

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA Nos. 1975 & 1977/Del/2021
(Assessment Years : 2018-19 & 2019-20)

Mr. Abhishek Kumar Agarwal, 205, 2 nd Floor, Sector – 30-33, SLF Mall, I.P. Faridabad, Haryana-03	Vs.	Ward – 1(1) Faridabad – 121 003
PAN No. AGUPA 8505 A		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Gautam Goel, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	15.06.2022
Date of Pronouncement:	15.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

Both the appeals filed by the assessee are directed against the orders dated 25.08.2021 & 14.09.2021 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) - Delhi relating to Assessment Years 2018-19 & 2019-20.

2. Since the issue in both the appeals are common, therefore, I clubbed both the appeals together for the sake of brevity and convenience. However, I am taking ITA No.1975/Del/2021 as a lead case wherein assessee has raised the following grounds:

1. *“That on the facts and circumstances of the case and in law, the order passed by the Ld AO is bad in law and the appellant denies its liability to be assessed at income of Rs.24,68,211/- as against the returned income of Rs.18,87,500/-.*
2. *That on the facts and circumstances of the case and in law, the ld. CIT(A) grossly erred in confirming the addition of Rs.5,80,711/- made u/s 43(B) of the IT Act, which is bad in law and not called for.”*
3. Similar grounds with different amount have been raised in other appeal but however the sum and substance and the issue involved in other appeal are identical.
4. Before me, at the outset, Learned AR submitted that the sole grievance of the assessee is confirming the additions on account of delay in deposit of employee’s contribution towards provident fund and ESI fund.
5. Before me, Learned AR submitted that additions 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.

6. 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.

7. I have heard the rival submissions and perused the material available on record. The issue is no more *res-integra*. The issue has already been settled in favour of the assessee by various judicial pronouncements by the Tribunal. The Hon'ble Jurisdictional High Court of Delhi in the case of **PCIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA no. 983/2018 dated 10.09.2018** has already taken a view in favour of the assessee by holding 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."

8. 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 1st April 2021 and will apply in relation to the assessment year 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.

9. Before me, Revenue has not placed any material on record to demonstrate that the aforesaid order cited hereinabove has been overruled/stayed/set aside by higher judicial forum. In view of the aforesaid facts, I am of the view that the AO was not justified in denying the deduction claimed by the assessee on account of late deposit of PF/ESI/EPF, albeit before filing the return of income. Admittedly in the matter, the Revenue had not contended that the assessee has deposited the contribution after the filing of the return of income. In view of the above, respectfully following the decision of the Hon'ble High Court cited hereinabove, **I allow the appeals filed by the assessee.**

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 15.06.2022, immediately after conclusion of the hearing of the matter in virtual mode.

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

Date:- 15.06.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI