

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 957/DEL/2021
[Assessment Year: 2018-19]

APT Services Group, 465, C/1, Azadpur, Saiyed Wali Gali, Delhi-110033. PAN- AAOFA8445R	<u>Vs</u>	DCIT, CPC Bangalore
APPELLANT		RESPONDENT
Appellant by		Sh. Tanpreet Kohli, CA
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		10.05.2022
Date of pronouncement		20.05.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-12, New Delhi, dated 14.08.2020, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of income Tax (Appeal) [“CIT(A)”] is bad, both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order of the DCIT(CPC) for assessing the income at Rs. 31,09,590/-, as against the returned income of Rs. 9,91,370/-.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of Rs. 21,18,225/- on account of delayed payment towards ESI and EPF.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in passing the order without giving assessee an adequate and proper opportunity of being heard in violation of principle of natural justice.*

5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Facts of the case, in brief, 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. 21,18,225/-, thereby the total income of the assessee was assessed at Rs. 31,09,590/- against the returned income of Rs. 9,91,370/-. 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.

3. Learned counsel for the assessee submitted that the only 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 cases 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, wherein the issue has been decided in favour of the assessee.

4. Per contra, the learned DR opposed the submissions and heavily relied on the orders of the authorities below.

5. I 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.

6. 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.”

7. 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."

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

9. In the result, assessee's appeal is allowed.

Order pronounced in open court on 20th May, 2022.

**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**