



**Chengalpattu District Branch of SIRC of ICAI
(Formerly known as Kanchipuram District Branch)**

E- NewsLetter JANUARY 2022



Chengalpattu District Branch of SIRC of ICAI

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E-NEWSLETTER

CHENGALPATTU DISTRICT BRANCH OF SIRC OF ICAI

From the Chairman's Desk

Dear professional colleagues,



My hearty wishes for the new English calendar year 2022 and Thai Pongal. My prayers and wish that our life be filled with joy, happiness and good health.

Right from our childhood days, we used to take new year resolution which are quite often followed for few days. This year, lets take resolution to maintain our health by practicing yoga and meditation. AS per the recent studies, disease is in mind and one can lead a healthy life by being compassionate towards to everyone and everything.

"Every pill has an ill and every ill does not have a pill". So, to lead a happy life, love all, love everything and be happy. Let this be our new year resolution and lead a happy life.

We have learnt a lot during this covid 19 pandemic. We have learnt to work from home, connect with people from home, conduct online meetings, connect from family members who are in abroad, reduced unnecessary travel and saved lot of time. Theses are blessing in disguise. Whatever may be the environmental situation, lets cope up with it happily and lead a happy and healthy life.

Thanking you.

With regards.

CA C Kathiresan

Chairman

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Chengalpattu District Branch of SIRC of ICAI

03.12.2021

SAVE BRANCH MOBILE NO: **8056244300**

Amendment to Section 36(1)(va) & 43B of Income Tax Act not Retrospective

compiled by CA Geetha G



IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.433/Bang/2021
Assessment Year : 2018-19

M/s BI Worldwide India Pvt. Ltd., 28, Opp DBS Bank, Ulsoor Road, Bangalore - 560 042. PAN: AAECB 5878L	Vs.	The Dy. Commissioner of Income-tax, Circle-(1)(1) (2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri C.R Krishna, CA
Revenue by	:	Smt.Priyadarshini Besaganni, JCIT (DR)

Date of Hearing :	28-12-2021
Date of orderPronouncement :	04-01-2022

PER BEENA PILLAI, JUDICIAL MEMBER

The appeal filed by the assessee is directed against the order of the NFAC dated 01/10/2019 for the assessment year 2018-19.

- The assessee has raised the following grounds:-
- On the facts and circumstances of the case the learned CIT (Appeal) erred in disallowing the claim in respect of belated remittance of Employee's provident fund and ESI Contribution of Rs.9,45,931/-. After the omission of the second proviso to section 43B w.e.f. 01-04-2004, the deduction is allowable under the first proviso, if the payment is made on or before the due date for furnishing the return of income
- On the facts and circumstances of the case the learned CIT (Appeal)
- erred in disallowing the claim in respect of belated remittance of Employee's provident fund based on the insertion to explanation to section 36 of Income Tax Act, 1961 by the Finance Act, 2021. The assessee believes that explanation to section 36 by Finance Act, 2021 has prospective effect and not retrospective effect. Hence the addition of Rs.9,45,931/- needs to be deleted."
- The brief facts of the case are that the assessee is a private limited company. For the assessment year 2018-19, return of income was filed on 30.11.2018 declaring a total income of Rs.20,12,34,160/-. The return was processed u/s 143(1) of the Income-tax Act. In the intimation issued u/s
- 143(1) of the Act, the CPC made an adjustment of the employees' contribution to PF and ESI to the tune of Rs.9,45,931/- on the ground that the assessee did not remit the employees' contribution to PF and ESI within the due date specified under the respective Acts.
- Aggrieved by the order of Ld.AO, the assessee preferred an appeal before the Ld.CIT(A).
- Before the Ld.CIT(A), it was submitted that the assessee remitted the employees contribution to PF and ESI before the due date of filing of the return u/s 139(1) of the Act and in view of the judgment of the Hon'ble jurisdictional High Court in the case of Sahari Enterprises 298 ITR 141, the assessee is entitled to deduction of the same. During the course of hearing before the CIT(A), the assessee made written submissions relaying on few more decisions of the jurisdictional High Court viz., CIT Vs. Spectrum Consultants India Pvt. Ltd., 206 CTR 241 and Essae Teraoka Pvt. Ltd., Vs. DCIT 366 ITR 408. The Ld.CIT(A), however, dismissed the appeal of the assessee by relying on decision of Hon'ble Gujarat High Court in case of Gujarat Road Transport Corporation reported in (2014) 41 taxmann.com 100. The CIT(A) noticed the difference between the employees' contribution and the employer's contribution and held insofar as the employees' contribution to ESI and PF, the same need to be remitted within the due date as mentioned in the respective Acts. The CIT(A) also relied on the amendment brought to section 36(1)(va) by Finance Act, 2021 and 43B of the I.T.Act.
- Aggrieved by the order of Ld.CIT(A), the assessee filed appeal before the Tribunal

