

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7693/DEL/2018
Assessment Year 2015-16

Falck India Pvt. Ltd., Upper Floor, The Peach Tree, Sushant Lok-1, Block C, Sector-43, Gurgaon.	v.	ACIT, Circle-9(1), New Delhi
TAN/PAN: AABCF4612M		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri Rajesh Kumar Dhanesta, Sr.D.R.
Date of hearing:	03 02 2022
Date of pronouncement:	10 02 2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-III, New Delhi ['CIT(A)' in short], dated 25.09.2018 arising in the assessment order dated 25.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per its grounds of appeal, the assessee herein has challenged the disallowance of Rs.11,54,669/- on account of delayed payment of employee's contribution towards PF and ESI.

3. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter was proceeded *ex-parte*.

4. Ld. DR for the Revenue relied upon the assessment order and the first appellate order.

5. On perusal of the records, we observe that the Assessing Officer has made the impugned addition on the ground that the assessee has deposited employee's contribution towards Provident Fund and ESI amounting to Rs.11,50,137/- and Rs.4,523/- respectively after due date as prescribed under the relevant Act/Rules. The Assessing Officer accordingly resorted to the additions under Section 36(1)(va) read with Section 2(24)(x) of the Act.

6. It is the case of the assessee before lower authorities that it has deposited the employee's contribution in PF and ESIC before the due date of filing of return of income stipulated under Section 139(1) of the Act.

7. We find that the identical issue has been decided in favour of the assessee by the Hon'ble Delhi High Court in the case of Pr.CIT vs. Pro Interactive Service (India) Pvt. Ltd. vide order dated 10.09.2018 in ITA No.983/2018. The extract of the judgment is reproduced as under:

"In view of the judgment of the Division Bench of Delhi High Court in Commissioner of Income-Tax versus Aimil Limited, (2010) 321 ITR 508 (Del) the issue is covered against the Revenue and, therefore, no substantial question of law arises for consideration in this appeal.

The legislative intent was /is to ensure that the amount paid is allowed as an expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPD) and Employee's State Insurance Scheme (ESI) as deemed income of the

employer under Section 2(24)(x) of the Act. ”

8. Respectfully following the binding precedents of Hon'ble Delhi High Court, we direct the Assessing Officer to allow the claim of the assessee and delete the addition. Hence, the grounds of appeal raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed ex-parte.

Order pronounced in the open Court on 10/02/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: **10/02/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER