

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.983/Del/2021

[Assessment Year : 2019-20]

Mehra Engineering Corporation, G-15, Jangpura Extension, New Delhi-110014. PAN-AAJFM9096P	vs	Assessing Officer A.O, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Pradeep Chandra Agarwal, CA	
Respondent by	Shri Anil Kumar Sharma, Sr.DR	
Date of Hearing	16.02.2022	
Date of Pronouncement	25.02.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2019-20 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 30.07.2021.

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

1. *“That the Ld. Assessing officer has made addition to the income by Rs.194,091/- on account of disallowance under Section 36(1)(va) for non-deposit of EPF and ESI as per the due date of the EPF act, 1956 and ESI Act, 1948 without considering the Judicial Pronouncement of High court of Delhi in case of AIMIL LIMITED and the facts of the case which are in similar lines to the facts mentioned in the case of the Judgment of the Delhi High court and the*

appeal is allowed by the CIT(A) In our favor against Appeal no-18/1098/1-20/101 date of order-21.09.2020 for AY-2018-2019 wherein fact of the case was same that is deposit of EPF and ESI was made after due date prescribed under relevant of the EPF act, 1956 and ESI Act, 1948 but deposited within due date of filing of income tax return u/s 139(1) of the I.T, Act, 1961.”

3. Facts giving rise to the present appeal are that the assessee company filed its return of income for Financial Year 2018-19 on 11.10.2019 declaring total income of Rs.9,67,790/-. Total tax liability was Rs.3,11,412/- which was discharged by way of TDS & TCS of Rs.34,693/- and Rs.18,398/- and payment of advance tax of Rs.2,90,000/-. A refund of Rs.31,680/- was claimed by the assessee. The Central Processing Unit sought clarification regarding allowability of expenditure related to PF and ESI contribution made by the employee of assessee's company. The assessee had replied online regarding clarification and justification for allowance of such payment dated 10.01.2020 sought by CPC vide its notice No.CPC/1920/G22/1971585368 dated 03.01.2020 on the subject but CPC rejected assessee's submissions and passed intimation order u/s 143(1) of the Act dated 29.02.2020 thereby making adjustment and an addition of income of Rs.1,94,091/- even all such dues were deposited on or before due date prescribed u/s

139(1) of the Act. Thus, the Assessing Officer made the assessment by passing intimation order u/s 143(1) of the Act dated 29.02.2020 at an income of Rs.11,61,880/- disallowing the contribution received by the assessee due to non-deposit of employees contribution within the timeline specified in the EPF and Miscellaneous Provision Act, 1952 and non deposit of the employees contribution within the timeline specified in the Employees State Insurance Act, 1948 amounting to Rs.1,94,091/-.

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 the Ld. Representatives of both 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 (EPF) 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 25th 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