- The Ld.AR submitted that identical issue is decided by the coordinate Bench of this Tribunal in following cases wherein the amendment has been held to be prospective in nature.
- M/s.The Continental Restaurant & Café Co. v. ITO in ITA No.388/Bang/2021 (order dated 11.10.2021)
- M/s. Nirmal Enviro Solutions Pvt. Ltd. vs. DCIT in ITA No.315/Bang/2021 (order dated 12.10.2021)
- Shri Gopalkrishna Aswini Kumar vs. ACIT in ITA No. 359/Bang/2021 (order dated 13.10.2021)
- The Ld.DR on the other hand supported the orders of the Income Tax Authorities.
- We have heard rival submissions and perused the material on record. An identical issue was considered by the Tribunal in the case of The Continental Restaurant & Café Co. v. ITO (supra). The relevant finding of the Tribunal reads as follows:-
- "I have heard rival submissions and perused the material on record. Admittedly, the assessee has not remitted the employees' contribution of PF of Rs.1,06,190/- and ESI of Rs.16,055/- totaling to Rs.1,22,245/- before the due date specified under the respective Act. However, the assessee had paid the same before the due date of filing of the return u/s 139(1) of the I.T.Act. The Hon'ble jurisdictional High Court in the case of Essae Teraoka (P.) Ltd. v. DCIT reported in 366 ITR 408 (Kar.) has categorically held that the assessee would be entitled to deduction of employees' contribution to PF and ESI provided the payment was made prior to the due date of filing of return of income u/s 139(1) of the I.T.Act. The Hon'ble jurisdictional High Court differed with the judgment of the Hon'ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation reported in 366 ITR 170 (Guj.). In holding so, the Hon'ble High Court was considering following substantial question of law:-
- "Whether in law, the Tribunal was justified in affirming the finding of Assessing Officer in denying the appellant's claim of deductions of the employees contribution to PF/ESI alleging that the payment was not made by the appellant in accordance with the provisions u/s 36(1)(va) of the I.T.Act?"
- In deciding the above substantial question of law, the Hon'ble High Court rendered the following findings:-
- "20. Paragraph-38 of the PF Scheme provides for Mode of payment of contributions. As provided in sub para (1), the employer shall, before paying the member, his wages, deduct his contribution from his wages and deposit the same together with his own contribution and other charges as stipulated therein with the provident fund or the fund under the ESI Act within fifteen days of the closure of every month pay. It is clear that the word "contribution" used in Clause (b) of Section 43B of the IT Act means the contribution of the employer and the employee. That being so, if the contribution is made on or before the due date for furnishing the

return of income under sub-section (1) of Section 139 of the IT Act is made, the employer is entitled for deduction.

- The submission of Mr.Aravind, learned counsel for the revenue that if the employer fails to deduct the employees' contribution on or before the due date, contemplated under the provisions of the PF Act and the PF Scheme, that would have to be treated as income within the meaning of Section
- 2(24)(x) of the IT Act and in which case, the assessee is
- liable to pay tax on the said amount treating that as his income, deserves to be rejected.
- With respect, we find it difficult to endorse the view taken by the Gujarat High Court. WE agree with the view taken by this Court in W.A.No.4077/2013.
- In the result, the appeal is allowed and the substantial question of law framed by us is answered in favour of the appellant-assessee and against the respondent-revenue. There shall be no order as to costs."
- The further question is whether the amendment to section 36(1)(va) and 43B of the I.T.Act by Finance Act,
- 2021 is clarificatory and declaratory in nature. The
- Hon'ble Supreme Court in the recent judgment in the case of M.M.Aqua Technologies Limited v. CIT reported in (2021)
- 436 ITR 582 (SC) had held that retrospective provision in a
- taxing Act which is "for the removal of doubts" cannot be presumed to be retrospective, if it alters or changes the law as it earlier stood (page 597). In this case, in view of the judgment of the Hon'ble jurisdictional High Court in the case of Essae Teraoka (P.) Ltd. v. DCIT (supra) the assessee would have been entitled to deduction of employees' contribution of PF and ESI if the payment was made prior to due date of filing of the return of income u/s
- 139(1) of the I.T.Act. Therefore, the amendment brought about by the Finance Act, 2021 to section
- 36(1)(va) and 43B of the I.T.Act, alters the position of law adversely to the assessee. Therefore, such amendment cannot be held to be retrospective in nature. Even otherwise, the amendment has been mentioned to be effective from 01.04.2021 and will apply for and from assessment year 2021-2022 onwards. The following orders of the Tribunal had categorically held that the amendment to section 36(1)(va) and 43B of the I.T.Act by Finance Act, 2021 is only prospective in nature and not retrospective.
- (i) Dhabriya Polywood Limited v. ACIT reported in (2021)
- 63 CCH 0030 Jaipur Trib.
- (ii) NCC Limited v. ACIT reported in (2021) 63 CCH 0060
- Hyd Tribunal.
- (iii) Indian Geotechnical Services v. ACIT in ITA No.622/Del/2018 (order dated 27.08.2021).

- (iv) M/s.Jana Urban Services for Transformation Private
- Limited v. DCIT in ITA No.307/Bang/2021 (order dated 11th October, 2021)
- In view of the aforesaid reasoning and the judicial pronouncements cited supra, the amendment to section
- 36(1)(va) and 43B of the I.T.Act by Finance Act, 2021 will not have application for the relevant assessment year, namely A.Y. 2019-2020. Accordingly, I direct the A.O. to grant deduction in respect of employees' contribution to PF and ESI since the assessee has made payment before the due date of filing of the return of income u/s 139(1) of the I.T.Act, It is ordered accordingly.
- In the result, the appeal filed by the assessee is allowed."
- 10. In view of the judicial pronouncements cited supra, we hold that the amendment to section 36(1)(va) and 43B of the Act will not have application for the relevant assessment year, namely assessment year 2018-2019. Accordingly, we direct the A.O. to grant deduction in respect of employees' contribution to PF and ESI since the assessee made the payment before the due date of filing of return u/s 139(1) on 30.11.2018 of the Act. Accordingly, grounds raised by assessee stands allowed.
- In the result, the appeal filed by the assessee is allowed.
- Order pronounced in the open court on 4th January, 2022.

Indirect Taxes Updates

by CA R. V. Bhuvaneshwari

**I. IMPORTANT GST UPDATES APPLICABLE FROM 01.01.2022****1. NO ITC UNLESS REFLECTED IN GSTR 2A/2B**

Input Tax Credit shall not be available unless the details of invoices are uploaded by the supplier in Form GSTR-1 and it is communicated to the recipient (i.e reflected in GSTR 2A/2B). Margin of 5% will not be applicable hereafter.

2. DIFFERENCE BETWEEN GSTR -1 & 3B: DIRECT RECOVERY

Section 75(12) is amended to provide that tax declared under GSTR-1 but not included and paid in GSTR-3B, will be considered as "Self Assessed Tax" and hence, direct recovery of such tax under Section 79 will be possible even without issuing any Show Cause Notice.

3. E-WAY BILL: 200% PENALTY TO RELEASE GOODS

At present, full tax and 100% penalty is required to be paid to release the goods which are seized for violation of E-way Bill related provisions and for non-carrying of other documents under Section 129. Now, it is amended that goods will be released on payment of penalty equal to 200% of tax and tax will be recovered through separate proceedings.

4. PROVISIONAL ATTACHMENT OF ASSETS FOR ANY OFFENCES LIKE BOGUS BILLING, EXTENDED TO BENEFICIARIES ALSO

Not only the person who has committed any fraudulent transactions, but also any Beneficiaries of such fraudulent transactions, i.e. for and whose behalf and interest, such transactions are undertaken, their Assets can also be provisionally attached.

5. 25% PRE-DEPOSIT FOR E-WAY BILL APPEALS

For filing appeals, before first appellate authority against order for violation of E-way bill and other provisions, it will be mandatory to pay pre-deposit of amount equal to 25% of penalty imposed.

6. REFUND CLAIMS OF FOREIGN DIPLOMATIC MISSIONS AND EMBASSIES

Rule 95 has been amended to provide that the refund claims filed by the foreign diplomatic missions and embassies in FORM GST RFD-10 in respect of the tax charged on the invoice for their inward supplies shall be supported by the copy of the invoice, duly attested by the authorized representative of the applicant if the said invoice do not bear the Unique Identity Number of the applicant.

II. GST RATE CHANGES W.E.F. 01.01.2022

1. There is an increase in the GST rate on footwear of value below Rs.1000 from 5% to 12%, which will be effective from January 1, 2022.

Notification No.21/2021 - CT(R), Dt. 31.12.2021

2. Composite Supply of Works Contract services to Government Authority / Government Entity is made taxable at 18%

Notification No.15/2021 - CT(R), Dt. 18.11.2021

III. GST ON SERVICE SUPPLIED BY RESTAURENTS THROUGH E-COMM OPERATORS

1. Does Ecomm operators rendering restaurant service are required to collect TCS u/s 52 of CGST, 2017 from 01.01.2022?

No, since restaurant services are notified u/s 9(5), ECOs will no longer be required to collect TCS.

2. Would ECOs required to take separate registration for since they are notified u/s 9(5)?

No, since they are already registered as per Rule 8 of CGST, there would be no requirement for separate registration for payment of Taxes u/s 9 (5).

3. Would ECOs liable to pay tax on restaurant services of unregistered suppliers?

Yes. ECOs will be liable to pay GST on any Restaurant services supplied through them including services by an Unregistered person.

4. Whether the invoice for the restaurant service is to be issued by the Restaurant or the ECOs?

The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

COMPLIANCE DUE DATES - JANUARY 2022

Due Date	Particulars of Compliance	Applicable Act	Forms/ Returns	Applicable To	Reporting Period
07-01-22	Due Date for deposit of Tax Deducted/ Collected	Income Tax	Challan - 281	All Tax Deductors/ Collectors	Dec-21
10-01-22	Return for TDS under GST	GST	GSTR - 7	Government Authorities	Dec-21
10-01-22	Return for Details of Supplies and the amount of tax collected	GST	GSTR - 8	E-Commerce Operator	Dec-21
11-01-22	Due date for filing of Summary Return of Outward Supplies.	GST	GSTR - 1	Taxpayers with Annual Turnover exceeding Rs. 1.5 crores.	Dec-21
11-01-22	Due date for filing of Summary Return of Outward Supplies.	GST	GSTR - 1	Taxpayers with Annual Turnover less than 1.5 crores and not opted for QRMP Scheme	Dec-21
13-01-22	Due date for filing of Summary Return of Outward Supplies.	GST	GSTR - 1	Taxpayers with Annual Turnover less than 1.5 crores and opted for QRMP Scheme	Oct - Dec 2021
13-01-22	Return for details of ITC Received and Distribution	GST	GSTR - 6	Input Service Distributors	Dec-21
15-01-22	Deposit of Provident Fund Contributions	Provident Fund	Through EPFO Portal	Entities registered with PF Authorities	Dec-21
15-01-22	Deposit of E.S.I.C Contributions	ESI	Through ESIC Portal	Entities registered with ESIC Authorities	Dec-21

