

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1632/Del/2020
Assessment Year : 2017-18**

Wellman Employment India Pvt.Ltd., C/o-Prakash Sachin & Co., 13-D, 13 th Floor, Atma Ram House, 1-Tolstoy Marg, New Delhi-110002. PAN-AABCW5648J	vs	DCIT, Range-18, New Delhi.
APPELLANT		RESPONDENT
Appellant by		Sh. Prakash Sinha, CA
Respondent by		Sh.Gaurav Pundir, Sr. DR
Date of Hearing		20.07.2021
Date of Pronouncement		06.08.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2017-18 is directed against the order of Ld. CIT(A)-9, New Delhi dated 31.07.2020. The assessee has raised following grounds of appeal:-

1. *“Because on the facts and circumstances of the case and as per law, the learned Assessing Officer as well as the learned CIT(A) has failed to appreciate the business model of the appellant that it is only a manpower supplier through different organisations and in terms of Employee Provident Fund Act 1952 and as per the law, the appellant cannot be termed as an employer requiring the compliance of section 36(1)(va) of the Income Tax Act 1961.*
2. *Because on the facts and circumstances of the case and as per law, the appellant is only a contract manpower supplier and the liability*

towards the Provident Fund Act and ESI Act is with the employer in terms of PF Act.

3. *Because on the facts and circumstances of the case and as per law, the statutory liability to comply with the PF/ESI Act was with the client and not on the appellant and therefore the appellant is not an employer in terms of section 36(1)(va) of the Income Tax Act 1961.”*

2. Facts giving rise to the present appeal are that the assessee had filed its return which was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”). Centralized Processing Centre (“CPC”) while processing the return, disallowed the expenditure of the assessee at Rs.31,71,449/- claimed in respect of employee’s contribution.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal by observing as under:-

5.3. *“In view of the factual matrix of the case, the recent judicial precedents of the Jurisdictional High Court and ITAT relied in the above paras and also the provisions of Section 36(1)(va) In the Income tax Act, 1961 which makes It amply clear that the employees Contribution to ESI and PF be deposited before the relevant due dates, I am of considered view that the appellant has failed to comply with the provisions as stipulated under the IT Act, 1961 i.e. the appellant has failed to deposit the employees contribution to ESI and PF before the due dates. Therefore, ground no 1, 2 and 3 are decided in negative to the appellant. Appellant fails in these grounds of appeal.”*

4. Aggrieved against this, the assessee preferred the present appeal before this Tribunal.

5. The only effective ground in this appeal is against the disallowance of expenditure claimed on account of the employee's contribution to ESI & EPF.

6. Ld. Counsel for the assessee submitted that due to Corona pandemic, the evidences could not be filed before Ld.CIT(A). He submitted that during the previous year under consideration, the assessee had 1475 number of manpower which were deputed to the client(s) and it received Rs.14,11,000/- towards service charges. It is stated that Ld.CIT(A) decided the appeal against the assessee without considering the subsequent decisions of the Hon'ble Jurisdictional High Court and the Tribunal.

7. Per contra, Ld. Sr. DR opposed these submissions and supported the order of Ld.CIT(A).

8. I have heard the rival contentions and perused the material available on record. The issue for consideration in this case is with regard to allowability of employee's contribution made towards EPF & ESI. Considering the material available on record and submissions of the assessee, I am of the considered view that the assessee ought to have been given opportunity for furnishing the relevant evidences in the interest of principles of natural justice. I, therefore, set aside the order of Ld.CIT(A) and restore the grounds to Ld.CIT(A) for the decision afresh after considering the evidences furnished by the assessee.

Thus, grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 06th August, 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