

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1279/DEL/2017 (A.Y 2013-14)

DCIT Circle 19 (1) New Delhi (APPELLANT)	Vs	Onicra Credit Rating Agency of India Ltd. UG-7, Suneja Tower-1, District Centre, Janakpuri New Delhi AAACO0849E (RESPONDENT)
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Appellant by	Ms. Rinku Singh, Sr. DR
Respondent by	None

Date of Hearing	01.07.2019
Date of Pronouncement	02.07.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 08/12/2016 passed by CIT(A)-55, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

“1. On the facts under the circumstances of the case, the Id. CIT(A) has erred in deleting the addition of the Assessing Officer of Rs.42,35,589/- of PF contribution and Rs.50,046/- of ESIC totaling to Rs.42,85,638/- is not allowable as deduction u/s 36(l)(va) and is assessee’s income as per provisions of section 2(24)(x) of the Income Tax Act, 1961 by ignoring the Explanation given to Section 36(1)(va) of the Income Tax Act, 1961 in respect of due date.”

2. *On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.34,99,178/- as reported by the Auditor in Form 3CD column 21(i) that the assessee-company has not paid' on or before furnishing the return of income which was disallowed by the Assessing Officer within the meaning of section 43B of the Income Tax Act, 1961.*

3. The assessee company is engaged in the business of service sector (Others) credit rating services. The e-return of income was filed on 29/08/2013 declaring loss of Rs. 90,26,697/-. The case was selected for scrutiny. Notice u/s 143(2) dated 3/9/2014 was issued and another notice u/s 142(1) dated 29/6/2015 along with questionnaire was issued. In response to the notices, Vice President (Finance) & Manager (Accounts) of the assessee company attended the proceedings from time to time are filed the necessary details which were examined by the Assessing Officer. The Assessing Officer made disallowance u/s 2(24) (x) read with Section 36(1) (v) amounting to Rs. 42,85,635/- and also made disallowance of income in respect of TDS difference reported in ITR and AS 26 amounting to Rs. 2,05,370/-. The Assessing Officer also made disallowance u/s 43(b) in respect of leave encashment amounting to Rs. 34,99,178/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. DR submitted that the CIT(A) was not justified in deleting the said disallowances. As regards to Ground No. 1 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the addition of the Assessing Officer of Rs. 42,35,589/- of PF contribution and Rs.50,046/- of ESIC totaling to Rs.42,85,638/- is not allowable as deduction u/s 36(1)(va) and is assessee's income as per provisions of Section 2(24)(x) of the Income Tax Act, 1961 by ignoring the Explanation given to Section 36(1)(va) of the Act in respect of due

date. As regards to Ground No. 2 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the addition made by the Assessing Officer of Rs. 34,99,178/- as reported by the Auditor in Form 3CD column 21(i) that the assessee-company has not paid on or before furnishing the return of income which was disallowed by the Assessing Officer within the meaning of Section 43B of the Income Tax Act, 1961.

6. During the hearing, the Ld. AR was not present. Therefore, we are proceeding on the basis of submissions before the CIT(A). The submissions are as under:-

"1. That the appellant denies its liability to be assessed at an income of (-) Rs. 10,36,510/- and accordingly denies its liability to pay tax, surcharge, cess and interest demanded thereon.

2. That having regard to the facts and circumstances of, the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order without assuming jurisdiction as per law and without serving the mandatory notices under sections 143(2) and 142(1) of the Income Tax Act, 1961.

3. (a) That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in disallowing employees contribution towards provident fund (PF) amounting to Rs.42,35,589/- and employees contribution towards ESI amounting to Rs.50,046/- aggregating to Rs.42,85,635/- as per provisions of section 2(24)(x) and 36(l)(va) of the Income Tax Act, 1961.

(b) That in any case and in any view of the matter, Ld. A.O has erred in law by overlooking the landmark judgment of 'CIT vs. Aimil Limited 321 ITR 508, which ought to have been considered by the assessing officer while passing assessment order.

4. (a) That having regard to the facts and circumstances of the case, Ld. A.O

has erred in law and on facts in making impugned addition of notional income of Rs.2,05,370/-, being difference in TDS amount as per 26AS and the TDS amount claimed in return of income.

(b) That in any case and in any view of the matter, Ld. A.O has erred in law and on facts in computing notional income of Rs.2,05,370/-, being 10 times of difference in TDS as per 26AS (which was Rs.2,77,93,933/-) and the TDS amount claimed in the return (which was Rs.2,77,73,396/-) that to without any basis and surmises.

5. (a) That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in disallowing leave encashment amounting to Rs34,99,178/- u/s 43B of Income Tax Act, 1961.

b) That in any case and in any view of the matter, Ld. A.O has erred in law and on facts by disregarding the fact that the assessee company did not claim deduction of leave encashment amounting to Rs. 34,99,178/- while computing the total income under the head ' Profits from Business or Profession', as can be seen from computation of income filed during assessment proceedings.

(C) That in any case and in any view of the matter, Ld. A.O has erred in law and on facts in disregarding the Tax Audit Report and computation of income of the assessee company filed before the assessing officer.

(d) That in any case and in any view of the matter, Ld. A.O has erred in law and on facts by disregarding the submissions dated 11.01.2016 filed during the assessment proceedings and also reproduced by the assessing officer vide para 5 on page 4 of his order passed u/s 143(3) of the Income Tax Act,1961.”

7. We have heard both the parties and perused the material available on record. As regards Ground No. 1, the late fee deposited by the assessee has been decided by the Hon'ble Supreme Court in case of CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268. It is pertinent to note that if the employees' contribution is not deposited by the due date prescribed under the relevant statutes and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the Employees' State Insurance Act. Therefore, these Acts permit the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in case of Vinay Cement (supra). We find that on the issue in dispute the Ld. CIT(A) has followed the finding of the Hon'ble jurisdictional High Court, which is binding on the Tribunal or the CIT(A) functioning under the jurisdiction of the Hon'ble Delhi High Court. In view of the above, we do not find any error in the order of the CIT(A) and accordingly, we uphold the same. Ground No. 1 of the appeal of the Revenue is dismissed. As regards Ground No. 2, the same is also decided correctly by the CIT(A). The CIT(A) held as under:

“9.9. I have carefully considered the observations of the Assessing Officer and submissions of the Appellant. From the computation of income, it is seen that Appellant has disallowed the Provision for Leave Encashment of Rs. 20,63,868/- and has claimed the amount of Leave Encashment of Rs. 20,22,855/- on actual payment basis. From the ledger of Provision for Leave Encashment for the period 01.04.2012 to 31.03.2013, it is also seen that Appellant had written back the liability no longer required on account of Leave Encashment of Rs. 17,19,749/-.

9.10 Appellant has stated that this amount was not claimed as expenditure during A.Y. 2012-13 and, therefore, it is not taxable. From the perusal of computation, statement as on 31.03.2012 submitted by the Appellant, it is seen that Appellant has claimed Leave Encashment of Rs. 5,11,875/- and has added back the provision of Rs. 53,72,144/- during the year. Assessing Officer is directed to verify whether the part of amount of Rs. 17,19,749/- written back as liability no longer required was included in the amount of Rs. 5,11,875/-. Since, Appellant has not claimed the expenditure of Rs. 34,99,178/-, disallowance of Rs. 34,99,178/- is deleted as the amount of Leave Encashment has been paid on actual payment basis. Accordingly, the addition of Rs. 34,99,178/- is deleted to the subject above observation.”

The CIT(A) has given a detailed findings, and there is no need to interfere with the order of the CIT(A). Hence, appeal of the Revenue is dismissed.

8. In result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 02nd JULY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 02/07/2019
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	01.07.2019
Date on which the typed draft is placed before the dictating Member	01.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	