

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 1057/Del/2021
(Assessment Year : 2019-20)

Zenith Weldaids Limited C-164, Site-1, B. S. Road Industrial Area, Ghaziabad UP-201 001 PAN No. AAACZ 0626 J (APPELLANT)	Vs.	CPC ITD Bengaluru (RESPONDENT)
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Assessee by	--None--
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 20.07.2021 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 26.06.2020 for A.Y. 2019-20 declaring total income of

Rs.14,06,220/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore vide Identification No. CPC/1920/V6/2003522017 dated 12.08.2020, the total income was determined at Rs.15,91,510/-. 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 20.07.2021 in Appeal No.CIT(A) Noida-1/10127/2020-21 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. *“Ld. CIT(A) has erred in law and on merits of the case was not justified in confirming the addition of Rs 1,85,294/- made by A.O (CPC) on account of late deposit of employee contribution towards PF/ESI, even it is paid before due date of filing of ITR in view of Section 43B of the Income Tax Act, 1961 and ignored various judicial pronouncement cited by the assessee.*
2. *CIT(A) has erred in law in confirming the disallowance of employee contribution to PF/ESI in the light of amendment in sections 36(va) as well as in section 43B by inserting corresponding Explanations through Finance Act, 2021. Although the impugned employee PF / ESI now comes under the provision of section 36(va) only, but the memorandum explaining Finance Bill, 2021 says that these amendments will take effect from 01.04.2021 and will accordingly apply to AY 2021-22 and subsequent Assessment Years. Thus the legislature itself has condoned the impugned default before 01.04.2021.*
3. *ITAT bench of Delhi in the case of Insta Exhibitions Private Limited vs ACIT ITA No 6941/DEL/2017 (and ITA no 4959/DEL/2016) wherein it was held that belated payments of ESI and PF cannot be treated as deemed income u/s 2(24). Further it was held that ‘notes on clauses introducing Finance Bill holds that amendment is effective from A.Y 2021-22’ and thus deleted the addition on this account.*
4. *That the appellant craves leave to add, amend or alter any of the grounds of appeal on or before the date of hearing.*

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

Date of dictation	16.06.2022
Date on which the typed draft is placed before the dictating Member	16.06.2022
Date on which the approved draft comes to the Sr.PS/PS	16.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	16.06.2022
Date on which the final order is uploaded on the website of ITAT	16.06.2022
Date on which the file goes to the Bench Clerk	16.06.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	