

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-3” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1591/DEL/2020

[Assessment Year: 2018-19

Trans India Holidays Private Limited 18, Community Centre, Zamrudpur, New Delhi-110048 PAN-AAACG0264D	<u>Vs</u>	Asstt. Commissioner of Income Tax Circle-58(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by		Shri Ankur Aggarwal, CA
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		18.01.2022
Date of pronouncement		31.01.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-9, New Delhi, dated 31-07-2020, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. On the fact and Circumstances of the case , the order passed by the learned DCIT, CPC Bangalore and Confirmation of the same by CIT (A)- 9 is bad both in the eyes of law and on facts

2. On the fact and Circumstances of the case, the learned CIT(A) the disallowance of Rs.636005/- u/s 36(l)(va) of Income Tax Act,1961 by Assessing Officer under section 143(1) of Income Tax Act,1961 and confirmation of the same by the

Commissioner of Income Tax (Appeals) under section 250 is contrary to facts and law

3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in without appreciating the fact that the delay in most of the cases has in range between 1-4 days except in case of two Payments a sum of Rs.1800 each which has been deposit on the 32nd day .The delay has been in the instant case are technical in nature like holiday, PF and ESI website issue, net banking blocked due to wrong password etc. There would be no case made out for misutilisation of funds as principle laid down in Circular no. 495, dated 22-9-1987 and para 90, page 16 of the finance minister speech Budget 1987.*

4. *That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in following the judgement of Bharat Hotels Limited (2019) 410 ITR 417 (Delhi) without appreciating the fact that after Bharat Hotel Limited Judgement, there is another judgement of Honourable Delhi High Court in case of M/s Pro Interactive Services (India) Private Limited, ITA No. 983/2018 dated 10.09.2018 where the Honourable Delhi High Court following the judgement of ITO vs. AIMIL Ltd (2010) 321 ITR 508 allowed relief to the assessee on late deposit of employee contribution to PF and ESI and came to contrarian findings. It is respectfully submitted that Bharat Hotel Ltd Judgments was pertaining to AY 2000-01 which falls prior to amendment to section 43b in the year 01.04.2004 and rightfully disallowed the employee contribution as per law prevalent at the juncture. To apply this judgments to that instant case would be gross injustice.*

5. *That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in ignoring the observation of Honourable Delhi High Courts in Case of CIT Vs. AIMIL Limited (2010) 321 ITR 508 which observed as under:*

“We may only add that if the employees’ contribution is not deposited by the due date prescribed under the relevant

Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principles laid down by the Supreme Court in Vinay Cement (supra).”

6. *That the appellant craves leave to amend, alter, add or delete all or any of the above grounds of appeal.”*

2. The only effective ground in this appeal is against sustaining the disallowance of Rs. 6,36,005/- made u/s 36(1)(va) of the Income-tax Act, 1961, hereinafter referred to as “the Act”. The facts giving rise to the present appeal are that while processing the return Central Processing Centre made certain adjustments. Thereby, the Central Processing Centre disallowed the contribution of PF & ESI on the basis that the same was deposited late as per the respective Acts.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions sustained the addition. Now the assessee is in appeal before the Tribunal.

4. At the outset learned counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the judgment of the Hon’ble Jurisdictional High Court in the case of ITO Vs. AIMIL Ltd. (2010) 321 ITR 508 and also the judgment in the case of M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018.

5. On the contrary, learned Sr. DR opposed the submissions and supported the orders of authorities below. However, the learned DR could not controvert the fact

that the issue is covered by the judgment of the Hon'ble Delhi High Court in the case of M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018.

6. I have heard the rival submissions and perused the material available on record. I find that the issue is squarely covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018. The same judgment has been followed by the coordinate Benches of the Tribunal in catena of decisions. Therefore, respectfully following the decision of Hon'ble Delhi High Court in the case of M/s Pro Interactive Services (India) Pvt. Ltd. (supra) I hereby direct the Assessing Officer to delete the disallowance.

7. The appeal of the assessee is allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Madan PalVerma

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI