

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1544/Del/2021

[Assessment Year : 2019-20]

Sudhakar Arora, 4A-1, Block Shopping Centre, Safdarjung Enclave, New Delhi-110029. PAN-AADPA8125D	vs	ITO, Ward-29(4), Delhi.
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 2019-20 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 25.08.2021. The assessee has raised following grounds of appeal:-

1. *“That under facts and circumstances, Ld.CIT(A) now NFAC Delhi grossly erred in law as well as on merits in dismissing the appeal as per the amendment in law by the Finance Act, 2021.*

2. *That under the facts and circumstances, the Ld.AO grossly erred in law as well on merits in not allowing the late payment of PF/ESI but paid before the due date of filing of ITR u/s 43B of the I.T.Act and thereby making an addition of Rs.2,69,886/-.”*

2. No one appeared on behalf of the assessee at the time of hearing. 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 is engaged in the business of wholesale trading of chips, Namkeen & cold drink and filed its return declaring total income at Rs.14,20,469/- u/s 139 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year 2019-20. During assessment proceedings, the Assessing Officer noted that the assessee had paid the employee’s contribution to PF/ESI late, i.e. beyond the due dates as per the respective Acts. He therefore, made an addition of Rs.3,69,886/- u/s 36(1)(va) of the Act on account of delay in payment of employee’s contribution of provident fund/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 (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 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