

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1491/Del/2021

[Assessment Year : 2018-19]

Om Prakash Rana, 1084, Joy Apartments, Plot -2, Sector-2, Dwarka, New Delhi-110075. PAN-ACWPR0026K	vs	DCIT, CPC, Bangaluru.
APPELLANT		RESPONDENT
Appellant by	None	
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 2018-19 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 27.07.2021. The assessee has raised following grounds of appeal:-

1. *“Addition Under Section 36(I)(va) read with Section 2(24)(x) and section 438 of the Income Tax Act, 1961:*
 - a) *This Appeal is presented before your honour against the order of National Faceless Appeal Centre (NFAC- Delhi) who is not justified in law and facts of the case to have confirmed the addition of Rs. 18,08,651/- in view of*

provision of section 2(24)(x) read with section 36(1)(va) and section 43B of the Income Tax Act, 1961, on account of late deposit of employees contribution towards EPF and ESIC which has been duly deposited on or before due date of furnishing of return of income u/s 139(1) of Income Tax Act 1961.

- b) The Assessing Officer has not followed the court verdicts which have clearly interpreted the due dates mentioned in the provisions of the Income Tax Act 1961 as due date for filing the returns of income.*
- c) In view of decision of Hon'ble Supreme Court in various cases put up, your honour may kindly appreciate that no incorrect claim is made by the appellant assessee as per the precedent set by the Hon'ble Supreme Court, various High Courts and other courts of law. In this connection it is also submitted before your honour that Ld. CIT (A) has not appreciated the correct facts of the case and has arbitrarily made the adjustment/addition under section 154 of the Income Tax Act ignoring the position of law settled by Hon'ble Supreme Court which is the law of land and binding on all.*
- d) From the perusal of record of payments made by appellant assessee, your honour may kindly appreciate that payment of employee contribution to the provident fund and ESI has been made by appellant assessee before the due date of return filed.*

e) *It is further submitted that the position is now well settled as regards the employees' and employer's contribution towards EPF and ESI paid, on or before the due date of filing of the return or date of return filed, whichever is earlier and the same cannot be disallowed.*

Assessee has every right to make, add, delete, modify or alter any grounds of appeal at the time of hearing.”

2. No one appeared on behalf of the assessee at the time of hearing. The notice sent through speed post was returned with remark “Left”. The assessee has not provided any new address to the Registry. Therefore, the appeal was taken up for hearing in the absence of assessee.

3. Facts giving rise to the present appeal are that the assessee was engaged in the business of security agency services. The assessee filed its return of income for Assessment Year 2018-19 on 24.10.2018 declaring total income at Rs.10,60,037/- and claiming refund of Rs.1,96,780/-. The assessee had received a letter from Central Processing Centre (“CPC”), Bangalore for proposing adjustment u/s 36(1)(va) of the Income Tax Act, 1961 (“the Act”) of an amount of Rs.18,08,651/-. Thereafter, the assessee received intimation order u/s 154 of the Act dated 15.06.2019 by CPC, Bangalore wherein the income was assessed at Rs.28,28,688/-. In

this order, an amount of Rs.18,08,651/- was added u/s 36(1)(va) of the Act, on account of late deposits of employee and employer contribution towards EPF and 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 the Ld. Sr.DR 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