

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1755/Del/2020
Assessment Year: 2017-18

Star Facilities Management Limited, 115-Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi.	Vs.	ITO, Ward-24(2), New Delhi.
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PAN: AALCS2854C

(Appellant)

(Respondent)

Assessee by	:	Shri Arta Trana Panda, Advocate
Revenue by	:	Shri Om Prakash, Sr.DR
Date of Hearing	:	01.11.2021
Date of Pronouncement	:	01.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 4th August, 2020 of the CIT(A)-8, New Delhi, relating to Assessment Year 2007-08.

2. The only effective ground raised by the assessee in the instant appeal is regarding the order of the CIT(A) in confirming the disallowance of Rs.2,62,984/- on account of delayed payment of employees' contribution to PF and ESI.

3. Facts of the case, in brief, are that the assessee is a private limited company and filed its return of income on 30th July, 2018 declaring nil income. The return was processed on 15th May, 2019 at CPC, Bangalore at an income of Rs.2,62,980/- by making an addition of Rs.2,62,984/- on account of late deposit of PF/ESI u/s 36(1)(va) of the IT Act. Before the CIT(A), the assessee, relying on various decisions, submitted that the addition is not justified since the assessee has deposited the employees' contribution to PF and ESI before the due date of filing the return of income. However, the Id.CIT(A), following the decision of the Hon'ble Delhi High Court in the case of CIT vs. Bharat Hotels Ltd., reported in 410 ITR 417 and various other decisions, held that the assessee is not entitled to deduction u/s 36(1)(va) due to failure on his part in depositing the employees' contribution on or before the due date.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee submitted that a number of High Courts including the jurisdictional High Court and the coordinate Benches of the Tribunal have taken the view that where the employees' contribution to PF and ESI have been deposited before the due date of filing of the return, no disallowance can be made u/s 36(1)(va) r.w.s. 2(24)(x) of the IT Act. He submitted that the Hon'ble Delhi High Court in the case of PCIT vs. Pro Interactive Service (India) Pvt. Ltd. in ITA No.983/2018, order dated 10th

September, 2018, following its earlier decision in the case of CIT vs. AIMIL Ltd., reported in 320 ITR 508, has held that "the legislative intent was / is to ensure that the amount paid is allowed as an 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 the Act."

6. Referring to the decision of the coordinate Bench of the Tribunal in the case of CIT v. Dee Development Engineers Ltd., ITA 4959/Del/2016, order dated 08.04.2021, he submitted that the Tribunal, following the above decision of the Hon'ble Delhi High Court in the case of Pro Interactive Service (India) Pvt. Ltd. (supra) has decided the issue in favour of assessee where the employees' contribution to PF and ESI were deposited after the due date prescribed under the Employees Provident Fund and Employees' State Insurance Act, 1948 but before the due date of filing of return. Relying on various other decisions as per his case law compilation, he submitted that under identical circumstances, the courts/coordinate Benches of the Tribunal have held that no disallowance u/s 36(1)(va) r.w.s 2(24)(x) can be made if the employees' contribution to PF and ESI have been deposited prior to the due date of filing of the return of income.

7. The ld. DR, on the other hand, relied on the order of the CIT(A).

8. I have considered the rival arguments made by both the sides and perused the record. The only question to be decided in the grounds raised by the assessee

is regarding the allowability of employees' contribution to PF and ESI if deposited after the due date prescribed under the relevant Act, but, before the due date of filing of return of income u/s 139(1) of the Act. Admittedly, the assessee, in the instant case, has deposited the employees' contribution to PF and ESI after the relevant date prescribed under the PF and ESI Act, but, before the due date of filing the return of income. I find, the Hon'ble Delhi High Court in the case of PCIT vs. Pro Interactive Service (India) Pvt. Ltd. (supra) has held that the legislative intent was / is to ensure that the amount paid is allowed as an expenditure only when payment is actually made. The Hon'ble High Court has further held that legislative intent and objective is not to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under the Act. I find, following the above decision the coordinate Bench of the Tribunal in the case of CIT v. Dee Development Engineers Ltd. (supra) has decided the issue in favour of the assessee holding that no disallowance u/s 36(1)(v) r.w.s. Section 2(24)(x) can be made if the employees' contribution to PF and ESI are deposited after the due date prescribed under the relevant Acts, but, paid before the due date of filing of return. Since the assessee, in the instant case has, admittedly, deposited the employees' contribution to PF and ESI before the due date of filing of the return of income, therefore, respectfully following the decisions cited (supra), I hold that no disallowance u/s 36(1)(v) r.w.s. Section 2(24)(x) can be made in the

instant case. Accordingly, the order of the CIT(A) is set aside and the grounds raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 01.11.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 01st November, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi