

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

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1521/Del/2021**

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

Ved Parkash Nagar, House No.G-1/34, Sector-89, PBTP Park Land, Faridabad, Haryana-121002. PAN-AFTPC8309L	vs	ITO, Ward-25, Faridabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri S.S.Nagar, CA	
<b>Respondent by</b>	Shri Sanjiv Mahajan, Sr.DR	
<b>Date of Hearing</b>	03.03.2022	
<b>Date of Pronouncement</b>	22.04.2022	

**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 24.09.2021.

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

- 1.0. *“That on the facts and in the circumstances of the case, the disallowance, imposition of tax and interest with reference thereto, the quantification of taxable income and the tax liability, has been grossly unjustified, erroneous and unsustainable and necessary direction be given to the Ld. AO (CPC) to give appropriate relief in accordance with law.*

- 2.0. *That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in confirming addition of Rs. 21,74,460/- without considering the fact that the same is out of the preview of section 143(1) of the Act.*
- 3.0. *That on the facts and in the circumstances of the case, and without prejudice to the Ground No. 2.0 above, the Ld. CIT(A) was not justified and grossly erred in confirming the addition of Rs. 21,74,460/- made by the Ld. AO on account of payment made for employee contribution to Provident Fund and ESI, despite it has been paid after the due date as prescribed in the PF and ESI Act but on or before the filing of its original return of Income.*
- 4.0. *The appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the grounds stated here in above, either before or at the time of hearing of this appeal.”*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the assessee filed return of income declaring total income at Rs.18,26,553/-. The said return was processed u/s 143(1) of the of the Income Tax Act, 1961 (“the Act”) by the Central Processing Centre (“CPC”), Bangalore determining total income at Rs.40,01,008/- in which the adjustment of Rs.21,74,460/- was made to the return of income on

account of deemed income u/s 36(1)(va) r.w.s. 2(24)(x) of the Act for late deposit of employee's contribution to PF and 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 authorized representatives of the 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 (EPD) 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> April, 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