

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 343/Ahd/2021  
Assessment Year 2019-20**

Adani Petronet (Dahej) Port Pvt. Ltd. Adani Corporation House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Ahmedabad-382421  <b>PAN: AAECA5046R (Appellant)</b>	Vs	AO Circle-1(1)(1), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Dhrunal Bhatt, A.R.  
Revenue Represented: Shri Nitin Vishnu Kulkarni, Sr.D.R.**

Date of hearing : 12-06-2024  
Date of pronouncement : 30-07-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 09.11.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the Intimation passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2019-20.

2. The brief facts of the case are that the assessee is a Company engaged in Port activities filed its Return of Income for the Asst. Year 2019-20 on 21.11.2019 declaring total income under normal provision of the Act at Rs.20,46,62,000/- and book profit under section 115JB of the Act at Rs.1,52,74,22,608/-. The return was taken for prima facie adjustment and a communication was sent to the assessee as to why not disallow Rs.8,19,544/- being belated payment of Employees contribution to PF Fund. The assessee replied that it paid the employees contribution to National Pension Scheme before the due date of filing of the Return of Income u/s. 139(1) of the Act, as there is no due date prescribed under the National Pension Scheme, thus there is no delay in payment of Employees contribution and therefore not to make any disallowance u/s. 36(1)(va) of the Act. However the above reply was rejected by CPC and added Rs.8,19,544/- as the income of the assessee and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before NFAC. Before NFAC, the assessee filed detailed submission about National Pension Scheme. The assessee further pleaded similar disallowance made for the earlier assessment year 2018-19 which was deleted by NFAC vide Order No. CIT(A)-1, Ahmedabad/10350/2019-20 dated 19.08.2020, therefore requested to delete the addition made by CPC. However ld. NFAC dismissed the appeal filed by the assessee following Supreme Court Judgment in the case of M/s. Checkmate Services Pvt. ltd. Vs. CIT in Civil Appeal No. 2833 of 2016 vide judgment dated 12.10.2022.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in confirming disallowance of Rs.8,18,092 on account of payment of employees' contribution to National Pension Scheme when entire payment is made before due date of filing return of Income.*

*1.1 In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in treating employee's contribution to National Pension Scheme as Employee's contribution to Provident Fund and ESIC. The Ld. CIT(A) ought to have appreciated that no due date of payment is prescribed for payment of such employees' contribution to NPS.*

*1.2 In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has erred in not following decisions of CIT(A) rendered in other group cases and relied upon by appellant in appellate proceedings.*

*2. In law and on the facts and in the circumstances of the Appellant's case, the Ld. CIT(A) has grossly erred in confirming disallowance of Rs. Rs.1,452 under section 36 of the Act, when no such disallowance is tenable while processing return of income under section 143(1) of the Act. The Ld. CIT(A) may be directed to delete such adjustment.*

*3. The Appellant craves leave to add, amend, alter and/or withdraw any ground or grounds of appeal before or at the time of hearing of the appeal.*

5. Ld. Counsel appearing for the assessee drawn our attention to the appellate order passed in the case of Shantigram Utility Services Pvt. Ltd. wherein such disallowance made by CPC was deleted by CIT(A), Gurgaon by following decision in the case of Adani Shipping (India) Pvt. Ltd. which reads as follows:

*“4.2.3 From the audit report furnished by the appellant in its reply. It is evident that the appellant has made all the payments towards*

*NPS contribution (any other welfare it is evident that that fund) within stipulated time. Thus, I am of the view that the contention of the appellant that it had made all the payments in due time and hence eligible to get deduction on account of the same, is found to be correct. This interpretation is further supported by the order of CIT(A) NFAC in the case of Adani shipping (India) Pvt. Ltd. (AAICA8476F) for the A.Y. 2019-20 issued on 21.11.2022 vide DIN ITBA/NFAC/S/250/2022-23/1047525743(1). In this case, the facts involved are almost identical and the Ld. CIT (A) allowed relief holding as under:*

*The issue involved in the grounds of appeal present before me is disallowance of Rs.2,37,585/- for employees contribution to National Pension Scheme. The AO. CPC has made the disallowance u/s 36(1)(va) for Rs.2,37,585/- based upon Schedule in Tax Audit report relating to Employees payment to PF/ESIC and other funds. The disallowance is made on the ground that such remittances are made beyond the date as prescribed in the respective. On perusal of the Tax Audit report, it is seen that the contribution of Rs. 2,37,585 is not related to Employees Contribution to PF/ESIC. Infact, the same is mentioned as Contribution to any other welfare fund in point no. 20(b) of the Tax Audit report. The appellant has claimed that the said payment is towards the National Pension Scheme. The Appellant has elaborately explained the modus operadi of the NPS Scheme. It is clear that the payment to NPS is voluntary payment. Such payment can either be paid by employee directly or employee can ask employer to pay the same on his behalf. There is no due date mentioned in the scheme for making such payment The employees Contribution to NPS is not compulsory and it is voluntary payment hence such contribution cannot be subject matter of addition u/s 36(1)(va) of the Act.*

*In view of the above, the disallowance made by the CPC on account of late payment of employees contribution to NPS fund of Rs 2.37,585/- is hereby deleted and the ground of appeal raised by the appellant is allowed.*

*In view of these facts and legal position, the ground of appeal taken by the appellant is allowed and the A.O. is directed to do the needful.”*

6. Per contra, the Ld.Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the Return of Income, the assessee made deposit of Rs.8,19,544/- being Employees contribution under any "other welfare fund" namely National Pension System (NPS). On perusal of the Tax audit report, it is seen that the contribution is made under NPS before due date of filing Return of Income. NPS is regulated by Pension Fund Regulatory and Development Authority and PFRDA Act, 2013. There is no due date prescribed by the PFRDA as to when the payment is required to be made to the NPS account. Further section 12[3][iii] of the PFRDA Act, 2013 clearly prohibits the provisions of this Act shall not apply to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus the impugned adjustment made on the payment under NPS by CPC is not justified as there is no due date prescribed in the respective PFRDA Act, 2013 and all the payment has been duly made before filing of the Return of Income as per section 139[1] of the Act. Therefore the amount of Rs.8,19,544/- is treated to be allowable u/s.43B[b] of the Act and **therefore the addition made by CPC is liable to be deleted.** Further we observe when the assessee had replied to the communication to the CPC and explaining the above facts, CPC is not correct in ignoring the reply and making the disallowance in the 143[1] proceedings. Thus the Grounds of Appeal raised by the assessee are hereby allowed.

8. In the result the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 30-07-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 30/07/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद