

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1379/DEL/2021
Assessment Year 2019-20

Rishi Pal Ashish Kumar Contractor, Dshish, Kherikarmu, Shamli	v.	ITD, CPC, Bengaluru.
TAN/PAN: AAPFR5945Q		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Agarwal, Adv.		
Respondent by:	Shri Ajay Kumar, Sr.D.R.		
Date of hearing:	14	02	2022
Date of pronouncement:	14	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), National Faceless Appeal Centre (NFAC) dated 19.08.2021 arising from the intimation order dated 10.05.2020 passed by the Asst. Director of Income Tax, Central Processing Center, Bangalore, under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. As per its grounds of appeal, the assessee herein has challenged the disallowance of Rs.62,23,657/- on account of delayed payment of employee's contribution towards EPF and ESI.

3. When the matter was called for hearing, ld. counsel for the assessee, Shri Ashish Agarwal, Adv. submitted that the impugned

employee's contribution towards PF and ESIC has been paid and deposited before the due date allowed u/s.139(1) although the assessee has remitted the payment belatedly and beyond the due dates specified in respects Acts. It was thus contended that where the assessee has complied with the obligation of payment towards employee's contribution before the due date, the deductions are allowable u/s.36(1)(va) of the Act as held in several judicial pronouncements including the decision of 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.983/2018.4. 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.62,23,657/- after due date as prescribed under the relevant Act/ Rules in breach of Explanation 5 to Section 43B of the Act. 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 EPF and ESI 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 (EPF) 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. While concluding so, we also take note of the plea of the assessee that delayed payment of employee's contribution to PF/ESIC is not disallowable as the amendments to Section 36(1)(va) and Section 43B effected by Finance Act, 2021 were applicable prospectively in relation to Assessment Year 2021-22 and subsequent years. Therefore, the claim of deduction of contribution to Employee's State Insurance Scheme (ESI) and Provident Fund u/s.36(1)(va) could not be denied to the assessee in Assessment Year 2019-20 in question on the basis of amendments made by Finance Act, 2021. For this proposition, we find support from the decision of the Co-ordinate Bench of Tribunal in the case of The Continental Restaurant and Café Company vs. ITO as reported in (2021) 91 ITR (Trib.)(S.N.) 60 (Bang.) and Adyar Ananda Bhavan Sweets India P. Ltd. vs. ACIT, ITA No.402 and 403/Chny/2021 order dated

08.12.2021. Consequently, the action of revenue on this score is set aside and cancelled.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 14/02/2022.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 14/02/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER