

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.3650/Del/2017
Assessment Year: 2013-14

M/s. Steel Bird International, 2E/3, Jhandewalan Extn., New Delhi	Vs.	ACIT, Circle-63(1), New Delhi
PAN :AABFS7296K		
(Appellant)		(Respondent)

Appellant by	Sh. Vikas Katyal, CA
Respondent by	Ms. Sarojini Xess, Sr. DR

Date of hearing	17.03.2022
Date of pronouncement	11.04.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 15.03.2017 of learned Commissioner of Income Tax (Appeals)-20, New Delhi for the assessment year 2013-14.

- 2.** Ground nos. 1 and 5, being general grounds, are dismissed.
- 3.** In ground no. 2, the assessee has challenged disallowance of Rs.8,80,486/- under section 36(1)(va) of the Income-tax Act, 1961

(for short 'the Act') representing delayed payment of employees' contribution to EPF and ESI.

3.1 We have considered rival submissions and perused the materials on record. There is no dispute that the assessee has paid/remitted the employees' contribution to EPF and ESI before the due date of filing of return of income under section 139(1) of the Act. The only reason for which the amount has been disallowed is, they were not deposited within the time specified under the relevant statute in terms of Explanation to section 36(1)(va) of the Act. We find, the aforesaid dispute is squarely covered by the decision of the Coordinate Bench in ITA No.1392/Del/2021 and Ors. (Raj Kumar and Ors., dated 28.02.2022)

3.2 Respectfully following the decision of the Coordinate Bench, as referred to above, we delete disallowance of Rs.8,80,486/-. This ground is allowed.

4. In ground no. 3, the assessee has challenged ad-hoc disallowance of Rs.2,17,028/- made out of vehicle running and maintenance, depreciation and conveyance. In course of assessment proceeding, the Assessing Officer noticed that the assessee has debited certain expenses towards car running and

maintenance, depreciation on car, conveyance etc. Stating that possibility of part of the expenses was incurred for non-business/personal purpose could not be ruled out, the Assessing Officer disallowed 10% of the total expenses claimed, which worked out to Rs.3,08,948/-. The disallowance so made, was also upheld by learned Commissioner (Appeals).

4.1 We have considered rival submissions and perused the materials on record. The assessee before us is a partnership firm. Therefore, possibility of car being engaged for personal use of the partners, at least to some extent, cannot be ruled out. It is also seen, the assessee has not maintained any logbook for user of the vehicle to demonstrate that it was wholly and exclusively used for business purpose. Therefore, some amount out of the expenses has to be disallowed. However, considering that the disallowance made at 10% is on higher side, we restrict such disallowance to 5% of the total expenses of Rs.30,89,477/-. The Assessing Officer is directed to compute the disallowance accordingly. This ground is partly allowed.

5. In ground no. 4, the assessee has claimed deduction under section 80IC of the Act on the profit which got enhanced due to disallowance of the expenses. Having considered rival

submissions, in principle, we accept assessee's contention that to the extent of disallowance made out of business expenses, the business profit gets enhanced and the assessee is entitled to claim deduction under section 80IC of the Act on such enhanced profit. This ground is accordingly disposed of.

6. In the result, the appeal is partly allowed.

Order pronounced in the open court on 11th April, 2022

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 11th April, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi