

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

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1549/Del/2021**

**[Assessment Year : 2019-20]**

Mohammed Darus Salam, 15/5A, Old Chandrawal, Civil Lines, New Delhi-110054. PAN-AFGPD5866E	vs	ITO, Ward-36(4), Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Manu K.Giri, Advocate & Ms. Sonia Dudeja, Advocate	
<b>Respondent by</b>	Shri Anil Kumar Sharma, Sr.DR	
<b>Date of Hearing</b>	17.02.2022	
<b>Date of Pronouncement</b>	22.03.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2019-20 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 02.09.2021.

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

1. *“That on the facts and circumstances of the case and in law, the Hon’ble CIT(A) has erred in sustaining the Intimation dated May 01,2020 issued under section 143(1) of the Act by the Learned Assistant Director of Income Tax, Centralized Processing Centre, Bengaluru (‘Ld. Assessing Officer’).*
2. *That on the facts and circumstances of the case and in law, the Hon’ble CIT(A) has failed to appreciate that the*

*adjustments made by the Ld. Assessing Officer are beyond the scope of Section 143(1) of the Act and by virtue of the same, the Ld. Assessing Officer has exceeded his jurisdiction which makes the impugned order liable to be quashed on this count itself.*

3. *That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the Ld. Assessing Officer in disallowing the deduction of Rs. 12,09,210/- claimed by the Appellant under section 36(1)(va) of the Act on account of delayed payment of employee's contribution by the Appellant towards Provident Fund.*

*3.1 That on the facts of the case and in law, the Hon'ble CIT(A) has failed to appreciate that the employee's contribution towards Provident Fund is allowable as deduction if the same is paid on or before the due date of filing of return of income for the relevant previous year.*

*3.2 That on the facts of the case and in law, the Hon'ble CIT(A) has erred in relying upon the amendments made in Section 36(1)(va) of the Act vide the Finance Act, 2021 despite the same being applicable prospectively with effect from April 1, 2021.*

4. *That on the facts and circumstances of the case, the impugned order is contrary to law and therefore is void ab-initio, and liable to be quashed.*

*All the above grounds of appeal are without prejudice and notwithstanding each other.*

*The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*

*Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, thus may be granted.”*

3. Facts giving rise to the present appeal are that the assessee had furnished its return of income for Assessment Year 2019-20 on 15.10.2019 declaring total income of Rs.24,36,500/-. Thereafter, the return was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”) by the Central Processing Centre (“CPC”), Bangalore who 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 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.

Order pronounced in the open Court on 22<sup>nd</sup> 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