

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

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

**ITA No.1411/Del/2021  
[Assessment Year : 2018-19]**

Appeal	Kids Dream	vs	CIT, New Delhi.
International Pvt.Ltd., H-1, Rajouri Garden, New Delhi-110021 PAN-AADCA0814C			
<b>APPELLANT</b>			<b>RESPONDENT</b>
<b>Appellant by</b>		Shri Uppalkh Khamboj, Adv.	
<b>Respondent by</b>		Shri Umesh Takyar, Sr.DR	
<b>Date of Hearing</b>		26.04.2022	
<b>Date of Pronouncement</b>		26.04.2022	

**ORDER**

**PER KUL BHARAT, JM :**

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 13.08.2021. The assessee has raised following grounds of appeal:-

1. *That on the facts and circumstances of the case the Commissioner of Income Tax (Appeals) is erred in law by confirming the order u/s 154 of AO, which is bad in law.*
2. *That on the facts and circumstances of the case the Commissioner of Income Tax (Appeals) is erred in law by confirming the order u/s 143(1) of AO, which is bad in law,*
3. *That the Commissioner of Income Tax (Appeals) has erred in facts and law by confirming the order u/s 143(1) of AO, which is passed in violation of principle of natural justice.*
4. *That the Commissioner of Income Tax (Appeals) has erred in facts and law by confirming the disallowance of EPF amounting to Rs. 2,94,848/- is bad in law as per the details facts and*

*circumstances of the case and hence, the disallowance made is liable to be deleted.*

5. *That the Commissioner of Income Tax (Appeals) has erred in facts and law by confirming the disallowance of ESI amounting to Rs.48,132/-is bad in law as per the details facts and circumstances of the case and hence, the disallowance made is liable to be deleted.*
6. *That on the facts and circumstances of the case the Commissioner of Income Tax (Appeals) is erred in law by considering wrong tax effect on assessed income i.e. 58,33,711/- @ 30% instead of @ 25% as per section 115BAA of IT Act,1961*
7. *That the Commissioner of Income Tax (Appeals) has erred in facts and law by not considering the decisions of judicial High Courts & Tribunals, which is against the principle of stare decisis and bad in law.*
8. *That the Commissioner of Income Tax (Appeals) has erred in facts and law by considering the amendment in Section 43B & Sec. 36(l)(va) by Finance Act, 2021 retrospectively , whereas the such amendment was w.e.f. 01-04-2021 i.e. AY 2021-2022, which is bad in law.*
9. *The appellant prays for leave to add, alter, modify and withdraw any of the grounds either before or at the time of hearing.”*

**FACTS OF THE CASE:-**

2. Facts giving rise to the present appeal are that the assessee, a Private Limited company engaged in the business of retail sale of textiles, apparel, footwear and leather goods, filed its return of income on 06.03.2019, declaring income of Rs.54,90,731/-. The same was verified u/s 143(1) of the Income Tax Act, 1961 (“the Act”) by AO/Central Processing Centre (“CPC”), Bangaluru. The AO made a disallowance u/s 2(24)(x) r.w.s 36(1)(va) of the Act on account of employee’s contribution amounting to Rs.2,94,848/-of EPF and Rs.48,132/- of ESI.

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 to 5 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 to 5 raised by the assessee are allowed.

9. Ground No.6 of the assessee's appeal is against considering the wrong tax effect on assessed income i.e. 58,33,711/- @ 30% instead of 25% as per section 115BAA of the Act.

10. Ld. Counsel for the assessee submitted that the authorities below have wrongly applied tax rate that needs to be corrected.

11. On the contrary, Ld. Sr. DR submitted that the issue to be restored to the AO for verifying the fact about the applicability of tax rate.

12. We have heard contentions of the Authorized representatives of both parties and perused the material available on record. The grievance of the assessee is regarding the application of wrong tax rate. It is stated that the assessee ought to have applied tax rate @ 25 % instead of 30% as per section 115BAA of the Act. We therefore, set aside the impugned order on this issue and restore this issue to the file of assessing authority to verify and charge tax in accordance with law as applicable to the assessee. Thus, Ground No.6 raised by the assessee is 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 26<sup>th</sup> April, 2022.

**Sd/-**

**(ANIL CHATURVEDI)  
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