

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 1869/Del/2021
(Assessment Year : 2019-20)

S J Wire Industries Adv. Vijay Kumar Gupta Opp. Jain Mandir Main Bazar Ballabgarh, Faridabad – 121004 PAN No. ABVFS 2015 H (APPELLANT)	Vs.	Ward – 1(1) Faridabad (RESPONDENT)
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Assessee by	Shri Vijay Kumar Gupta, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	16.06.2022
Date of Pronouncement:	16.06.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 12.03.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2019-20.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who filed its return of income on 30.10.2019 for A.Y. 2019-20 declaring total income of Rs.1,93,750/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore vide Identification No. CPC/1920/A5/1977014395 dated 06.03.2020, the total income was determined at Rs.4,23,330/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A), NFAC. CIT(A), NFAC vide order dated 12.03.2021 in DIN & Order No.ITBA/NFAC/S/250/2020-21/1031433055(1) dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), NFAC, assessee is now in appeal and has raised the following grounds:

- “1. *That in the present case, employees’ contribution Rs.2,29,576/- towards ESIC and EPF having been paid by the appellant employer before the date of filing of return of income u/s 139(1) for the present period, such amount could not be added back in the income of the appellant declared in the return of income filed. This addition is against the well settled law on the subject.*
2. *That the disallowance of deduction as has been made in the present case could not be made by way of intimation u/s 143(1)(a) of the IT Act, 1961. Such a disallowance could be made only after providing an opportunity to the assessee to establish its claim.*
3. *That the appellant craves leave to add, amend, revise modify, substitute or delete any or all grounds of appeal or/and prayer made.*
4. **Prayer :**

In view of the above, it is, therefore, prayed that the impugned assessment order as well appeal order disallowing deduction to the amount of Rs.5,70,838.00 being illegal, arbitrary, beyond jurisdiction and in utter disregards of the true facts and in the circumstances of

the case may kindly be quashed in the interest of justice and fair play.

5. *That the impugned appeal order dated 12.03.2021 having been received on 13.08.2021, i.e. during the period between 15.03.2020 to 02.10.2021, the limitation period shall be 90 days started from 03.10.2021 in terms of the judgment of the Hon'ble Supreme Court dated 23.09.2021 [Miscellaneous Application No.665 of 2021 in SMW (C) No.3 of 2020].*

As such, the present appeal is within the period of limitation.”

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 appeal filed by the assessee.**

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.06.2022

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

Date:- 16.06.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI