

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

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 783/DEL/2022  
[Assessment Year: 2019-20]**

Pinaka Security & Allied Services Private Limited, D5, Bagdola, First Floor, Sector 8, Dwarka, Delhi-110077  PAN- AAICP1408Q	<u>Vs</u>	Income-tax Officer, Ward-19(4), New Delhi
<b>APPLICANT</b>		<b>RESPONDENT</b>
<b>Applicant by</b>		<b>Sh. Viney Jain, CA</b>
<b>Respondent by</b>		<b>Sh. Mrinal Kumar Das, Sr. DR</b>
<b>Date of hearing</b>		<b>06.05.2022</b>
<b>Date of pronouncement</b>		<b>06.05.2022</b>

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of learned CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.11.2021, pertaining to the assessment year 2019-20.

2. The assessee has raised following ground of appeal:

*“1 That on the basis of facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless*

*Appeal Center –CIT(A), NFAC, (Ld. CIT(A)) dated 10.11.2021 (hereinafter referred to as ‘impugned appellate order) is erroneous and bad in law.*

2 *That the Ld. CIT(A) has erred in law and on facts of the case in confirming the assessment made by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) in the case of the Appellant at Rs. 35,60,960/- a against the returned income of Rs. 11,48,700/- without any proper basis and appreciation of the facts and circumstances of the case.*

3 *That the Ld. CIT(A) has erred in confirming the disallowance made by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) under section 36(1)(va) of Rs. 24,12,260/- on account of delay in deposit of employee’s contribution towards PF/ESI without considering the correct interpretation and application of latest law in this regard.*

4 *That the Ld. CIT(A) grossly erred in placing reliance on the amended provisions of Section 36(1)(va) and Section 43B as per Finance Act, 2021 and applying these amended provisions retrospectively for sustaining disallowance made by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) under section 36(1)(va) of Rs. 24,12,260/- on account of delay in deposit of employee’s contribution towards PF/ESI*

5 *That the Ld. CIT(A) has erred in confirming the disallowance made by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) under section 36(1)(va) of Rs. 24,12,260/- on account of delay in deposit of employee’s contribution towards PF/ESI without observing the principles of natural justice and without appreciating the facts and circumstances of the case.*

6 *That having regard to the facts and circumstances of the case, the Ld. CIT(A) ought to have quashed the order u/s 143(1) passed by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) as the jurisdiction was not validly assumed as per law.*

7 *That the Ld. CIT(A) has erred in confirming the disallowance under section 36(1)(va) of Rs. 24,12,260/- under the head income from business in the intimation issued u/s 143(1) without appreciating the fact that such addition does not constitute as prima facie adjustment under section 143(1)(a) and hence Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld.*

*AO”) acted without jurisdiction and made disallowance by assuming incorrect jurisdiction in this regard.*

*8 That the Ld. CIT(A) has erred in confirming the disallowance made by Ld. Asst. Director of Income Tax, CPC, Bangalore (Ld. AO”) under section 36(1)(va) of Rs. 24,12,260/- on account of delay in deposit of employee’s contribution towards PF/ESI without considering the fact that such amount was duly deposited on or before due date of filing return u/s 39(1).*

*9 That the appellant prays for interest under section 244A relating to refunds as claimed in the return of income.*

*10 That the appellant denies liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief.”*

3. The assessee had filed an application seeking out of turn hearing of the appeal on the ground that the issue involved in this appeal is relating to deposit of employees’ contribution towards EPF and ESI. Learned counsel submitted that since the issue is covered under the identical facts, the appeal filed by other assesseees have been taken on out of turn basis by the Tribunal. He submitted that, therefore, this appeal may also be allowed to be fixed for hearing on out of turn basis.

4. Learned DR opposed the submissions.

5. We have heard rival contentions. The Revenue has not disputed the fact that the issue involved in this appeal is relating to disallowance out of EPF and ESI contribution by employees on the ground that the same was not deposited within the time as stipulated under the respective Acts. It is stated that the contribution

was deposited before the due date for filing of the return. Reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Dharmendra Sharma 123 CTR 609; CIT Vs. AIMIL Ltd. (2010) 321 ITR 508; as also the judgment in the case M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018. In view of the binding precedence the appeal of the assessee is taken for hearing out of turn basis and is disposed of by this order.

6. Facts of the case are that Centralized Processing Center, Bengaluru vide its intimation u/s 143(1) of the Income-tax Act, 1961, hereinafter referred to as "the Act", made adjustment regarding disallowance of the employees' contribution towards EPF & ESI amounting to Rs. 24,12,260/-, thereby the total income of the assessee was assessed at Rs. 35,60,960/- against the returned income of Rs. 11,48,700/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions dismissed the appeal. Aggrieved, the assessee has preferred appeal before this Tribunal.

7. Learned counsel for the assessee at the outset submitted that the issue involved is squarely covered in favour of the assessee in various cases. The Tribunal has taken the appeals for hearing on out of turn basis and by following the judgment of the Hon'ble Jurisdictional High Court has decided the issue in favour of the assessee.

8. Learned DR opposed the submissions and heavily relied on the orders of the authorities below.

9. We have heard the rival submissions, perused the material on record and gone through the orders of authorities below. We find that the issue relating to employees' contribution towards EPF and ESI is covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. AIMIL Ltd. (2010) 321 ITR 508 and also the judgment in the case M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018.

10. The Hon'ble Jurisdictional High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Delhi), has held as under:

*“If the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income-tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in Vinay Cement [2009] 313 ITR (St.) 1.”*

11. The Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs. M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018 vide order dated 10.09.2018 in ITA no. 983/2018 has held as under:

*“In view of the judgment of the Division Bench of Delhi High Court in Commissioner of Income Tax Vs. 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 employer under section 2(24)(x) of the Act."*

12. Therefore, respectfully following the binding precedence, we hereby delete the addition. The grounds raised in this appeal are allowed.

10. Assessee's appeal is allowed.

Order pronounced in open court on 6<sup>th</sup> May, 2022.

**Sd/-**  
**(G.S. PANNU)**  
**PRESIDENT**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**