

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.1761/Del/2020
(Assessment Year : 2018-19)

Surendra Kumar Thakur K-230, Jhangir Puri, New Delhi, Delhi – 110 033 PAN : ACZPT 1746 R	Vs.	DCIT CPC Bangalore
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Gurjeet Singh, C.A. Shri Deepanshu Jain, Adv.
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	28.10.2021
Date of Pronouncement:	11.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 14.08.2020 of the Commissioner of Income Tax (Appeals)-12, 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. Assessee filed his return of income for A.Y. 2018-19 on 06.06.2019 declaring total income of Rs.10,01,675/-. CPC Bangalore vide intimation issued dated 15.06.2019 u/s 143(1) of the Act determined the total income at Rs.34,26,280/- by making disallowance of Rs.25,89,600/- u/s 36(1)(va) of the Act on account of non-deposit of the employees' contribution towards PF/ESIC before the prescribed due dates. Aggrieved by the order of CPC, assessee carried the matter before the CIT(A) who vide order dated 14.08.2020 in Appeal No. 93/19-20 upheld the order of CPC. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds :

1. *“Because the action for making disallowance of Employees Provident Fund and ESI amounting to Rs.25,89,600/- u/s 143(1)(a) is under challenge on facts and law as the addition is outside the scope of section 143(1)(a).*
2. *Because the action is being challenged on facts and law for disallowance of Employee Provident Fund & ESI amounting to Rs.25,89,600 u/s 36(1)(v) of the Act.*
3. *For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

4. Before me, Learned AR submitted that in the intimation passed u/s 143(1), CPC disallowed Rs.25,89,600/- u/s 36(1)(va) on account of non-deposit of employees contribution towards PF/ESIC before the prescribed due dates. Learned AR submitted that though there has been delay in deposit of PF/ESIC

Contributions but all the contributions received by the assessee from the employees 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. He therefore submitted that the addition be deleted. He thereafter submitted that if the addition is deleted, then the ground raised about the validity of addition in the intimation u/s 143(1) of the Act would be rendered academic and will not require any adjudication.

5. 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.

6. I have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the addition made u/s 36(1)(va) of the Act on account of 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. The aforesaid contention of the assessee has not been controverted by Learned DR. I find that the various Benches of the Tribunal at Delhi and other Tribunal have held that the delayed deposits of PF & ESIC 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 1st 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 brought out by Finance Act 2021 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)**, am of the view that no disallowance u/s 36(1)(va) of the Act is warranted in the present case. I therefore direct the AO to delete the addition. **Thus the assessee's ground is allowed.** Since the ground on merits has been decided in assessee's favour, the ground whereby the assessee is challenging the adjustment u/s 143(1) is rendered academic and therefore dismissed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.11.2021

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 11.11.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI