

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.1708 & 1709/Del/2021

[Assessment Years : 2018-19 & 2019-20]

Libra Infra Projects Pvt.Ltd., WZ-241, Palam Village, New Delhi-110045. PAN-AAACL6627K	vs	ITO, Ward-15(3), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Amit Goel, CA & Shri Nippun Mittal, CA	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	02.03.2022	
Date of Pronouncement	02.03.2022	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee for the assessment years 2018-19 and 2019-20 are directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 22.09.2021 & 23.09.2021 respectively. Since the similar grounds have been raised, both appeals of the assessee were taken up for hearing together and are being decided by way of this consolidated order for the sake of brevity.

ITA No.1708/Del/2021 [Assessment Year : 2018-19]

2. First I take up the assessee's appeal in **ITA No. 1708/Del/2021** pertaining to **Assessment Year 2018-19**. The assessee has raised following grounds of appeal:

1. *“On the facts and circumstances of the case and in law, the disallowance of Rs. 8,90,857/- made in the Intimation u/s 143(I) without jurisdiction and beyond the scope of provisions of section 143(I) and CIT(A)/National Faceless Appeal Centre erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the CIT (A)/National Faceless Appeal Centre erred in confirming the addition of Rs.8,90,857/- made by the assessing officer/CPC on the account of disallowance u/s 36(1)(va) of the Act.*
3. *The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.*
The aforesaid grounds of appeal are without prejudice to each other.”

3. Facts giving rise to the present appeal are that the assessee filed return of income on 08.10.2018 declaring total income of Rs.14,11,310/-. The assessee had deposited the employees contribution to PF of Rs.7,76,721/- and employees contribution to ESI of Rs.1,14,136/- with the regulatory authorities after the due

date prescribed under EPF and ESI Act. Thereafter, Central Processing Centre (“CPC”), Bengaluru u/s 143(1) of the of the Income Tax Act, 1961 (“the Act”) 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 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.

ITA No.1709/Del/2021 [Assessment Year : 2019-20]

9. Now, I take up the assessee's appeal in **ITA No. 1709/Del/2021** pertaining to **Assessment Year 2019-20**. The assessee has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case and in law, the disallowance of Rs. 8,56,109/- made in the Intimation u/s 143(I) without jurisdiction and beyond the scope of provisions of section 143(I) and CIT(A)/National Faceless Appeal Centre erred in not holding so.*

2. *On the facts and circumstances of the case and in law, the CIT (A)/National Faceless Appeal Centre erred in confirming the addition of Rs.8,56,109/- made by the assessing officer/CPC on the account of disallowance u/s 36(1)(va) of the Act.*
3. *The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.*

The aforesaid grounds of appeal are without prejudice to each other.”

10. The facts are identical as were in ITA No.1708/Del/2021 pertaining to Assessment Year 2018-19. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1708/Del/2021 [Assessment Year 2018-19]. My direction in ITA No.1708/Del/2021 [Assessment Year 2018-19] would apply *Mutatis Mutandi* in this year as well. Thus, grounds raised by the assessee in the appeal are allowed.

11. In the result, the appeal of the assessee is allowed.

12. In the final result, both appeals of the assessee are 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