

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1895/Del/2021

[Assessment Year : 2018-19]

Micro Machines, Plot No. 103, Sector-06, Faridabad. PAN-AAKFM0507G	vs	DCIT, CPC, Bengaluru.
APPELLANT		RESPONDENT
Appellant by	Shri Deepesh Garg, Adv.	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	22.03.2022	
Date of Pronouncement	24.03.2022	

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 22.11.2021.

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

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. DCIT/CPC in making aggregate addition of Rs.18,24,104/- on account of alleged delay in late deposit of ESI and PF u/s. 36(1)(va) and that too by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating the facts and circumstances of the case.*

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. DCIT/CPC in making aggregate addition of Rs.18,24,104/- on account of alleged delay in late deposit of ESI and PF u/s. 36(1)(va), is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual ground.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the action of Ld. DCIT/CPC in charging interest of the Income Tax Act, 1961.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Facts giving rise to the present appeal are that Central Processing Centre (“CPC”), Bengaluru vide intimation u/s 143(1) of the Income Tax Act, 1961 (“the Act”) for Assessment Year 2018-19 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 authority 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, where it is 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 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 24TH March, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI