

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.597/Del/2022

[Assessment Year : 2018-19]

Friends Detective Security Services, NU 104A, Pitam Pura, New Delhi-110088. PAN-AABFF5683M	vs	Ward-36(5), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Gurjit Singh, CA	
Respondent by	Shri Umesh Takyar, Sr.DR	
Date of Hearing	26.04.2022	
Date of Pronouncement	26.04.2022	

ORDER

PER ANIL CHATURVEDI, A.M :

This appeal filed by the assessee for the assessment year 2018-19 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 26.03.2022. The assessee has raised following grounds of appeal:-

1. *"Because the action for making disallowance of Employees Provident Fund amounting, Employees ESI and wrong adjustment of income from other sources amounting Rs. 1,51,40,293/- u/s 143(l)(a) is under challenge on facts and law as the addition is outside the scope of section 143(l)(a).*
2. *Because the action is being challenged on facts and law for disallowance of Employees Provident Fund & Employees ESI amounting Rs. 1,42,71,422/- amounting Rs. u/s 36(l)(va) overlooking that the said amount has been deposited before the filing of return u/s 139(1).*

3. *Because the action is being challenged on facts and law for disallowance of Employees Provident Fund & Employees ESI amounting Rs.1,42,71,422/- amounting Rs. u/s 36(l)(va) considering the amendment made by Finance Bill 2021 as explanatory in nature and the question of being prospective or retrospective does not arise whereas per assessee, the said amendment is applicable from AY 2021-22.*
4. *Because the action is being challenged on facts and law for adding income from other sources amounting Rs. 8,68,871 twice once in income from other sources and again in Income from business and profession overlooking the submission of assessee.*
5. *For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

FACTS OF THE CASE:-

2. Facts giving rise to the present appeal are that the assessee, being a partnership Firm, filed its return of income on 04.10.2018, declaring a total income of Rs.16,41,490/-. The same was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”) by AO/Central Processing Centre (“CPC”), Bangaluru, determining total income of the assessee at Rs.1,93,25,340/-. The AO made addition of Rs.1,42,71,422/- related to employee’s contribution to PF/ESI u/s 36(1)(va) of the Act.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who confirmed the addition.

4. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

5. Ground Nos. 1, 2 & 3 of the assessee's appeal are against the disallowance of delayed payment of employee's contribution to PF & ESI.

6. Before us, Ld. AR submitted that additions have been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Income Tax Act, 1961 ("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 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. Ld. Sr. 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. We have heard contentions of the 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 delayed payment 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, Ground Nos. 1, 2 & 3 raised by the assessee are allowed.

9. Ground No.4 raised by the assessee is against the addition of Rs.8,68,871/- from other sources twice, once in income from other sources and other in income from business and profession.

10. At the outset, Ld. Counsel for the assessee submitted that the addition of Rs.8,68,871/- was taxed twice; once income from other sources and another income from business and profession. He submitted that the action of AO is highly arbitrary and unjust.

11. Ld. Sr. DR fairly conceded that the income has been taxed twice. However, he submitted that this fact needs to be verified at the end of the AO.

12. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. The contention that income of Rs.8,68,871/- was taxed twice by the AO which needs to be verified. Therefore, the issue is sent back to the AO for verification for the veracity of claim that the addition is made twice. In the event, the AO find that the contention of assessee is correct, he would delete the addition. Thus, Ground No.4 raised by the assessee is partly allowed for statistical purposes.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 26th April, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI