

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

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA Nos.1685 & 1686/Del/2021
[Assessment Years : 2018-19 & 2019-20]**

Nestor Pharmaceuticals Ltd., G-1, Ashoka Estate, 24, Barakhamba Road, New Delhi-110001. PAN-AAACN1547Q	vs	CPC, Bangalore.
APPELLANT		RESPONDENT
Appellant by	Shri Amit Goel, CA & Shri Parnav Yadav, Adv.	
Respondent by	Shri S.N.Pandey, Sr.DR	
Date of Hearing	09.03.2022	
Date of Pronouncement	20.04.2022	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee for the assessment years 2018-19 & 2019-20 are directed against the orders of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”) dated 30.09.2021 and 01.10.2021 respectively. Since identical grounds have been raised, both appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.1685/Del/2021 [Assessment Year : 2018-19]

2. First, we take up assessee's appeal in **ITA No.1685/Del/2021** pertaining to **Assessment Year 2018-19**. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case and in law, the disallowance of Rs. 41,18,565/- made in the Intimation u/s 143(1) without jurisdiction and beyond the scope of provisions of section 143(1) and CIT(A)/National Faceless Appeal Centre erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the CIT (A)/National Faceless Appeal Centre erred in confirming the addition of Rs. 41,82,565/- made by the assessing officer/CPC on the account of disallowance u/s 36(1) (va) of the Act.*
3. *On the facts and circumstances of the case and in law, the CPC erred in not giving full credit of taxes paid u/s 115JB of the Act.*

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid grounds of appeal are without prejudice to each other.”

FACTS OF THE CASE:-

3. Facts giving rise to the present appeal are that the assessee filed its return of income on 30.11.2018 by declaring income of Rs.3,40,92,139/-. The same was processed by AO/Central Processing Centre (“CPC”), Bangaluru and computed the income at Rs.3,82,74,700/-after making addition/ adjustment of Rs.41,82,565/- on account of disallowance u/s 36(1)(va) of the

Income Tax Act, 1961 ("the Act"). The assessee had furnished that the credit of prepaid taxes had not been granted in full. Therefore, CPC, Bangaluru raised a demand of Rs.59,18,456/- instead of granting the refund of Rs.2,34,900/- as claimed by the assessee company in its return of income and made adjustment regarding delay in deposit of employees contribution to EPF & 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. We have heard Authorized representatives of both parties and perused the material available on record and gone through the orders of the authorities 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, we 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.

ITA No.1686/Del/2021 [Assessment Year : 2019-20]

9. Now, we take up assessee’s appeal in **ITA No.1686/Del/2021** pertaining to **Assessment Year 2019-20**. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case and in law, the disallowance of Rs. 66,36,275/- made in the Intimation u/s 143(1) without jurisdiction and beyond the scope of provisions of section 143(1) and CIT(A)/National Faceless Appeal Centre erred in not holding so.*

2. *On the facts and circumstances of the case and in law, the CIT (A)/National Faceless Appeal Centre erred in confirming the addition of Rs. 66,36,275/- made by the assessing officer/CPC on the account of disallowance u/s 36(1) (va) of the Act.*

3. *On the facts and circumstances of the case and in law, the CPC erred in not giving full credit of taxes paid u/s 115JB of the Act.*

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid grounds of appeal are without prejudice to each other.”

10. The facts and grounds are identical as were in ITA No.1685/Del/2021 pertaining to Assessment Year 2018-19. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1685/Del/2021 [Assessment Year 2018-19]. We, therefore taking the consistent view, direct the Assessing Officer to delete the disallowance. Thus, grounds raised by the assessee in this appeal are also allowed.

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

12. In the final result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 20th April, 2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

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