

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos.1540 & 1662/Del/2021
(Assessment Years : 2018-19 & 2019-20)

Punjab Bevel Gears Ltd., 107, Chopra Complex, Community Centre, Preet Vihar, Delhi-110 092 PAN : AAACP 0274 E	Vs.	DCIT, CPC Bangalore
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Gurjit Singh, C.A.
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	03.03.2022
Date of Pronouncement:	11.03.2022

ORDER

PER ANIL CHATURVEDI, AM:

Both the appeals filed by the assessee are directed against the order dated 15.09.2021 of the Commissioner of Income Tax (Appeals) – NFAC, Delhi relating to Assessment Years 2018-19 & 2019-20.

2. At the outset, Learned AR submitted that the issue involved in both the appeals are identical except for the year and amounts involved and therefore the submissions made by him for one year would be applicable to the other year also. Ld DR did not controvert the aforesaid submissions of Ld AR. In view of the aforesaid submissions of the Counsel, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2018-19.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is a company who filed its return of income for A.Y. 2018-19 on 26.02.2019 declaring total income at Rs.1,73,09,244/-. The return of income was processed by Centralized Processing Centre (CPC), Bangalore u/s 143(1) of the Act by order dated 27.11.2019 determining total income at Rs.2,29,95,810/- by *inter alia* making addition of Rs.58,59,067/- on account of alleged late payment of Employees' contribution towards EPF/ESI by invoking the provision of Section 36(1)(va) of the Act.

5. Aggrieved by the order of AO, assessee carried the matter before the NFAC who vide order dated 15.09.2021 in Appeal No. CIT(A), Delhi-7/10116/2020-21 dismissed the appeal of the

assessee. Aggrieved by the order of NFAC, assessee is now in appeal and has raised the following grounds:

- “1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi has erred both in law and on facts in upholding the addition under section 36(1)(va) of Rs.3,58,716/- on account of delay in deposit of employees contribution under the relevant act and Rs.55,00,351.00 on account of delay in deposit of Provident Fund Contribution without considering the stated judgments where it was held that if the payments of PF and ESIC are made before due date for filing of the return u/s 139 of the Act, no disallowance u/s 36(1)(va) read with section 43B is warranted. It is further submitted if the employee’s 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 Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed. That the submissions made during the appellate proceedings have not been properly appreciated by the Authorities below.
- “2. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi erred both in law and on facts in upholding the addition under section 36(1)(va) of Rs.58,59,067/- although it was submitted that, second proviso to section 43B of the Act which specifically made reference to section 36(1)(va) of the Act for due date of deposit. As per the amendment, the proviso was withdrawn and payment of contribution to ESI/EPF was brought within the purview of first proviso to section 43B of the Act. After this amendment, it was sufficient to deposit the contribution from employees by the date for filing return of income in order to claim the deduction under the Act. This amendment was curative in nature, that deletion of the said proviso made it clear that the law was enacted to ensure that the payments towards PF, ESI etc contributions must be made before furnishing the return of income.
3. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi has further erred both in law

and on facts in upholding the addition of under section 36(1)(va) of Rs.58,59,067/- on account of delay in deposit of employees contribution under the relevant act without appreciating the fact the case laws and judgments quoted by learned Commissioner of Income Tax (Appeals) are not applicable to the matter under consideration and hence no reliance can be placed on them.

4. *That the learned Commissioner of Income Tax (Appeals), NFAC, New Delhi has further erred both in law and on facts in upholding the addition of under section 36(1)(va) of Rs.58,59,067/- without appreciating the fact that additions made by the Learned Deputy Commissioner of Income Tax, CPC, Bangalore has been made without granting an opportunity prior to framing the impugned order. The same is illegal and violation of principle of natural justice and therefore vitiated. At the outset, it is most respectfully submitted that, no valid and proper opportunity was granted to the appellant during the course of assessment proceedings and assessment has been framed in gross violation of the principles of the natural justice.*
5. *That it is therefore, prayed that, it be held that assessment made by the learned Income Tax Officer and sustained by the learned Commissioner of Income Tax (Appeals), NFAC be quashed and, further addition so upheld by the learned Commissioner of Income Tax (Appeals), NFAC along with interest levied be deleted and appeal of the appellant be allowed.”*

6. Similar grounds have been raised by assessee in ITA No.1662/Del/2021 for A.Y. 2019-20.

7. Before us, at the outset, Learned AR submitted that though the assessee has raised several grounds but the sole controversy which is to be decided is with respect to addition of Rs.58,59,067/- on account of delay in deposit of employee's contribution towards provident fund and ESI fund.

8. Before us, Learned AR submitted that addition of Rs.58,59,067/- has been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Act for the reason that the contribution received towards PF/ESIC by the assessee from its employees was not deposited before the due date. He submitted that though there has been delay in deposit of PF/ESIC Contributions but all the contributions received by the assessee from its employees have been deposited with the appropriate authorities before the filing of return of income by the assessee. He therefore submitted that since the amounts have been deposited before the filing of return of income, no disallowance is called for and for aforesaid proposition, he relied on the decision in the case 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 various other decisions.

9. Learned DR on the other hand supported the order of lower authorities and also placed reliance on the decision of Delhi 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.

10. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is addition made u/s 36(1)(va) of the Act on account of delayed deposit of PF/ESIC contributions. Before us, 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. The aforesaid contention of the Learned AR has not been controverted by Learned DR. 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 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, "notes on clauses" to the Finance Bill 2021 clearly states that the amendment will take effect from 1st April 2021 and will apply in relation to the assessment year 2021-22 and subsequent assessment year. In such a situation, we are of the view that the amendment brought out by Finance Act 2021 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 expenditure 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 u/s 36(1)(va) of the Act is warranted in the present case. We therefore direct the AO to delete the addition. **Thus the assessee's ground is allowed.**

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

12. **As far as ITA No.1662/Del/2021 for A.Y. 2019-20** is concerned, before us, both the parties have submitted that the issue raised in the appeal for A.Y. 2019-20 is identical to that of A.Y. 2018-19.

13. We have hereinabove while deciding the appeal for A.Y. 2019-20 for the reasons stated have allowed the appeal of the assessee. We therefore for similar reasons also allow the appeal of the assessee for A.Y. 2019-20. Thus **the grounds of the assessee are allowed.**

14. In the combined result, both appeals of the assessee are allowed.

Order pronounced in the open court on 11.03.2022

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Date:- 11.03.2022

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Copy forwarded to:

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI