

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER

**ITA No. 1139/Del/2021
[Assessment Year : 2018-19] &**

**ITA No. 1140/Del/2021
[Assessment Year : 2019-20]**

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|--|-------------------------|----------------------------------|
| Shardha Nand Sharma House No. 1768, Sector-8, Faridabad Haryana PAN: BETPS1151L | vs | ITD CPC Bengaluru Karnatak |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri Girish Gupta, CA | |
| Respondent by | Shri Om Prakash, Sr. DR | |
| Date of Hearing | 13.12.2021 | |
| Date of Pronouncement | 13.12.2021 | |

ORDER

PER C. N. PRASAD, JM :

These two appeals are filed by the assessee against the order of the Ld.CIT (A), National Faceless Appeal Centre, in sustained the disallowance made on account of belated payment of Provident Fund and ESI Contributions while processing the return u/s 143(1) by Central Processing Centre, CPC, Bengaluru. The assessee has raised following grounds of appeal:-

**ITA No. 1139/Del/2021
[Assessment Year : 2018-19]**

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.2,96,060/- made by the AO(CPC) on account of late deposit of employees' contribution towards provident fund and ESI Fund.

3. On the facts of case, the Ld. CIT(A) has erred in confirming the addition made by AO, that employees contribution of PF and ESI Fund would disallow when paid after the due date prescribed under relevant Act but before due date of filing ITR.

4. On the facts and circumstances of the case, learned CIT(A) has erred in law and on facts by applying amendments to section 36(1)(va) and "Explanation 5" inserted to Section 43B introduced in the Finance Act 2021 retrospectively.

5. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the various judicial pronouncements brought on record by the assessee in this regard.

6. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in passing the order without providing reasonable opportunity of being heard to the assessee in clear violation of principle of natural justice.

ITA No. 1140/Del/2021
[Assessment Year : 2019-20]

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.5,80,530/-/- made by the AO(CPC) on account of late deposit of employees' contribution towards provident fund and ESI Fund.*

3. *On the facts of case, the Ld. CIT(A) has erred in confirming the addition made by AO, that employees contribution of PF and ESI Fund would disallow when paid after the due date prescribed under relevant Act but before due date of filing ITR.*

4. *On the facts and circumstances of the case, learned CIT(A) has erred in law and on facts by applying amendments to section 36(1)(va) and "Explanation 5" inserted to Section 43B introduced in the Finance Act 2021 retrospectively.*

5. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the various judicial pronouncements brought on record by the assessee in this regard.*

6. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in passing the order without providing reasonable opportunity of being heard to the assessee in clear violation of principle of natural justice.*

7. *On the facts and circumstances of the case, ld has erred in law and on facts in charging interest u/s 234B and 234C."*

2. The Ld. Counsel for the assessee at the outset submits that CPC while processing the return u/s 143(1) of the Act disallowed Employees Contribution towards Provident Fund and ESI for Rs. 2,96,060/- and Rs. 5,80,530/- for

Assessment Years 2018-19 and 2019-20 respectfully. On the ground that they were remitted beyond the time specified in the respective statute. Ld. Counsel for the assessee submits that the assessee has remitted these contributions before due date of filing of return of income. u/s 139(1) of the Act. The Ld. Counsel submits that the issue in appeal is squarely covered by the decisions of the Delhi High Court in the case of CIT Vs. AIMIL Ltd. [321 ITR 508] and CIT Vs. P. M Electricals Ltd. [313 ITR 1610. The Ld. Counsel referring to these decisions submits that, it has been held by Hon'ble High Court that if the employer as well as the Employee Contribution towards ESI & PF is paid before the due date of filing of return no disallowance can be made by the Assessing Officer. The Ld. Counsel also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Alom Extrusion Ltd. [319 ITR 306] for the said propositions. Ld. Counsel further placing reliance on the Coordinate Bench decision in the case of Chatru Mal Garg Vs. ACIT in ITA No. 850/Del/2021 dated 29/10/2021 submitted that the Bench considered the amendment made by Finance Act, 2021 inserting Explanation 2 to Section 39(1)((va) and held that the amendment with apply only from Assessment Year 2021-22 and subsequent years as it was inserted with effect from 1/4/2021.

3. On the other hand, the Ld. DR supported the orders of the authorities below.

4. We have heard the rival submissions and perused the order of the Ld.CIT(A) and the decisions relied on. It is not in dispute that the Contributions to Provident Fund and the ESI were remitted by the assessee before due date for filing of return. The Hon'ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (Supra) held that if the Provident Fund and ESI Contributions were remitted before due date of filing of return of income such contributions cannot be disallowed u/s 43B of the Act.

5. We further observed that the Coordinate Bench of the Tribunal in the case of Chatru Mal Garg Vs. CIT in ITA No. 850/Del/2021 dated 29/10/2021 decided identical issue in favour of the assessee by considering the Amendment made by the Finance Bill 2021 w.e.f. 1/4/2021 to the Provisions to Section 36(1)(va) of the Act observing as under:-

*“7. I have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to disallowance under section 36(1)(va) of the Act. It is an undisputed fact that there has been slight delay in the deposit of employees’ contribution of PF and ESI by the assessee and the contribution have been deposited beyond the due date prescribed by the relevant authorities but at the same time it is also a fact that the amounts have been deposited with the appropriate authorities by the assessee before filing the return of income for the relevant assessment year. I find that Hon’ble Delhi High Court in the case of **CIT vs. AIMIL Ltd. (supra)** has held that no disallowance under section 36(1)(va) of the Act is called for when the amounts are deposited before filing the return of income. Similar view has also been taken by the Hon’ble Punjab & Haryana High Court in the case of **CIT vs. Hemla Embroidery Mills (P) Ltd (supra)** and **Indian Geotechnical Services (supra)**. As far as the applicability of amendment made by Finance Act 2021 is concerned, I find that the Co-ordinate Bench of Tribunal in the case of **Indian Geotechnical Services (supra)** has held that amendment made by Finance Bill 2021 shall take effect from 1st April 2021 and will accordingly apply to A.Y. 2021-11 and subsequent years. In the present case assessment year involved is 2018-19 and*

*therefore following the aforesaid decision in the case of **Indian Geotecfenical Services (supra)**, I am of the view that the amended provisions would have no application to the case under consideration. Before me, Learned DR has relied on the decision of Co-ordinate Bench of Tribunal in the case of **Vedvan Consultants Pvt. Ltd. (supra)**. 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 of High Courts cited hereinabove and the decision of the Co-ordinate Bench of Tribunal, I am of the view that no addition u/s 36(l)(va) of the Act is called for in the present case. Therefore I direct the AO to delete the addition. **Thus the ground of assessee is allowed.**"*

6. Respectfully, following the alone said decisions the Assessing Officer is directed to delete the disallowance made towards PF & ESI Contributions and recompute the income accordingly.

7. In result, both the appeals of the assessee are allowed.

Order pronounced in the open court in both the parties on this 13th day of December, 2021.

Sd/-

**(C. N. PRASAD)
JUDICIAL MEMBER**

Dated : 13 /12/2021

R. N

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI