

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No. 1822/Del/2020
(Assessment Year : 2018-19)

Amandeep Singh Khurana W-71, GK-1, New Delhi Delhi – 110048 PAN : AAJPK 0422 D (APPELLANT)	Vs.	ITO Ward – 30(4) New Delhi (RESPONDENT)
---	-----	---

Assessee by	Shri Ashok Khandelwal, C.A.
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	27.10.2021
Date of Pronouncement:	27.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee are directed against the order dated 31.07.2020 of the Commissioner of Income Tax (Appeals)-10, New Delhi relating to Assessment Year 2018-19.

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

3. Assessee is an individual who filed his return of income for A.Y. 2018-19 on 24.10.2018 declaring total income at Rs.28,29,070/-. CPC vide intimation dated 21.05.2019 passed u/s 143(1) of the Act determined the total income at Rs.30,90,910/- by *inter alia* making addition of Rs.2,61,847/- u/s 36(1)(va) of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 31.07.2020 in Appeal No.10092/19-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

“1. *Action of the CIT(A) in confirming the action of AO in making an addition of Rs.2,61,847/- u/s 36(1)(va) of the Act for delayed deposit of employees contribution of EPF and ESI but paid before the due date of filing of return is unjust, illegal, arbitrary and against the facts and circumstances of the case and is against the judgement of Jurisdictional Delhi High Court in the case of M/s. Pro Interactive Services (India) Pvt. Ltd., ITA No.983/2018 dated 10.09.2018.*”

4. Before me, Learned AR reiterated the submissions made before the CIT(A) and further submitted that addition of Rs. 2,61,847/- made u/s 36(1)(va) of the Act by CPC has been upheld by CIT(A). He submitted that though there has been delay in deposit of Employees' Contribution on PF/ESI but the fact remains that all the amounts have been deposited with the appropriate authorities before filing of return of income by the assessee and in support of his aforesaid contention, he pointed to the table reproduced by CIT(A) at Page 2 of the order. He therefore submitted that since the PF/ESIC dues collected have been

deposited before the filing of return of income by assessee no disallowance u/s 36(1)(va) of the Act is called for and for the aforesaid proposition, he relied on the decision of Tribunal in the case of **DCIT vs. Dee Development Engineers Ltd. order dated 08.04.2021 in ITA No.4959/Del/2016**. He further submitted that Tribunal while deciding the issue in favour of the assessee, had also considered the decision in the case of **Bharat Hotels Ltd. (supra)** which has been relied upon by the CIT(A). He therefore submitted that following the order of Tribunal in the case of **Dee Development Engineers Ltd. (supra)** the addition be deleted.

5. Learned DR on the other hand supported the order of CIT(A) and also placed reliance on the decision rendered by Delhi High Court in the case of **Bharat Hotels Ltd. (supra)**.

6. I have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance u/s 36(1)(va) of the Act on account of delayed deposit of PF/ESI dues. It is an undisputed fact that though there has been delay in deposit of PF/ESI dues but it is also an undisputed fact that money collected from employees, have been deposited with the appropriate authorities before filing of return of income. I find that Delhi Bench of Tribunal in the case of **Dee Development Engineers Ltd. (supra)** after considering the decision of Delhi High Court in the case of **Bharat**

Hotels (supra) has decided the issue in favour 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 me, no material has been placed by Revenue to demonstrate that decision rendered by Co-ordinate Bench of Tribunal in the case of **Dee Development Engineers Ltd. (supra)** has been stayed/ set aside/ overruled by higher judicial forum. I therefore, following the decision rendered by the Co-ordinate Bench of Tribunal in the case of **Dee Development Engineers**

Ltd. (supra) and for similar reasons hold that no disallowance u/s 36(1)(va) of the Act is called for in the present case. I therefore direct the deletion of addition. **Thus the ground of assessee is allowed.**

8. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 27.10.2021, immediately after conclusion of the hearing of the matter in virtual mode.

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

Date:- 27.10.2021

*PY**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI