

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1600/Del/2020
Assessment Year : 2018-19**

Pawan Kumar Janghu, C/o-CA M R Sahu & Associates, H.No.651, FF, Sec-10A, Gurgaon, Haryana-122001. PAN-AEVPJ8333C	vs	DCIT, CPC, Bengaluru.
APPELLANT		RESPONDENT
Appellant by		Sh. M.R.Sahu, CA
Respondent by		Sh.Gaurav Pundir, Sr. DR
Date of Hearing		20.07.2021
Date of Pronouncement		30.07.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2018-19 is directed against the order of Ld. CIT(A), Delhi dated 20.08.2020. The assessee has raised following grounds of appeal:-

1. *“That CIT(A) erred in confirming the addition of Rs.17,34,620/- made in the intimation issued under section 143(1) issued by Ld. DCIT, CPC, Bangalore on account of delay in deposit of employees contribution to PF of Rs.14,47,682/- and employees contribution to ESI of Rs.2,86,938/- without considering the fact that both employees contribution to PF & ESI was duly deposited on or before due date of filling return u/s 139(1).*

2. *That CIT(A) erred in confirming the addition of Rs.17,34,620/- under the head income from business done by Ld. DCIT,CPC, Bangalore without issuing any show cause notice for such addition hence there is denial of Natural Justice thus addition made in the intimation issued u/s 143(1)*

without following the principle of Natural Justice deserves to be deleted in full.

3. *That CIT(A) erred in confirming the addition of Rs.17,34,620/- under the head income from business in the intimation issued u/s 143(1) due to delay in deposit of employees contribution to PF and ESI under the relevant Acts but the same was duly deposited before due date of filling return under section 139(1) of the I.T Act,1961 without appreciating the fact that section 143(1)(a) does not permit addition on account of debateable issues where two views are possible.*

4. *That CIT(A) grossly erred in discarding the judicial precedents relied upon by the assessee appellant and confirm addition on relying upon the judgments of Delhi High Court in the case of 'CIT Vs. Bharat Hotels Ltd (2019) 410 ITR 417 (DeL.HC) and that of Delhi Tribunal in the case of Eagle Trans Shipping Logistics (India) Pvt Ltd Vs. ACIT (2019) 1781TD 849 (Del.Trib)' without appreciating the fact that ratio of decision in the case of 'CIT Vs. Bharat Hotels Ltd (supra) is not applicable to the facts of the assessee appellant's case.*

5. *That CIT(A) grossly erred in not appreciating the fact that disallowance of employees contribution to PF and ESI under section 36(1)(va) r.w.s 2(24)(x) when the amount was deposited before due date of filling return u/s 139(1) is not free from controversy as different High Courts across India have taken different views, thus erred in not applying the majority and favourable view opined by the High Courts in the assessee-appellant's case.*

6. *That assessee appellant prays for interest under section 244A relating to refunds as claimed in the return of income.*

7. *The assessee appellant himself self denies his liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief.*

8. *The above grounds of appeal are without prejudice to each other. The appellant may be allowed to add/amend/withdraw any grounds of appeal at the time of hearing or at any time before hearing with due permission of the Hon'ble Tribunal.”*

2. The only effective ground in this appeal is against the addition of Rs.17,34,620/- on account of employee's contribution to PF of Rs.14,47,682/- and employees contribution to ESI of Rs.2,86,938/- on account of delay in deposit as per concerned statutes.

3. Facts giving rise to the present appeal are that Centralized Processing Centre ("CPC") while processing the return of the assessee, disallowed the claim of employee's contribution towards PF and ESI on account of delay in depositing the amount.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who sustained the addition on account of employee's contribution to PF and ESI.

5. Aggrieved against this, the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that the authorities below were not justified in disallowing the claim and making the addition. He submitted that Ld.CIT(A) had relied upon the decision of Hon'ble Delhi High Court rendered in the case of *CIT vs Bharat Hotels Ltd. [2019] 103 taxmann.com 295/410 ITR 417 (Delhi)*. He submitted that the Co-ordinate Bench of this Tribunal in the case of *Azamgarh Steel & Power Pvt.Ltd. vs CPC, Banglore in ITA*

no.1626/Del/2020 order dated 31.05.2021 following the decision of Tribunal in the case of *DCIT vs Dee Development Engineers Ltd. in ITA No.4959/Del/2016* order dated 08.04.2021 decided the issue in favour of the assessee. He drew my attention to the decision of the Tribunal in *ITA No.1626/Del/2020* in the case of *Azamgarh Steel & Power Pvt.Ltd. vs CPC* order dated 31.05.2021 wherein Ld. Counsel for the assessee submitted that the Hon'ble Jurisdictional High Court in the case of *Bharat Hotels Ltd.* (supra) did not take note of the judgement rendered in the case of *CIT vs AIMIL Ltd. reported in 321 ITR 508 (Del.)*. He further submitted that the Hon'ble Delhi High Court in the case of *Pr.CIT vs Pro Interactive Service (India) Pvt.Ltd. in ITA No.983/2018* pronounced on 10.09.2018 decided the issue in favour of the assessee.

7. Per contra, Ld. Sr. DR supported the decision of the authorities below and relied on the case laws submitted before Ld.CIT(A).

8. I have heard the rival contentions and perused the material available on record and going through the orders of the authorities below. The Hon'ble Delhi High Court in the case of *Pr.CIT vs Pro Interactive Service (India) Pvt.Ltd.* (supra) vide order dated 10.09.2018 in ITA No.983/2018 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 (EPD) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under Section 2(24)(x) of the Act.”

9. I find that the Division Benches of this Tribunal in ITA No.4959/Del/2016 in the case of *DCIT vs Dee Development Engineers Ltd.* (supra) and in the case of *Azamgarh Steel & Power Pvt.Ltd. vs CPC* (supra) has followed the judgement of the Hon'ble Delhi High Court in the case of *Pr.CIT vs Pro Interactive Service (India) Pvt.Ltd.* (supra). The Co-ordinate Bench of this Tribunal in the case of *Azamgarh Steel & Power Pvt.Ltd. vs CPC* (supra) held as under:-

6. *“We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance of delayed deposit of contribution received by the employees' towards provident funds and ESI fund. It is an undisputed fact that there has been delay in the actual deposit of payment to the appropriate authority but at the same time it was also a fact that all the contributions received by the assessee from its employees have been deposited before the due date of filing of return of income. We further find that identical issue arose in the case of Dee Development Engineers Ltd. (supra) wherein the Co-ordinate Bench of Tribunal after considering the decision in the case of CIT vs. AIMIL Ltd. (supra) decided the issue of the assessee by observing as under:*

“7. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 1, the assessee company has not deposited the employees' contribution within the due date which is prescribed under the said statute i.e. Provident Fund and ESIC. This issue is dealt by the Hon'ble Delhi High Court in case of CIT vs. M/s Bharat Hotels Ltd. 410 ITR 417 wherein the issue is decided in favour of the Revenue, without considering the

decision of the Hon'ble Delhi High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Del.). But the Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018 wherein the Hon'ble High Court decided the issue in favour of the assessee relying upon the judgment of AIMIL Ltd. (supra). The Hon'ble Delhi High Court held that the legislative intent was/is to ensure that the amount paid is allowed as 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(24)(x) of the Act. It is settled law that when two judgments are available giving different views then the judgment which is in favour of the assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court. Hence, in light of the latest decision in case of Pro Interactive Service (India) Pvt. Ltd., the issue is covered in favour of the assessee. Hence, Ground No. 1 is dismissed."

7. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case of Dee Development Engineers Ltd. (supra) and that of the assessee and further no material has been placed before us to demonstrate that the decision rendered by the Co-ordinate Bench of Tribunal in the case of Dee Development Engineers Ltd. (supra) has been stayed/ set aside/ overruled by higher judicial forum. We therefore, relying upon the aforesaid decision of Dee Development Engineers Ltd. and for similar reasons hold that the CPC was not justified in disallowing the payment. We therefore direct the deletion of addition. Thus ground of the appeal of the assessee is allowed."

10. Respectfully following the binding precedents, I therefore, direct the Assessing Officer to allow the claim of the assessee and delete the addition.

Thus, grounds of appeal raised by the assessee are allowed.

11. 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 30th July, 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