

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.1677 & 1678/Del/2021

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

Sahil Dang, A-89, Malviya Nagar, South Delhi, New Delhi-110017. PAN-AGKPD7383D	vs	ITO, Ward-29(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Sandeep Kumar, 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”) both dated 16.09.2021. 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.1677/Del/2021 [Assessment Year : 2018-19]

2. First I take up the assessee’s appeal in **ITA No. 1677/Del/2021** pertaining to **Assessment Year 2018-19**. The assessee has raised following grounds of appeal:

1. *“The Assessment order passed by Assessing Officer is bad in law, is against facts and circumstances of the case, is against provisions of the Income Tax Act and against law of natural justice.*
2. *The Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre has grossly erred in confirming the addition made by Assessing Officer u/s 36(l)(va) of Rs. 8,00,969/- is against facts and circumstances of the case, is against decided cases by Hon. Courts, therefore is against provisions of the Income Tax Act, 1961 and is also bad in law.*
3. *The assessee craves leave to amend, add or modify any grounds of appeal before the disposal of the appeal.”*
3. Facts giving rise to the present appeal are that the assessee was an individual, engaged in business of supply of labourers to various industrial units, e-filed its return of income on 13.09.2018 declaring total income of Rs.20,36,420/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”) by the DCIT, Central Processing Centre (“CPC”), Bengaluru 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. 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.1678/Del/2021 [Assessment Year : 2019-20]

9. Now, I take up the assessee's appeal in **ITA No. 1678/Del/2021** pertaining to **Assessment Year 2019-20**. The assessee has raised following grounds of appeal:-

1. *"The Assessment order passed by Assessing Officer is bad in law, is against facts and circumstances of the case, is against provisions of the Income Tax Act and against law of natural justice.*
2. *The Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre has grossly erred in confirming the addition made by Assessing Officer u/s 36(l)(va) of Rs. 4,52,717/- is against facts and circumstances of the case, is against decided cases by Hon. Courts, therefore is against provisions of the Income Tax Act, 1961 and is also bad in law.*
3. *The assessee craves leave to amend, add or modify any grounds of appeal before the disposal of the appeal."*

10. The facts are identical as were in ITA No.1677/Del/2021 pertaining to Assessment Year 2018-19. The Ld. Representatives of the parties have adopted the same arguments as were in ITA

No.1677/Del/2021 [Assessment Year 2018-19]. My direction in ITA No.1677/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