

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

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1589/Del/2021**

**[Assessment Year : 2019-20]**

Indian Plastics & Laminates Ltd., S-30, Greater Kailash-II, New Delhi-110048. PAN-AAACI0440H	vs	CIT(A), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Rajeshwar Prasad Painuly, CA	
<b>Respondent by</b>	Shri Sanjay Kumar, Sr.DR	
<b>Date of Hearing</b>	23.02.2022	
<b>Date of Pronouncement</b>	23.02.2022	

**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 26.08.2021.

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

1. *“That this ground pertains to erroneous addition of an amount of Rs. 2,47,938/- that was contributed towards Employees' State Insurance or Provident Fund by the assessee. Ld. CIT erred in disallowing the expenses incurred for contribution towards Employees' State Insurance or Provident Fund under section 36. The*

*assessee through Ld. AR contends that the abovementioned contribution should be allowed as an expense since the amount was contributed before the due date of filing of income tax return.*

*In view of the above, the legislative position as per Section 438 states that the abovementioned expenditure be allowed if such contribution is made before or on the date of filing of income tax return.*

- 2) *It is pertinent to note that similar facts and contentions of parties were presented recently before the Hon'ble CIT in M/S. EXPRESS ROADWAY P. LTD. VERSUS ACIT CIRCLE - 8 (2) NEW DELHI- No.- ITA No. 5570/Del/2017 where the judgement was pronounced on October 11,2021 where it was held that 'CIT(A) while deciding the issue in favour of the assessee has given a finding that though there was delay in deposit of ESI & EPF contribution but the same were deposited with the appropriate authorities before the due date of filing of return of income. We find that Hon'ble Delhi High Court in the case of CIT vs. AIMIL Limited [2009 held that if the employees" contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore in correspondence with the abovementioned landmark judgement, it is evidently proven that the Act permits the employer to make the*

*deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed:*

- 3) *The assessee through Ld. AR places reliance on the landmark judgement pronounced by the Delhi High Court in AIMIL Ltd. (321 ITR 508/188 Taxman 265) where the Hon'ble court held that if the employees contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act.*

*Therefore, the relevant Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed.*

- 4) *The contention of the Hon'ble CIT with respect to the intention of the legislation is thereby contradicted by the abovesaid landmark judgement which was also substantiated by the Hon'ble Supreme Court in Commr. of Income Tax-II, Gauhati vs. Vinay Cement Ltd. (07.03.2007 - SC) : MANU/SC/8128/2007 wherein the judgement can be interpreted in a very elementary way stating that an assessee is expected to pay dues within due date but in case of delay the consequences pertain to late fee and*

*interest can be attracted, nowhere is it stated that the entire amount be disallowed on minor delay especially 'when the amount was paid before filing of return of income.*

5. *The Hon'ble Supreme Court of India in Commr. of Income Tax-It, Gauhati vs. Vinay Cement Ltd. (07.03.2007 - SC) : MANU/SC/8128/2007 also condoned the delay contending that the contribution was made before filing of the income tax return substantiating furthermore that if the payment is made before filing of return of income, there may be penalties but disallowance in its entirety is contradiction of the basic principle of justice.*

6. *In another case, CIT v. P.M. Electronics Ltd., (313 ITR 161) before the Hon'ble Delhi High Court, it was adjudged that if the payments are made before the due date of filing the return, no such disallowance can be made under section 43B."*

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 2019-20 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 (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 23<sup>rd</sup> 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