

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

ITA No. 118/Del/2022  
(Assessment Year : 2018-19)

Pawan Kumar VPO. Silani, Pana Zalim, Distt., Jhajjar, Haryana – 124 103  PAN No. COWPK 3613 K <b>(APPELLANT)</b>	Vs.	ITO Ward – 3 Rohtak  <b>(RESPONDENT)</b>
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Assessee by	Shri Naveen Gupta, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	11.04.2022
Date of Pronouncement:	21.04.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 15.11.2021 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) - Delhi relating to Assessment Year 2018-19.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual who filed its return of income for A.Y. 2018-19 on 07.10.2018 declaring total income at Rs.6,57,880/-. The return of income was processed by Centralized Processing Centre (CPC), Bengaluru u/s 143(1) of the Act by order dated 17.05.2019 determining total income at Rs.28,98,793/- by *inter alia* making addition of Rs.22,11,333/- on account of alleged late payment of Employees' contribution towards EPF/ESI by invoking the provision of Section 36(1)(va) of the Act.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A)-NFAC who vide order dated 15.11.2021 in Appeal No. CIT(A), Rohtak/11324/2019-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A)-NFAC, assessee is now in appeal and has raised the following grounds:

1. *“That the order of the Ld CIT(A) is against law and facts.*
2. *That the Ld CIT(A) erred in confirming the addition of Rs.22,11,333/- made by the Ld AO by making disallowance u/s 36(1)(va) of the Act on account of late deposit of employee's share of PF and ESI.*
3. *That the Ld CIT(A) erred in confirming the addition of Rs.22,11,333/- made by the Ld AO by making disallowance u/s 36(1)(va) of the Act on account of late deposit of employee's share of PF and ESI, although it is highly debatable issue and it is not allowable to make such debatable disallowances u/s 143(1).*
4. *That the appellant craves leave to add, alter or withdraw any of the ground of appeal at the time of hearing.”*

5. Before me, at the outset, Learned AR submitted that the sole grievance of the assessee is the disallowance of Rs.22,11,333/- on account of delay in deposit of employee's contribution towards provident fund and ESI fund.

6. Before me, Learned AR submitted that addition of Rs.22,11,333/- has been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Act for the reason that the contribution received towards PF/ESIC by the assessee from its employees was not deposited before the due date. He submitted that though there has been delay in deposit of PF/ESIC Contributions but all the contributions received by the assessee from its employees have been deposited with the appropriate authorities before the filing of return of income by the assessee. He therefore submitted that since the amounts have been deposited before the filing of return of income, no disallowance is called for and for aforesaid proposition, he relied on the decision in the case of **Azamgarh Steel & Power vs. CPC in ITA No.1626/Del/2020 dated 31.05.2021** and **CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi)** and various other decisions.

7. Learned DR on the other hand supported the order of lower authorities and also placed reliance on the decision of Delhi Tribunal in the case of **Vedvan Consultants Pvt. Ltd. vs DCIT in ITA No.1312/Del/2020 order dated 26.08.2021**. He also submitted that the amendment brought out by Finance Act 2021

would be applicable to the present case as by the amendment it has been clarified that provisions of Section 43B of the Act shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub clause (x) of Clause (24) of Section 2 applies.

8. I have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the addition made u/s 36(1)(va) of the Act on account of delayed deposit of PF/ESIC contributions. Before me, Learned AR has pointed to the statement of the deposits made during the year and from that table he has pointed out that though there has been delay in deposit of the PF/ESIC Contributions but all the amounts have been deposited with the appropriate authorities before filing of return of income by the assessee. The aforesaid contention of the Learned AR has not been controverted by Learned DR. I find that the various Benches of the Tribunal at Delhi and other Tribunal have held that the delayed deposits of PF & ESIC before the date of filing of return is an allowable expenditure and for which reliance was placed on the decision of Hon'ble Delhi High Court in the case of **AIMIL Ltd. (supra)**. As far as reliance by Learned DR on the amendment brought out by Finance Act 2021 is concerned, "notes on clauses" to the Finance Bill 2021 clearly states that the amendment will take effect from 1<sup>st</sup> April 2021 and will apply in relation to the A.Y. 2021-22 and subsequent assessment year. In such a situation, I am of the view that the amendment brought out by

Finance Act 2021 does not apply to the assessment year under consideration. As far as the reliance of Revenue on the decision of **Vedvan Consultants Pvt. Ltd. (supra)** is concerned, I find that the various division Benches of the Delhi & other Tribunal have held the delayed deposits of PF/ESIC Contributions to be allowable expenditure if the same are deposited with the appropriate authorities before filing of return of income by the assessee. Further, it is settled law that when two judgments are available giving different views, then the judgment which is in favour of the assessee shall apply as held in case of **Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court**. I therefore, following the decision rendered by Hon'ble Apex Court in the case of **M/s. Vegetable Products Ltd. (supra)** and **AIMIL Ltd. (supra)**, are of the view that no disallowance u/s 36(1)(va) of the Act is warranted in the present case. I therefore direct the AO to delete the addition. **Thus the assessee's ground is allowed.**

**9. In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 21.04.2022**

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Date:- 21.04.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI