

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC-1” BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1892/Del/2020  
Assessment Year : 2018-19**

Indo States Exports, E-6, Kalindi Colony, New Delhi-110065. PAN-AAAFI1883M	vs	ACIT, Circle-28(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Raj Kumar Gupta, CA	
<b>Respondent by</b>	Sh. R.K.Gupta, Sr.DR	
<b>Date of Hearing</b>	10.06.2021	
<b>Date of Pronouncement</b>	30.06.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2018-19 is directed against the order of learned CIT(A)-10, New Delhi dated 07.09.2020.

The assessee has raised following grounds of appeal:-

1. *“That the Ld. A.O. CPC erred in law and on merits in making addition / adjustment of Rs.3,01,631/- for the PF and ESIC contribution of the employees, deposited beyond the due date as per PF and ESIC Act but within the time allowed to file the ITR u/s 139(1) and deposited before filing I.T. return.*

2. *That under the facts and circumstances, the addition of Rs.3,01,631/- for PF and ESIC contribution of employees deposited beyond the due date as per PF and ESIC Act but within the time allowed to file the ITR is outside the scope of addition / adjustment while processing*

*the ITR u/s. 143(1) of the Act, also, because, more so, the issue is highly debatable.*

3. *That, without prejudice, on merits, addition of Rs.3,01,631/- for PF and ESIC contribution of employees deposited beyond the due date as per PF and ESIC Act but within the time allowed to file the ITR is fully allowable and cannot be added back.*

4. *That under the facts and circumstance no interest U/s 234B and C should have been charge, otherwise also the calculation of interest are grossly excessive.”*

2. The only effective ground is against the disallowance of Rs.3,01,631/- on account of late payment of employee's contribution towards EPF and ESI. Ld. Counsel for the assessee submitted that authorities below were not justified in disallowing the claim of the assessee in respect of employee's contribution. He submitted that the issue is squarely covered by the latest judgement of Hon'ble Delhi High Court rendered in the case of *PCIT vs Pro Interactive Service (India) Pvt.Ltd. in ITA No.983/2018 [Del.]* order dated 10.09.2018. Further he contended that the judgement of Hon'ble Delhi High Court in the case of *CIT vs Bharat Hotels Ltd. [2019] 103 Taxmann.com 295 (Delhi)*, can not be applied on the facts of the present case. Subsequently, the Hon'ble High Court considering the judgement of the Hon'ble Delhi High Court in the case of the *CIT vs AIMIL Ltd. [2010] 321 ITR 508 (Del.)* has decided the issue in favour of the assessee.

3. In the contrary, Ld. DR opposed the submissions of the Ld. Counsel for the assessee and supported the orders of authorities below.

4. I have heard the rival contentions and gone through the material available on record. I find that Ld.CIT(A) in paras 6.13 & 6.14 rejected the claim of the assessee by observing as under:-

6.13. *"In the written submissions, appellant has placed reliance on various decisions, including the decision of Hon'ble High Court of Delhi in the case CIT vs. Aimil Ltd. and hon'ble Apex Court's decision in the cases CIT vs. Vinay Cement Ltd. and CIT vs. Alom Extrusions Ltd. In this connection it is pertinent to mention here that the decision of Bharat Hotels Ltd., delivered by the Hon'ble jurisdictional High Court is the latest decision, thus reliance placed by the appellant on earlier decisions of the Jurisdictional High Court became of no help to the appellant. It is further mentioned that hon'ble Delhi ITAT in the case M/s Eagle Trans Shipping and Logistics India Pvt Ltd vs ACIT, Circle 8(1), New Delhi has relied upon the decision of Hon'ble Delhi High Court in the case of M/s Bharat Hotels Ltd. and in the above order of ITAT, facts of CIT vs. Alom Extrusions Ltd. have been distinguished holding that the Hon'ble Supreme Court has decided the issue in Alom Extrusions Ltd. case qua employers contribution as per section 43B(b) of the Act and not qua employees contribution u/s 36(1)(va) of the Act. Similarly, In the written submissions, appellant has also placed reliance on the decision of Hon'ble Supreme Court in the case CIT vs. Vinay Cement Ltd. and Pro CIT, Jaipur-2 vs Rajasthan Estate Beverage Corporation Ltd (2017) 84 taxmann.com 185 (SC) in which the SLP filed by the department was dismissed. In this connection, it is pertinent to mention here that recently Hon'ble Apex Court has given a landmark decision observing that the dismissal of a SLP in limine simply implies that the case before this court was not considered worthy of examination for a reason, which may be other than the merits of the case. Reliance in this regard is placed on the decision of Hon'ble Apex Court dated 01/03/2019 in civil Appeal No. 2432 of 2019 in the case Khoday Distilleries Ltd. (Now Known As Khoday India Limited) and others vs Shri*

*Mahadeshwara Sahakara Sakkare Karkhane Ltd. Kollegal (Under Liquidation) Represented by the Liquidator with Civil Appeal No. 2433 of 2019. Thus, the reliance placed on the above judicial pronouncements wherein the SLP of the department was dismissed does not make it a case that subsequent orders of jurisdictional High Court or ITAT cannot be relied upon.*

*6.14. Taking into consideration the facts of the case and latest judicial precedence available on record, I am of the considered view that the appellant is not entitled for deduction u/s 36(1)(va) in respect of delayed payment of employee's contribution towards EPF and ESI before the due date of filing of ITR amounting to Rs.3,01,631/-. The appellant is keeping Govt. money in his possession which is against the spirit of the law. Also there will be no sanctity for any due date if the same is allowed till another date. The ground of appeal taken by the appellant is rejected.”*

5. From the decision of Ld.CIT(A), it is clear that Ld.CIT(A) has followed the judgement rendered in the case of *Bharat Hotels Ltd.* (supra). However, the Hon'ble Jurisdictional High Court in the later judgement dated 10.09.2018 in the case of *PCIT vs Pro Interactive Service (India) Pvt.Ltd.* (supra) held as under:-

*“In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income Tax versus AIMIL Limited, (2010) 321 ITR 508 (Del.) the issue is covered against the Revenue and, therefore, no substantial question of law arises for consideration in this appeal.*

*The legislative intent was/is to ensure that the amount paid is allowed as an expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under section 2(23)(x) of the Act.”*

6. Respectfully following the same, I hereby direct the Assessing Officer to delete the addition. Thus, grounds raised by the assessee in this appeal are allowed.

7. In the result, the appeal of the assessee is allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 30<sup>th</sup> June, 2021.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI