

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI AM ALANKAMONY, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 1873/DEL/2021 (A.Y 2018-19)**

JMD Consultant 310A, Khaneja Complex, Shakarpur, New Delhi <b>PAN No. AAKFJ9670H (APPELLANT)</b>	Vs	Ward-50 (1) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Suresh Gupta, CA</b>
<b>Respondent by</b>	<b>Smt. Princy Singhla, Sr. DR</b>

<b>Date of Hearing</b>	<b>08.03.2022</b>
<b>Date of Pronouncement</b>	<b>10.03.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee against the order dated 11/10/2021 passed by the National Faceless Appeal Centre (NFAC) Delhi for Assessment Year 2018-19.

2. The grounds of appeal are as under:-

*“1. The Ld CIT(A) has grossly erred both on facts and in law in upholding impugned adjustment in the processing intimation u/s 143(1) of Rs. 39,14,490/- u/s 36(l)(va) of the IT Act for delayed deposit of employees’ share of ESI/PF not appreciating the fact that such payments are made before due date of filling of return of income u/s 139(1) of IT Act and therefore are allowable under law as per decisions of jurisdictional Delhi*

*High Court and Apex Court. (Tax Effect: Rs. 12,09,577/-)*

*2. The Ld CIT(A) has grossly erred both on facts and in law in upholding impugned addition of Rs. 39,14,490/- u/s 36(l)(va) of the IT Act for delayed deposit of employee shares of ESI/PF in view of the Explanation 2 inserted in section 36(l)(va) by Finance Act 2021 ignoring the fact that above Explanation is not applicable for the year under consideration. (Tax Effect: Rs. 12,09,577/-).*

*3. The Ld CIT(A) has grossly erred both on facts and in law in upholding impugned addition of Rs. 39,14,490/- u/s 36(l)(va) of the 11/Act for delayed deposit of employees' share of ESI/PF applying the decision of Hon'ble jurisdictional High Court in the case of CIT vs Bharat Hotels Ltd. ignoring the fact that the above decision has been overruled in the subsequent decision of the Jurisdictional Court dated 10.09.2018 in the case of CIT vs Pro Interactive Services India Pvt. Ltd. in ITA No. 983/2018. (Tax Effect: Rs. 12,09,577/-).*

*4. Whether on the facts and in the circumstances of the case and position on law, the Education Cess amounting to Rs.11,256/- is an allowable deduction for computation of taxable income as the same is not covered by disallowable expenditure u/s 40(a)(ii) of the Income-tax Act, 1961 and therefore the deduction of the same need be allowed by the department suo-moto. (Tax Effect: Rs. 3478/-) The above ground is an additional ground.”*

3. The Ld. AR submitted that, though there has been delay in depositing the Employees Contribution of PF/ESI, the same has been deposited with the appropriate authorities before filing of return of the income of the assessee. Further, submitted that since the amounts have been deposited before filing of the return of the income, no disallowance is called for. The addition of Rs. 39,14,490/- which has been made u/s 36 (a) (va) of the Act in respect of contribution received from Employees in respect of PF & ESI which is deposited after the due date mentioned in the Acts (i.e. PF & ESI Act) with a few days delay, but well within the date of furnishing income tax return u/s 139(1) of the Act. The assessee has relied on the order of Coordinate Bench dated 31/01/2022 in ITA No. 1245 & 1246/Del/2021 wherein it is held as under:-

*“7. Before us, the Learned A.R. pointed to the order of the Ld. CIT(A) in para 2.2.2 and submitted that though there has been delay in the deposit of Employees Contribution of PF/ESIC, but, the same has been deposited with the appropriate authorities before the filing of return of income by the assessee. He, therefore, submitted that since the amount have been deposited before the filing of the return of income, no disallowance is called for and for the aforesaid proposition, he relied on the decision in the cases of Azamgarh Steel & Power vs CPC in ITA NO. 1626/Del/2020 dated 31.05.2021 and CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi) and the decision of Delhi Tribunal in the case of Ajay Mehta, Gurgaon, Haryana vs. ADIT, CPC Bangalore vide*

*ITA.No.849/Del/2021, order dated 29.10.2021.*

8. *The Ld. D.R. on the other hand supported the orders of the lower authorities and also placed reliance on the decision of Hon'ble Tribunal in the case of Vedvan Consultants Pvt. Ltd. vs DCIT in ITA No. 1312/ Del/2020 order dated 26.08.2021. He also submitted that the amendment brought out by Finance Act 2021 would be applicable to the present case as by the amendment it has been clarified that provisions of Section 43B shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub clause (x) of Clause (24) of Section 2 applies.*

9. *We have heard the rival submissions and perused the material available on record. The issue in the present grounds is with respect to the delayed deposit of PF/ESIC Contributions. Before us, the Learned AR has pointed to the statement of the deposits made during the year and from that table he has pointed out that though there has been delay in deposit of the PF/ESIC*

*Contributions, but, all the amounts have been deposited with the appropriate authorities before filing of return of income by the assessee. We find that the various Benches of the Tribunal at Delhi and other Tribunal have held that the delayed deposits of PF & ESIC before the date of filing of return of income is an allowable expenditure and for which reliance was placed on the decision of Hon'ble Delhi High Court in the case of AIMIL Ltd. (supra). As far as reliance by Learned DR on the amendment brought out by Finance Act 2021 is concerned, "note on clauses" to the Finance Bill 2021 clearly states that the amendment will take effect from 1<sup>st</sup> April 2021 and will apply in relation to the assessment year 2021-21 and subsequent assessment year. In such a situation, we are of the view that since the assessment year under consideration, is A.Y 2018-19, the amendment does not apply to the assessment year under consideration. As far as the reliance of Revenue on the decision of Vedvan Consultants Pvt. Ltd. (supra) is concerned, we find that the various Division Benches of the Delhi & other Tribunal have held the delayed deposits of PF/ESIC Contributions to be allowable if the same are deposited with the appropriate authorities before filing of return of*

*income by the assessee. Further, it is settled law that when two judgments are available giving different views, then the judgment which is in favour of the assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court. We, therefore, following the decision rendered by Hon'ble Apex Court in the case of M/s. Vegetable Products Ltd. (supra) and AIMIL Ltd. (supra), are of the view that no disallowance was warranted in the present case. We, therefore direct the AO to delete the addition. **Thus the assessee's ground is allowed.**"*

4. Respectfully following the order of the Tribunal, we allow the grounds taken by the assessee.

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

**Order pronounced in the Open Court on this 10<sup>th</sup> Day of March, 2022**

**Sd/-  
(AM ALANKAMONY)  
ACCOUNTANT MEMBER**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

Dated: 10/03/2022  
R. Naheed \*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI