

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1956/Del/2020
Assessment Year: 2018-19

Northern India Trading Co.,
C/o SSAR & Associates, CA,
4852/24, FF Ansari Road,
Near Sanjivan Hospital,
Daryaganj,
New Delhi.

Vs. DCIT,
CPC,
Bengaluru.

PAN: AAHFN1944R

(Appellant)

(Respondent)

Assessee by	:	Shri Sachin Jain, CA
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	16.11.2021
Date of Pronouncement	:	29.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 07.09.2020 of the CIT(A)-10, New Delhi, relating to Assessment Year 2018-19.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income declaring the total income at Rs.17,56,067/-. The CPC, Bangalore processed the return u/s 143(1) of the Act on 16th October, 2019 at Rs.21,84,142/- wherein an adjustment of Rs.4,28,075/- was made on account of late deposit of employees' contribution to PF and ESI as per provisions of section

36(1)(va) of the Act. In appeal, the Id.CIT(A), relying on various decisions, upheld the action of the CPC, Bangalore.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. That both the lower authorities were not justified in making and confirming the assessment order u/s 143(1) since the same was not in accordance with the Provisions of the Income Tax Act, 1961 and is illegal on account of various grounds.

2. That the assessment order passed by Ld. AO is bad in law since the same was passed without following the Principles of Natural Justice and without providing the proper opportunity.

3. That under the facts and circumstances of the case an addition of Rs. 4,28,075/- made by the Ld. AO u/s 36 (1)(va) of the Income Tax Act, 1961 and subsequently confirmed by the CIT (A) deserves to be deleted.

4. That the appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing with the permission of the Honøble ITAT, Delhi Bench.

4. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions relied on by both the sides. The only dispute in the grounds raised by the assessee is regarding the allowability of amount of Rs.4,28,075/- on account of delayed payment of employees' contribution to PF and ESI. There is no dispute to the fact that the above payments have been deposited before the due date of filing of return of income u/s 139(1) of the Act. We find, the Honøble 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 Honøble High Court has further held that legislative intent and objective is not to treat belated payment of Employee's Provident Fund (EPD) 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 employeesø 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 employeesø 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.

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

Pronounced in the open court on 29.11.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 29th 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