

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1907/Del/2021

[Assessment Year : 2018-19]

Devine Security Services, M-33, West Patel Nagar, New Delhi-110008. PAN-AAHFD3766H	vs	CPC, Bengaluru.
APPELLANT		RESPONDENT
Appellant by	Shri Ashish Goyal, CA & Shri Aditya Chhejed, Adv.	
Respondent by	Shri Sanjay Kumar, Sr.DR	
Date of Hearing	23.02.2022	
Date of Pronouncement	23.02.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2018-19 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 16.11.2021.

2. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order passed by the National Faceless Appeal Centre [NFAC] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the NFAC is bad both in the eye of law and on*

facts as the same having been passed in gross violation of principle of natural justice.

3. *On the facts and circumstances of the case, the order passed by the NFAC is bad both in the eye of law as the Faceless appeal scheme, 2020 itself is bad in law being in violation of principle of natural justice and hence liable to be quashed.*
4. *On the facts and circumstances of the case, the order passed by the NFAC is bad both in the eye of law as the Faceless appeal scheme, 2020 under which this order has been passed itself is in violation of provisions of the Income Tax Act and Rules framed therein and hence liable to be quashed.*
5. *On the facts and circumstances of the case, the order passed by the NFAC is bad in law having being passed in violation of the faceless appeals scheme and hence liable to be quashed.*
6. *On the facts and circumstances of the case, the order passed by the NFAC is bad in law having being passed without giving opportunity of being heard physically.*
7. *On the facts and circumstances of the case, the order passed by the NFAC is bad in law having being passed without giving opportunity of being heard through video conferencing.*
8. *On the facts and circumstances of the case, the NFAC has erred both on fact and in law in confirming the action of*

the learned AO(CPC) making the disallowances by exercising its powers beyond the scope of section 143(1) of the Income Tax Act.

9. *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in ignoring the contention of the assessee that the addition made by the AO(CPC) in the intimation order passed under section 143(1) of the Act is not in the nature of the prima facie adjustment and hence adjustment made by the AO is illegal and without jurisdiction.*
10. *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in ignoring the settled position of law that no prima facie adjustment can be made when the issue is debatable.*
11. (i) *On the facts and circumstances of the case, the NFAC has erred both on facts and in law, in confirming the disallowance of Rs.23,92, 115/- made by the AO(CPC) on account of late deposit of employees' contribution towards provident fund and employees state insurance Fund*
(ii) *That the above disallowance has been confirmed ignoring the contention of the assessee that employees' contribution towards provident fund and ESI Fund would qualify for deduction even if paid after due date prescribed under Provident Fund Act and ESI Act but before due date of filing of return in view of section 43B of the Income Tax Act.*

12. *On the facts and circumstances of the case, the NFAC 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.*
13. *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in confirming the addition ignoring the fact that the amendment made by the Finance Act, 2021 will be applicable prospectively and therefore not applicable in the year under consideration.*
14. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Facts giving rise to the present appeal are that Central Processing Centre (“CPC”), Bengaluru vide intimation u/s 143(1) of the Income Tax Act, 1961 (“the Act”) for Assessment Year 2018-19 made adjustment regarding delay in deposit of employees contribution to PF & ESI.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who confirmed the addition.

5. Now, the assessee is in appeal before this Tribunal.

6. Ld. Sr. DR vehemently submitted that law is clear in this respect and he relied upon the decision of Ld.CIT(A).

7. I have heard Ld. Representatives of both the parties and perused the material available on record and gone through the orders of the authority below. The issue in this appeal is related to disallowance of expenditure on account of delay in deposit of employees contribution related to EPF & ESI. The issue is squarely covered by the judgement of Hon'ble Jurisdictional High Court of Delhi in the case of *PCIT vs Pro Interactive Service (India) Pvt.Ltd. in ITA No.983/2018 [Del.]* order dated 10.09.2018 held as under:-

“In view of the judgement 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(23)(x) of the Act.”

Therefore, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court in the above-mentioned binding

precedent, I hereby direct the Assessing Officer to delete the disallowance. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 23rd February, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI