

आयकर अपीलिय अधिकरण न्यायपीठ, नागपुर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI S. S. VISWANETHRA RAVI, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	66/NAG/2021	Mai Manpower Solutions LLP, Plot No.172, Shop No.2, Meghdoot Heights, South Ambazari, Shraddhanandpeth, Nagpur-440010. PAN : ABFFM5317C	ADIT (CPC), Bengaluru.	2018-19
2.	97/NAG/2021	S. Prince Hightech Pvt. Ltd., T-55, Prince Complex, Kamptee Road, Gaddi Godam, Nagpur- 440001. PAN : AAKCS7579P	DCIT, CPC, Bengaluru.	2017-18
3.	111/NAG/2021	Arjun Singh Jasbir Singh Arora, 24, Central Bazaar Road, Ramdaspath, Nagpur-440010. PAN : ARFPA0846C	ADIT, CPC, Bengaluru.	2019-20
4.	112/NAG/2021	Satish Nichldas Khemchandani, Satish Sadi Stores, Modi No.3, Sitabuldi, Nagpur-440012. PAN : ABWPK2269E	ACIT, Circle-1, Nagpur.	2017-18
5.	113/NAG/2021	M/s. Forms, 109/2, Khairi Village, Off. Kamptee Road, Kamptee, Nagpur-441401. PAN : AAAFF6011G	DCIT, CPC, Bengaluru.	2018-19
6.	114/NAG/2021	M/s. Easy Home Appliances, Block No.26, 27, 28, Kamla Nehru Market, Sakkardara Square, Raghuji Nagar, Nagpur- 440024. PAN : AAAFE2642J	DCIT, CPC, Bengaluru.	2019-20

Assessee by : Shri K. P. Dewani  
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 09.11.2021  
घोषणा की तारीख / Date of Pronouncement : 17.11.2021

### **आदेश / ORDER**

#### **PER BENCH :**

These are the appeals filed by the different assessees directed against the respective orders of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [‘CIT(A), NFAC] for the assessment years 2017-18, 2018-19 and 2019-20 respectively.

2. Since the identical facts and issues are involved in all the appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.111/NAG/2021 are stated herein.

4. Briefly, the facts of the case are as under :

The appellant is an individual filed return of income for the assessment year 2019-20 declaring total income of Rs.28,33,610/-. Against the said return of income, an intimation u/s 143(1) of the Income Tax Act, 1961 (‘the Act’) was issued on 07.07.2020 after making a disallowance of Rs.1,02,699/- being belated payment of employees contribution to PF/ESI under the relevant Statute based on the information provided in the tax audit report. On receipt of the said intimation u/s 143(1) of the Act, an appeal was filed before the Id. CIT(A), NFAC contending that the disallowance of belated remittance to employees contribution to PF/ESI duly paid before due date of filing the

return of income should not be disallowed. The Assessing Officer ought not to have granted short period of time for tax collected at source of Rs.21,643/-. The learned NFAC held that the Explanation 5 inserted to section 43B of the Act is only clarificatory in nature has retrospective application, addition was confirmed by him.

5. Being aggrieved by the above decision of ld. NFAC, the assessee is in appeal before us in the present appeal.

6. It is contended that the Explanation 5 to section 43B of Finance Act, 2021 w.e.f. 01.04.2021 shall only prospective application and cannot be applied with retrospective effect. Therefore, law laid down by the Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transports Ltd., 368 ITR 749 (Bom.) still applicable to the facts of the present case.

7. On the other hand, ld. Sr. DR placed reliance on the order of the ld. CIT(A), NFAC.

8. We heard the rival submissions and perused the material on record. The first issue raised by the assessee in the grounds of appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. The provisions of section 43B provides that certain payment shall be allowed as a deduction only on actual payment. However, the Parliament also inserted a proviso to provide that as incentive relaxation that in respect of tax duty, cess or fee is paid before the due date of filing of return of income under the normal provisions of I.T. Act, still the assessee will be entitled for deduction. This relaxation was not applicable to the

contribution to labour welfare funds as substituted by second proviso was inserted to provide that no deduction shall be in respect of labour welfare funds unless the contribution have been paid within the due date prescribed under the respective Statutes. This proviso came to be omitted by Finance Act, 2003 w.e.f. 01.04.2004. As a result of this omission of second proviso and by virtue of first proviso, the labour welfare funds also treated as per any other sum covered by section 43B of the Act. Therefore, the Hon'ble Bombay High Court in the case of Ghatge Patil Transports Ltd. (supra) held that belated remittance of employees contribution to PF/ESI is also covered under the first proviso and even belated remittance beyond due dates under the respective Act but within the due date for filing of the return of income under the normal provisions of the I.T. Act, the same is held to allowable. Subsequently, the Finance Act, 2021 has inserted Explanation 5 to section 43B of the Act, which reads as under :-

“43B. ....

*[Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies.]”*

9. Therefore, the question is whether the said Explanation shall have retrospective effect or prospective effect?. Once, it is held to be retrospective, the same is not allowable as deduction under the provisions of section 43B of the Act. Therefore, it is imperative to decide whether said Explanation has retrospective or prospective effect. The parliament in order to nullify the decisions of the various High Courts has inserted the Explanation 5. An Explanation, which seeks to nullify judicial precedents, can have only prospective application as it change

law as it earlier stood, and it has effect of widening the main provisions. This was stated in *Sedco Forex International Drill. Inc. v. CIT*, (2005) 12 SCC 717 as follows:

*“17. As was affirmed by this Court in Goslino Mario [(2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 139] .) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See Sonia Bhatia v. State of U.P., (1981) 2 SCC 585, 598] . If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24 (para 44); Brij Mohan Das Laxman Das v. CIT, (1997) 1 SCC 352, 354; CIT v. Podar Cement (P) Ltd., (1997) 5 SCC 482, 506]. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are “it is declared” or “for the removal of doubts”.”*

10. Further, it is expressly stated, Explanation 5 shall have effect w.e.f. 1.4.2021 only. Therefore, having regard to legal position stated herein above it can be held that the Explanation 5 to section 43B shall have only a prospective application. Accordingly, we hold that the ld. NFAC is not justified in disallowing the belated remittance of employees contribution to PF/ESI but paid within the due date of filing the return of income under the normal provisions of the I.T. Act. Accordingly, we reverse the order of the ld. NFAC with this extent. Thus, this ground of appeal stands allowed.

11. The second issue raised by the assessee in grounds of appeal relates to the short period credit of tax collected at source. This issue remitted back to the file of the Assessing Officer with direction to allow tax credit at source as reflected in Form No.26AS of the Act. Thus, this ground of appeal is partly allowed.

12. In the result, the appeal filed by the assessee in ITA No.111/NAG/20121 stands partly allowed.

**ITA No.112/NAG/2021**

13. The only issue in the present appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. Since the facts and issue are identical to the facts and issue adjudicated by us in ITA No.111/NAG/2021 in forgoing paragraphs, therefore, our decision in ITA No.111/NAG/2021 shall apply *mutatis mutandis* to this appeal in ITA No.112/NAG/2021. Thus, the appeal of the assessee in ITA No.112/NAG/2021 stands allowed.

**ITA No.113/NAG/2021**

14. The only issue in the present appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. Since the facts and issue are identical to the facts and issue adjudicated by us in ITA No.111/NAG/2021 in forgoing paragraphs, therefore, our decision in ITA No.111/NAG/2021 shall apply *mutatis mutandis* to this appeal in ITA No.113/NAG/2021. Thus, the appeal of the assessee in ITA No.113/NAG/2021 stands allowed.

**ITA No.114/NAG/2021**

15. The only issue in the present appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. Since the facts and issue are identical to the facts and issue adjudicated by us in ITA No.111/NAG/2021 in

forgoing paragraphs, therefore, our decision in ITA No.111/NAG/2021 shall apply *mutatis mutandis* to this appeal in ITA No.114/NAG/2021. Thus, the appeal of the assessee in ITA No.114/NAG/2021 stands allowed.

**ITA No.66/NAG/2021**

16. The only issue in the present appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. Since the facts and issue are identical to the facts and issue adjudicated by us in ITA No.111/NAG/2021 in forgoing paragraphs, therefore, our decision in ITA No.111/NAG/2021 shall apply *mutatis mutandis* to this appeal in ITA No.66/NAG/2021. Thus, the appeal of the assessee in ITA No.66/NAG/2021 stands allowed.

**ITA No.97/NAG/2021**

17. The first issue in the present appeal relates to the allowability of belated remittance of employees contribution to PF/ESI u/s 36(1)(va) of the Act r.w.s. 43B of the Act. Since the facts and issue are identical to the facts and issue adjudicated by us in ITA No.111/NAG/2021 in forgoing paragraphs, therefore, our decision in ITA No.111/NAG/2021 shall apply *mutatis mutandis* to this appeal in ITA No.97/NAG/2021. Thus, the first issue raised by the assessee in grounds of appeal stands allowed.

18. The second issue raised by the assessee in grounds of appeal challenges the decision of ld. CIT(A), NFAC disallowance the interest and damages paid under the Provident Fund Act. It is submitted that the

interest paid is only compensatory in nature and, therefore, the same is allowable nature. It is settled position of law that sums paid in the nature of interest is compensatory in nature, the same should be allowed as deduction. In the absence of any material on record, we are unable to decide the issue. Accordingly, we remand back the matter to the file of the Assessing Officer with a direction to allow the same as deduction on being satisfied himself that the interest is only compensatory in nature or otherwise to disallow the same. Thus, this issue raised by the assessee stands partly allowed. Thus, the appeal of the assessee in ITA No.97/NAG/2021 stands allowed.

19. To sum up, all the above captioned appeals filed by the assessee are partly allowed.

Order pronounced on this 17<sup>th</sup> day of November, 2021.

**Sd/-**

**Sd/-**

**(S. S. VISWANETHRA RAVI)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**(INTURI RAMA RAO)**  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> November, 2021.

Sujeet

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A), NFAC, Delhi.
4. The CIT, NFAC, Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर / DR, ITAT, "Nagpur" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.