

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.849/Del/2021  
(Assessment Year : 2019-20)

Ajay Mehta L-1073, Devender Vihar Sector – 56, Gurgaon Haryana- 122 011  PAN : AEIPM 3736 K <b>(APPELLANT)</b>	Vs.	ADIT CPC Bengalore  <b>(RESPONDENT)</b>
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Assessee by	Shri Rakesh Kumar, C.A.
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	05.10.2021
Date of Pronouncement:	29.10.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 28.02.2020 of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2019-20.

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

3. Assessee is an individual stated to be carrying business of Manpower Supply Contractor as a proprietor concern. Assessee filed his return of income for A.Y. 2019-20 on 11.10.2019 declaring total income of Rs.20,61,810/-. In the intimation issued u/s 143(1) of the Act dated 28.02.2021, the total income from business and profession was determined at Rs.18,13,404/- as against the returned income of Rs.11,18,941/- *inter alia* by making disallowance of Rs.6,94,463/- on account of delayed deposit of employees' contributions towards PF/ESIC. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who in the order dated 25.05.2021 in Appeal No. CIT(A), Gurgaon-1/12046/2019-20 upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before me and has raised the following grounds :

1. *"The Ld. ADIT has erred in law and on facts in passing the impugned intimation order u/s 143(1).*
2. *The Ld. ADIT has erred in law and on facts in making an adjustment of Rs. 6,94,463/- under section 143( 1 )(a)(iv) to the total income as declared by the appellant, though no such disallowance of expenditure was indicated in the Tax Audit Report, only the details of late payment were given therein on account of Employees contribution towards EPF and ESI.*
3. *The Ld. ADIT has erred in law and on facts in disallowing the sum of Rs.6,94,463/- towards the late deposit of employees*

*contribution to EPF and ESI and making addition thereof under section 36(1)(va) of the Act, ignoring the fact that it had been deposited by the appellant with the authorities much before the due date for filing the return of his income and, therefore, it was allowable as deduction by invoking the provisions of section 43B of the Act as held by various High Courts and the Supreme Court in the decided cases.*

4. *The Ld. ADIT has erred in law and on principle of natural justice in making the said addition without affording a proper opportunity to the appellant of being heard in the matter.*
5. *The appellant craves leave to add, alter, amend or vary the above ground(s) of appeal before or at the time of hearing.”*

4. At the outset, the Learned AR submitted that though the assessee has raised several grounds but the sole controversy is with respect to disallowance made u/s 36(1)(va) of the Act.

5. Before me, Learned AR pointed to the statement showing delay in deposit of employees' contribution towards PF/ESIC at page 13 of the paper book and from the aforesaid table, he submitted that though there has been delay in deposit of PF/ESIC Contributions but all the contributions received by the assessee have been deposited with the appropriate authorities before the filing of return of income by the assessee. He therefore submitted that since the amounts have been deposited before filing the return of income, no disallowance is called for and for aforesaid proposition, he relied on the decision in the case of **Azamgarh Steel & Power vs CPC in ITA No.1626/Del/2020**

**dated 31.05.2021 and CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi) and** various other decisions.

6. Learned DR on the other hand supported the order of lower authorities and also placed reliance on the decision of Delhi Tribunal in the case of **Vedvan Consultants Pvt. Ltd. vs DCIT in ITA No.1312/Del/2020 order dated 26.08.2021**. He also submitted that the amendment brought out by Finance Act 2021 would be applicable to the present case as by the amendment it has been clarified that provisions of Section 43B shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub clause (x) of Clause (24) of Section 2 applies.

7. I have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the delayed deposit of PF/ESIC contributions. Before me, Learned AR has pointed to the statement of the deposits made during the year and from that table he has pointed out that though there has been delay in deposit of the PF/ESIC Contributions but all the amounts have been deposited with the appropriate authorities before filing of return of income by the assessee. I find that the various Benches of the Tribunal at Delhi and other Tribunal have held that the delayed deposits of PF & ESIC but before the date of filing of return is an allowable

expenditure and for which reliance was placed on the decision of Hon'ble Delhi High Court in the case of **AIMIL Ltd. (supra)**. As far as reliance by Learned DR on the amendment brought out by Finance Act 2021 is concerned, "notes on clauses" to the Finance Bill 2021 clearly states that the amendment will take effect from 1<sup>st</sup> April 2021 and will apply in relation to the assessment year 2021-22 and subsequent assessment year. In such a situation, I am of the view that the amendment does not apply to the assessment year under consideration. As far as the reliance of Revenue on the decision of **Vedvan Consultants Pvt. Ltd. (supra)** is concerned, I find that the various division Benches of the Delhi & other Tribunal have held the delayed deposits of PF/ESIC Contributions to be allowable if the same are deposited with the appropriate authorities before filing of return of income by the assessee. Further, 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**. I therefore following the decision rendered by Hon'ble Apex Court in the case of **M/s. Vegetable Products Ltd. (supra)** and **AIMIL Ltd. (supra)**, of the view that no disallowance was warranted in the present case. I therefore direct the AO to delete the addition. **Thus the assessee's ground is allowed.**

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

**Order pronounced in the open court on 29.10.2021**

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

*Date:- 29.10.2021*

*PY\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI