

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5915/Del./2019
Assessment Year: 2016-17

A Design India Pvt. Ltd., S-126, GK-II, South Delhi, New Delhi	Vs.	ITO, Ward-1(1), New Delhi
PAN :AAHCA0593J		
(Appellant)		(Respondent)

Appellant by	Shri Satyaji Goel, Adv.
Respondent by	Shri Satpal Gulati, CIT(DR)

Date of hearing	10.12.2020
Date of pronouncement	23.12.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 30/04/2019 passed by the learned Commissioner of Income-tax (Appeals)-I, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2016-17 raising following grounds:

1. *That on the facts and in the circumstances of case and in law, the Ld. Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 4,16,161/- on account of delay in deposit of employee's contribution to provident fund without appreciating the fact that the same amount was duly paid before filing of income*

tax return and within the time limit specified u/s 139(1) of the Income Tax Act, 1961.

2. *That on the facts and in the circumstances of case and in law, the Ld Commissioner of Income Tax (Appeal) was not justified in upholding the disallowance solely on the basis of typographical mistake in tax audit report and without providing any opportunity of being heard.*
3. *That entire employee's contribution to provident fund having been deposited before time limit specified u/s 139(1) and same being duly corroborated from relevant challans, the impugned disallowance is misconceived and not sustainable.*
4. *That the appellant reserves the right to amend, delete, add, substitute, modify or alter any one or more of the grounds of appeal at the time of hearing.*

The Appellant prays that the addition of Rs. 4,16,161 /- made in respect of delay in deposit of provident fund be deleted.

2. Briefly stated facts of the case are that in the scrutiny assessment dated 12/12/2018 passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer made disallowance of ₹ 5,53,851/- for employees contribution to provident fund under section 36(1)(va) of the Act. On further appeal, the Ld. CIT(A) allowed part relief of ₹ 1,37,690/- and sustained the remaining addition of ₹ 4,16,161/-. Aggrieved, the assessee is before the Tribunal raising the ground as reproduced above.

3. Before us, both the parties appeared through videoconferencing facility.

4. The learned counsel of the assessee submitted that all the payments for employees contribution toward provident fund had been made before the due date of the filing of the return of

income, however, the Ld. CIT(A) has wrongly noted payment of ₹ 4,16,161/- as after the filing of return of income. He submitted that in principle the Ld. CIT(A) has agreed that payments made prior to the due date of the filing of return of income are eligible for deduction, however, he committed error in verifying the date of payments. Accordingly, the learned counsel submitted that matter of verification may be restored back to the file of the Ld. CIT(A) or the Assessing Officer.

5. The Ld. DR though relied on the order of the lower authorities, did not object for verification of date of payments in dispute by the Assessing Officer or by the Ld. CIT(A).

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CIT(A) following the decision of the Hon'ble Delhi High Court in the case of CIT Vs AIMIL Ltd (2010) 321 ITR 508 has accepted the claim of the deduction for payments of employees contribution to ESI/PF and accordingly restricted the disallowance for payments made after the date of the filing of the return of income. The finding of the Ld. CIT(A) is reproduced as under :

“My predecessor for AY 2015-16 in the appellant’s own case has decided as under:

I have carefully considered the assessment order and written submissions filed by the Ld. AR. The AO has invoked the provisions of section 36(1)(va) read with section 2(24)(x) of the Act and treated the delayed payment of Rs. 2,27,624/- employee’s contribution to PF and ESI as appellant’s income. The Hon’ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 has held that the assessee can get the

benefit of deduction if the payment is made before the return is filed, as per the principle laid down by the Hon'ble Supreme Court in the case of CIT vs. M/s Vinay Cement Ltd. 213 ITR 268.1 find that the appellant has paid the Employee's contribution to provident fund and ESI before the due date of furnishing the return u/s 139(1) of the I. T. Act, 1961. In view of the legal position on the issue, it is held that the AO was not justified in making the disallowance of Rs. 2,27,624/- which is ordered to be deleted. This ground of appeal is ruled in favour of the appellant.

I have carefully considered the assessment order and written submissions filed by the Ld. AR. I have also perused page number 93 of the submissions. The following payments were made after the due date in the case of the appellant company: (i) Rs 1,34,000/- paid on 2016-10-20, (ii) Rs 1,39,868/- paid on 2016-11-19 and (iii) Rs 1,42,293/- paid on 2016-12-18 as per the page number 93 of the submissions. The total of such deposits made after due date comes to Rs 4,16,161/- whereas the return of income was e-filed on 16.10.2013. . Respectfully following the decision of the Hon'ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508, the AO is directed to delete the addition of Rs 1,37,690/- (Rs 553851 - Rs 416161). The remaining addition of Rs 416161/- is upheld and the appellant gets a relief of Rs 1,37,690/-."

7. Before us, the Ld. counsel of the assessee has contested that all the payments towards ESI/PF contribution of the employees were made before the due date of the filing of the return of income and, therefore, no disallowance is warranted in the case of the assessee. Thus, the sole issue before us is only of verification whether all the payments of ESI/PF contribution of the employees were made before the date of the filing of the return of income or not. In the facts and circumstances of the case, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for verification of the claim of the assessee and decide accordingly. It is needless to mention that both the assessee and the Assessing Officer shall be afforded adequate opportunity of being heard. The

grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd December, 2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 23rd December, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi