

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5002/Del/2018
(Assessment Year : 2014-15)

ACIT Circle – 8(1), New Delhi - 110002 PAN : AAACE 2983 M (APPELLANT)	Vs.	Educomp Solutions Ltd., 1211, Padam Tower-1, 5 Rajendra Place New Delhi – 110 008 (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Jagdish Singh, Sr. D.R.

Date of hearing:	04.10.2021
Date of Pronouncement:	08.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 02.04.2018 of the Commissioner of Income Tax (Appeals)-3, Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of providing online education services and web tutorial services etc. Assessee electronically filed its return of income for A.Y. 2014-15 on 28.11.2014 declaring loss of Rs.147,99,65,046/-. Thereafter assessee filed revised return of income on 18.03.2016 declaring loss of Rs.1,47,99,65,046/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.11.2016 and the total loss was determined at Rs.142,46,06,090/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 02.04.2018 in Appeal No.440/16-17 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds:

- “1. *Ld. CIT(A) erred on law and on the facts of the case in deleting the addition of Rs.5,53,58,960/- made by the AO on account of delayed payment towards ESI/EPF.*
2. *The appellant craves leave to modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed. The case file reveals that on earlier occasion there was no appearance on behalf of the assessee. In such a situation, we proceed to dispose of the appeal *ex-parte* qua the assessee after hearing the Learned DR.

5. During the course of assessment proceedings, AO noticed that payment towards employee's contributions to PF & ESI was deposited after the due date prescribed in the relevant Act. The

details of such delayed payments are tabulated at page 2 & 3 of the assessment order. AO was of the view that the delayed payment of employee's contribution to ESI & EPF is not allowable in view of Section 2(24)(x) r.w.s 36(1)(va) of the Act. He accordingly disallowed the aggregate payment amounting to Rs.5,53,58,960/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that the ESI & EPF contributions were deposited before the due date of filing of the return of income and thereafter by following the decisions in the case of CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi) and CIT vs. Alom Extrusions Ltd. [2009] 185 Taxman 416 (SC) directed the AO to allow the deduction. Aggrieved by the order of CIT(A), Revenue is before us.

6. Before us, Learned DR supported the order of AO.

7. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to disallowance of delayed deposit of ESI/EPF on contribution. We find that CIT(A) while deciding the issue in favour of the assessee has given a finding that though there was delay in deposit of ESI & EPF contribution but the same were deposited with the appropriate authorities before the due date of filing of return of income. She thereafter relying on the decision rendered by Hon'ble Delhi High Court and Hon'ble Supreme Court decided the issue in favour of the assessee. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. Revenue has also not placed on record any contrary

binding decision in its support. In view of the aforesaid facts, we find no reason to interfere to the order of CIT(A) and **thus the ground of Revenue is dismissed.**

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 08.10.2021

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

Date:- 08.10.2021

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Copy forwarded to:

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI