dates as per section 36(1)(va) of the Act. He accordingly supported the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. In the instant case, it is not in dispute that employees' contribution to ESI and PF collected by the assessee from its employees had been deposited well before the due date of filing of return of income u/s 139(1) of the Act. We find that the issue is squarely covered by the decisions of the Hon'ble Rajasthan High Court, Hon'ble

Himachal Pradesh High Court as well as Hon'ble Punjab & Haryana High Court. We further note that though the Id. CIT(A) has not disputed the various decisions of Hon'ble High Courts including the decision of the jurisdictional Himachal Pradesh High Court but has referred to the amendment brought in by the Finance Act, 2021. It is a consistent position across various Benches of the Tribunal including Chandigarh Benches that the amendment which has been brought in by the Finance Act, 2021 shall apply w.e.f. assessment year 2021-22 and subsequent assessment years and the impugned assessment year being assessment year 2018-19, the said amendment cannot be applied in the instant case. Therefore, considering the entirety of facts and circumstances of the case and following the decisions of various High Courts as well as Coordinate Benches of the Tribunal referred above, the addition made by way of adjustment while processing the return of income u/s 143(1) of the Act, amounting to Rs.11,99,710/- so made by the CPC towards the deposit of employees' contribution towards ESI and PF paid before the due date of filing of the return of income u/s 139(1) of the Act, is hereby directed to be deleted.

9. The appeal of the assessee is accordingly allowed.

**ITA No.193/Chd/2021(A.Y.2019-20)**

10. In this case, both the parties fairly submitted that the facts and circumstances of the case are exactly identical and similar contentions as raised in ITA No.185/Chd/2021, may be considered. Therefore, our findings and directions contained in ITA No.185/Chd/2021 shall apply *mutatis mutandis* in the instant case and the appeal of the assessee is allowed.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 15.12.2021.

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
न्यायकि सदस्य/Judicial Member

Sd/-  
**(VIKRAM SINGH YADAV)**  
लेखा सदस्य/Accountant Member

**Dated: 15.12.2021**

**\*रती\***

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