

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC-1', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA Nos.1739 & 1740/Del/2020
(Assessment Years : 2017-18 & 2018-19)

Transzone Logistics (India) Pvt. Ltd. House No.259, Front Side First Floor, Shahabad Mohammadpur, New Delhi-110 075 PAN : AADCT 7687 A (APPELLANT)	Vs.	DCIT CPC Bangalore (RESPONDENT)
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Assessee by	Ms. Gunjan Jain, C.A.
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	25.10.2021
Date of Pronouncement:	29.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

Both the appeals filed by the assessee are directed against the order dated 14.09.2020 of the Commissioner of Income Tax (Appeals)-9, New Delhi relating to Assessment Years 2017-18 & 2018-19.

2. At the outset, Learned AR submitted that the issue involved in both the appeals are identical except for the year and amounts involved and therefore the submissions made by him for one year would be applicable to the other year also. Ld DR did not controvert the aforesaid submissions of Ld AR. In view of the aforesaid submissions of the Counsel, I for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2017-18.

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

4. Assessee is a company who filed its return of income for A.Y. 2017-18 on 10.12.2018 declaring total income at Rs.16,43,330/-. Thereafter vide intimation u/s 143(1) dated 17.02.2020, CPC Bangalore determined the total income of the assessee at Rs.23,30,250/- *inter alia* by disallowing Rs.6,86,922/- on account of delayed deposit of ESI/PF u/s 36(1)(va) of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). Before the CIT(A) it was *inter alia* submitted that though there has been delay in deposit of dues but all the dues have been deposited before filing the return of income and therefore no disallowance u/s 36(1)(va) of the Act is called for. Assessee also relied on various decisions. CIT(A) however did not agree with the contention of the assessee. He relying on the

decision of Jurisdictional High Court in the case of **CIT vs. Bharat Hotels Ltd. reported in 410 ITR 417** upheld the order of AO. Aggrieved by the order of CIT(A), assessee has now raised the following grounds:

1. *“Under the facts and circumstances of the case, the order passed by the Learned First Appellate Authority is grossly injudicious, unwarranted and bad in law.*
2. *The Learned First Appellate Authority has grossly erred in upholding the disallowance u/s 36(1)(va) of the Act amounting to Rs.6,86,922/- on account of late payment of employee’s contribution to PF/ESI. The same is permissible u/s 43B of the Act as the aforementioned amount deposited before filing return of income for the relevant assessment year.*
3. *The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.”*

5. Before me, Learned AR reiterated the submissions made before the CIT(A) and further submitted that CIT(A) had upheld the order of AO by relying on the decision of Delhi High Court in the case of **Bharat Hotels Ltd. (supra)**. She submitted that on identical facts the Co-ordinate Bench of Tribunal in the case of **DCIT vs. Dee Development Engineers Ltd. order dated 08.04.2021 in ITA No.4959/Del/2016** had decided the issue in favour of the assessee. She further submitted that Tribunal while deciding the issue in favour of the assessee, the Hon’ble Tribunal had also considered the decision in the case of **Bharat Hotels Ltd. (supra)** as relied upon by the CIT(A). She pointed to the copy of relevant decision placed in the paper book. She therefore

submitted that following the order of Tribunal in the case of **Dee Development Engineers Ltd. (supra)** the addition be deleted.

6. 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)**.

7. 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."

8. 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 ratio of 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.**

9. **In the result the appeal of the assessee is allowed.**

10. **As far as ITA No.1740/Del/2020 for A.Y. 2018-19** is concerned, before me, both the parties have submitted that the issue raised in the appeal for A.Y. 2018-19 is identical to that of

A.Y. 2017-18. I have hereinabove while deciding the appeal for A.Y. 2018-19 for the reasons stated have allowed the appeal of the assessee. I therefore for similar reasons also allow the appeal of the assessee for A.Y. 2018-19. Thus **the ground of the assessee is allowed.**

11. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on 29.10.2021

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

Date:- 29.10.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI