

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.908/Del/2021

[Assessment Year : 2018-19]

Excel Phosphates Pvt.Ltd., 195-196, Shatabdi Nagar, Delhi Road, Meerut, Uttar Pradesh-250103. PAN-AACCE3927B	vs	DCIT, CPC, Bengaluru.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	02.03.2022	
Date of Pronouncement	02.03.2022	

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 20.09.2021.

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

"Ground 1: That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in facts and in law in upholding the addition of INR 2,39,295/- in the order passed by DCIT (CPC-Bengaluru) ("AO") u/s 143(1) of the Income Tax Act, 1961.

Ground 2: That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) erred in not adjudicating

the appeal "ground-wise" and collectively dismissing all the grounds without discussing the individual grounds on their merit.

Ground 3: That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) erred in facts and in law, in not dismissing the intimation u/s 143(1) from the CPC, overstepping its jurisdiction and making an adjustment on a debatable issue.

Ground 4: That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) erred in facts and in law by disregarding various judgements from High courts, including the jurisdictional High Court, and Supreme court of India, explicitly ruling that the provisions of Section 43B are applicable to both - employer as well as employee contribution to provident fund.

Ground 5: That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) erred in facts and in law in applying the amendment to section 36(1)(va) with a retrospective effect. The AO was incorrect in law by stepping on the substantive rights of the Appellant and denying it the deduction, even though the appellant had duly complied with the law, as prevailing in the subject assessment year.

Ground 6: That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) erred in facts and in law in not affording an opportunity of being heard to the Appellant and passing an order in a hasty manner.

Ground 7: The Appellant craves to add, delete, modify any grounds of appeal during the course of proceedings.”

3. 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.

4. Facts giving rise to the present appeal are that the assessee was engaged in the business of manufacture of pesticides and fertilizers, filed its return of income for Assessment Year 2018-19 on 17.10.2018 declaring a total income of Rs.26,75,694/-. The return was processed u/s 143(1) of the of the Income Tax Act, 1961 (“the Act”) by the AO/Central Processing Centre (“CPC”), Bengaluru and an addition of Rs.2,39,295/- was made to the returned income u/s 36(1)(va) of the Act who made adjustment regarding delay in deposit of employees contribution to EPF & 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. Sr.DR and perused the material available on record and gone through the orders of the authorities 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 02nd March, 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