15-01-22	Due Date for furnishing quarterly statement of tax collected	Income Tax	Form 26EQ	All Tax Collectors	Oct - Dec 2021
15-01-22	Due Date for Furnishing of Audit Reports u/s 44AB the Income Tax Act	Income Tax	Form 3CA/3CB-3CD	Corporate Assessee & non-corporate assessee subject to Audit	AY 2021-22
20-01-22	Due date for filing Summary Return of Outward & Inward Supplies	GST	GSTR - 3B	GST Taxpayers having Turnover exceeding Rs. 1.5 Crores in Preceeding Financial Year	Dec-21
20-01-22	Due date for filing Summary Return of Outward & Inward Supplies	GST	GSTR - 3B	GST Taxpayers having Turnover not exceeding Rs. 1.5 Crores in Preceeding FY but not opted for QRMP Scheme	Oct - Dec 2021
20-01-22	Last date for filing of Summary Return of Outward & Inward Supplies and Tax payable	GST	GSTR - 5A	OIDAR Service Providers	Dec-21
20-01-22	Last date for filing of Summary Return of Outward & Inward Supplies and Tax payable	GST	GSTR - 5	Non-Resident Taxable Persons	Dec-21

30-01-22	Due Date for issuing of Quarterly Certificate of Tax Collected.	Income Tax	Form 26EQ	All Tax Collectors	Oct - Dec 2021
31-01-22	Due Date for filing of Quarterly statement of TDS deposited for the quarter ending September 30, 2021	Income Tax	Form 24Q, Form 26Q	All Tax Deductors/ Collectors	Oct - Dec 2021

Extension of Due Dates

Particulars of Compliance	Applicable To	Previous Due Date	Extended Due date
Filing of Form -9 (Annual Return) for FY 2020-21	All GST Registered persons having Turnover above Rs. 2 Crores	31-12-2021	28-02-2022
Furnishing of Self-certified Form -9C (Reconciliation Statement) for FY 2020-21	All GST Registered persons having Turnover above Rs. 5 Crores	31-12-2021	28-02-2022

VERY VERY IMPORTANT

IMPORTANT GST UPDATES APPLICABLE FROM 1ST JANUARY 2022

1. NO ITC UNLESS REFLECTED IN GSTR 2A/2B

Input Tax Credit shall not be available unless details of invoices uploaded by supplier in Form GSTR-1 are communicated to the recipient (i.e reflected in GSTR 2A/2B). Margin of 5% will no more be available.

2. DIFFERENCE B/W GSTR -1 & 3B: DIRECT RECOVERY

Section 75(12) is amended to provide that the tax declared under GSTR-1 but not included in GSTR-3B, will be considered as "Self Assessed Tax" and hence, direct recovery of such tax under Section 79 will be possible even without issuing any Show Cause Notice.

3. E-WAY BILL: 200% PENALTY TO RELEASE GOODS

At present, full tax and 100% penalty is required to be paid to release the goods which are seized for violation of E-way Bill related provisions and for non-carrying of other documents under Section 129. Now, it is provided that goods will be released on payment of penalty equal to 200% of tax and tax will be recovered through separate proceedings.

4. PROVISIONAL ATTACHMENT OF ASSETS OF BOGUS BILLING BENEFICIARIES ALSO

Not only supplier and recipients but assets of the beneficiaries of bogus billing can also be provisionally attached.

5. SCOPE OF PROVISIONAL ATTACHMENT WIDENED

Provisional attachment is made applicable in all cases of proceedings of Assessment, Inspection, Search, Seizure and Arrest or Demands and recovery. Now, provisional attachment of property, like bank accounts, can be done not only in the case of Show Cause Notices and investigation but also for other proceedings like Scrutiny of Returns and tax collected but not paid.

6. 25% PRE-DEPOSIT FOR E-WAY BILL APPEALS

For filing appeals, before first appellate authority against order for violation of E-way bill and other provisions, it will be mandatory to pay pre-deposit of amount equal to 25% of penalty imposed.

7. E-WAY BILL CO-NOTICEE MAY NOT GET FREE BY PAYMENT OF 200% PENALTY BY MAIN NOTICEE

Where proceedings against main person liable to pay tax have been concluded under Section 74, proceedings against co-noticee are also deemed to be concluded as provided under Explanation 1(ii) to Section 74. However, now, such benefit will not be available to co-noticee for proceedings initiated to impose penalties for violation of E-way bill.

IMPORTANT UPDATES IN COMPANY LAW

MCA vide circular no. 22 had waived the additional fee for filing of AOC-4, AOC-4 (CFS), AOC-4 XBRL AOC-4 Non-XBRL forms till 15th Feb 2022 and MGT-7/MGT-7A forms till 28 Feb 2022 for the Financial Year ended 31-03-2021.

Income Tax Case Laws

by CA. Muthu Abirami

Reference: <https://www.taxmann.com/>

Madras High Court

R. Pannerselvam v PCIT

WP No. 7433 OF 2019

Held: AO to consider belated refund claim of non-filer of ITR on merits, subject to any penalty/interest for non-filing of ITR

- A reading of Section 237 makes it clear that there is no limitation prescribed for filing a claim for refund of income tax.
- The 6-years time-limit specified in CBDT's Circular No.9/2015, for considering any refund claim other than through ITRs filed u/s 139(1)/(4), would only apply if the application u/s 119 was made to claim exemption for the first-time after the returns were filed in time and after the period prescribed for revising the assessment had expired (6 years time-limit for re-assessment under old sections 147 to 151) and the assessment had attained finality.
- Where no ITR was filed by applicant within the time stipulated under section 139(1)/139(4) and refund claim was made by him for the first-time after the 6-years time limit specified in Circular No.9/2015, AO must consider the refund claim on merits u/s 237 r/w section 119 and assess the tax due and determine the amount refundable. The non-issue of re-assessment notice within the old 6 -years time-limit will not be held to the detriment of the assessee. The AO would, however, be at liberty to impose any penalty/interest applicable under the law for non-filing of ITR within the time-limit stipulated u/s 139.

High Court of Gujarat

Kartik Vijaysinh Sonavane v DCIT.

SPECIAL CIVIL APPLICATION NO. 6193 OF 2021

Held: Where TDS has been deducted by employer of assessee, it will always been open for department to recover same from said employer and credit of same could not have been denied to assessee

Section 205, read with sections 199 and 201, of the Income-tax Act, 1961 - Collection and recovery of tax - Bar Against Direct Demand on Assessee (TDS) - Assessment years 2009-10 and 2011-12 - Assessee was an employee of 'K' Airlines - K Airlines deducted TDS on salary made to assessee but did not deposit same in Government treasury - Accordingly, credit when claimed by assessee was not given by revenue and demand had been raised with interest - Whether TDS having been deducted by employer of assessee, it will always been open for department to recover same from said employer and credit of same could not have been denied to assessee - Held, yes - Whether credit of tax shall be given to assessee and if in interregnum any recovery or adjustment is made by revenue, assessee shall be entitled to refund of same, with statutory interest - Held, yes [In favour of assessee]

High Court of Bombay

River Valley Meadows and Township (P.) Ltd. vs DCIT

WP 2216 OF 2021

Held: Where notice under section 148 was issued to assessee on 25-6-2019 and prior mandatory approval of Additional CIT which was required under section 151 was dated 26-6-2019, section 148 notice so issued was illegal as there was no prior approval as required under section 151(2)