

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.1728/Del/2020
Assessment Year: 2018-19

Urbanac Proects Private Limited E-52, New Mangalpuri, Mandi Road, Mehrauli, New Delhi-110030 PAN No.AAGCA8925M (APPELLANT)	Vs	ITO Ward- 27 (2) New Delhi (RESPONDENT)
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Appellant by	Sh. Nippun Mittal, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of hearing:	29/03/2022
Date of Pronouncement:	29/03/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-9, New Delhi dated 25.08.2020 for A.Y.2018-19.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.394382/- on account of employee contribution to ESI and PF.

3. We have carefully perused the orders of the authorities below. The details of PF deposit is as under :-

<i>Month</i>	<i>Amount (Rs.)</i>	<i>Due Date of Deposit</i>	<i>Actual date of deposit</i>
<i>July 2017</i>	<i>3,90,263/-</i>	<i>15/08/2017</i>	<i>17/08/2017</i>
<i>Total</i>	<i>3,90,263/-</i>		

4. The details of ESI deposit is as under :-

<i>Month</i>	<i>Amount (Rs.)</i>	<i>Due Date of Deposit</i>	<i>Actual date of deposit</i>
<i>November 2017</i>	<i>1,373/-</i>	<i>15/12/2017</i>	<i>16/01/2018</i>
<i>December 2017</i>	<i>1,373/-</i>	<i>15/01/2018</i>	<i>16/01/2018</i>
<i>March 2018</i>	<i>1,373/-</i>	<i>15/04/2018</i>	<i>16/04/2018</i>
<i>Total</i>	<i>4,119/-</i>		

5. We find that the return of income was filed on 06.12.2018. This means that the assessee has deposited PF and ESI well before filing the return of income.

6. We are of the considered opinion that the issue is now well settled in favour of the assessee and against the revenue by decision of the Hon'ble High Court as follows :-

• **Sagun Foundry (P) Ltd, vs. CIT, 145 DTR 265 (All)** has held in favour of the assessee and adjudged that :

By way of First Proviso Section 43-B, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax duty cess or fee is paid before the date of filing of the return under Act 1961, Assessee would then be entitled to deduction. This relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer should not sit on the collected contributions and deprive workmen of the rightful

benefits under social welfare legislations by delaying payment of contributions to the welfare funds.

“27. ... In the result when contribution had been paid, prior to filing of return under Section 139(1), Assessee/employer would be entitled for deduction....”

28. we find that irrespective of the fact that deduction in respect of sum payable by employer contribution was involved, but Court did not restrict observations, findings and declaration of law to that context but looking to the objective and purpose of insertion of Section 43B applied it to both the contributions. It also observed clearly that Section 43B is with a non-obstante clause and therefore override even if, anything otherwise is contained in Section 36 or any provision of Act 1961.

29. Therefore, we are clearly of the view that law laid down by High Courts of Karnataka, Rajasthan, Punjab & Haryana, Delhi, Bombay and Himachal Pradesh have rightly applied Section 43B in respect to both contributions i.e. employer and employee. ...

30. In view of above all the questions formulated above are answered against Revenue and in favour of Assessee.

31. Appeal is therefore allowed

- **CIT vs. AIMIL LIMITED, (2010) 188 Taxman 265 (Del.)**

“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 payments but can incur penalties also, for which specific provisions are made in the provident fund act. Therefore, the act permits the

employer to make the deposit with some delay, subject to aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before due date of filing the return under section 139(1)."

- **PR. CIT vs. PRO INTERACTIVE SERVICE (INDIA) PVT. LTD.,
ITA 983/2018, DATED 10.09.2018 (DEL)**

"In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income-Tax versus AIMIL Ltd., [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(24)(x) of the Act."

7. In the light of the aforementioned judicial decisions we direct the AO to delete the addition of Rs.394382/-. The appeal is accordingly allowed.

8. Decision announced in the open court in the presence of both parties.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-29.03.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.03.2022
Date on which the typed draft is placed before the dictating Member	29.03.2022
Date on which the typed draft is placed before the Other member	29.03.2022
Date on which the approved draft comes to the Sr.PS/PS	29.03.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	29.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	29.03.2022
Date on which the final order is uploaded on the website of ITAT	31.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	