

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1032/Del/2021
Assessment Year: 2019-20

Maxx Solutions,
958-960, Tower BI,
9th Floor, Sapaze IT Park,
Sohna Road, Sector-49,
Gurgaon.

Vs. CPC,
Bengaluru.

PAN: AAVFM7455N

(Appellant)

(Respondent)

Assessee by	:	Shri Ashish Agarwal, Advocate
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	15.11.2021
Date of Pronouncement	:	29.11.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 22nd July, 2021 of the National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2019-20.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 26th October, 2019 declaring total income at Rs.18,50,524/-. The return was processed by the CPC, Bangalore u/s 143(1) of the Act on 06.03.2020 wherein disallowance of Rs.5,78,203/- was made as per provisions of

section 36(1)(va) on account of delayed payment of employees' contribution to PF and ESI. In appeal, the Id.CIT(A), relying on various decisions, upheld the action of the AO.

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

ö The Ld. CIT(A) was wrong in confirming addition of Rs.5,78,203/- u/s 36(1)(va) of the IT Act, 1961 without any base.ö

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.5,78,203/- 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 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.

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