

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

Before Shri Ani Chaturvedi, Accountant Member
and
Shri Anubhav Sharma, Judicial Member

ITA No. 9372/Del/2019
(Assessment Year: 2017-18)

ACIT,
Circle-26(2),
New Delhi

(Appellant)

Vs. Vamani Overseas P Ltd,
TA-3/146-C, Tuglakabad,
South Delhi
New Delhi
(Respondent)

PAN: **AABCV6458R**

Assessee by : Shri Deepesh Garg, Advocate
Revenue by: Shri M. Barnwal, Sr. DR

Date of Hearing 30/06/2022
Date of pronouncement 06/07/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the revenue against the order dated 23.09.2019 of CIT(A)-26(1), New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 9/10117/2019-20 arising out of an appeal before it against the order dated 02.05.2019 passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by CPC, Circle-26(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the Assessee filed return of income u/s 139(1) of the Act on 08.08.2018 declaring income of Rs. 24,01,89,376/-. In the impugned order passed by the CPC income of the Assessee has been re-computed u/s 143(1) by making certain adjustments/ additions at Rs.

26,08,22,139/- which indicate addition of Rs. 2,06,32,763/-. Aggrieved the Assessee filed appeal before the Id CIT(A), who decided the appeal in favour of the Assessee.

3. As per its grounds of appeal, the Revenue has challenged the reversal of disallowance of Rs. 2,06,32,763/- made by the Assessing Officer under Section 36(1)(va) of the Act on account of delayed deposit of employee's contribution towards PF and ESIC.

4. Heard and perused the record.

5. Giving thoughtful consideration to the matter on record and the contentions as raised it can be observed that, admittedly the assessee has deposited the impugned contributions to the PF/ ESI though after due date as prescribed under the relevant provisions of PF / ESI Act but within the time allowed u/s 43B i.e. up to the due date u/s 139(1) for filing of income.

6. Regarding the amendments made through Finance Act, 2021, it is specifically mentioned by the legislature that the amendments are effective from 01.04.2021. Further the Memorandum explaining the Provisions in the Finance Bill, 2021 clearly prescribes thus:

"These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years."

7. Thus, the legislature itself has categorically stated that the amendments shall apply to the assessment year 2021-22 and subsequent assessment years. Therefore these amendments are not applicable to the assessment years preceding the assessment-year 2021-22 i.e. not applicable upto assessment-year 2020-21. This has also been held so in decisions of ITAT Benches including following:

- (a) ITAT Kolkata in Harendra Nath Biswas Vs. DCIT, ITA No. 186/Kol/2021 for A.Y. 2019-20, order dated 16.07.2021
- (b) ITAT Hyderabad in Salzgitter Hydraulics Private Limited Vs. ITO, ITA No. 644/Hyd/2020 for A.Y. 2019-20, order dated 15.06.2021
- (c) `ITAT Jodhpur in Akbar Mohammad Vs. ACIT, CPC, Bangalore ITA No. 108 &109 / Jodh / 2021 for A.Y. 2018-19 and 2019-20, order dated 31.01.2022

8. The Co-ordinate Bench at Delhi in ITA No. ITA No.5570/Del/2017, M/s. Express Roadway V. ACIT Circle – 8(2) New Delhi, has discussed the relevant law as below :

"We find that Hon'ble Delhi High Court in the case of CIT vs.AIMIL Limited (2010) 321 ITR 508 (Del) held as under:

"17. We may only add that 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. Insofar 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 (supra).1

18. We, thus, answer the question in favour of the assessee and against the Revenue. As a consequence, the appeals filed by the assessee stand allowed and those filed by the Revenue are dismissed."

9. We further find that Hon'ble Delhi High Court in the case of SPL Industries vs. CIT (2011) 9 Taxmann.com 195 (Delhi) held as under:

"7. It is apt to note that the Division Bench has taken note of the submission advanced by the revenue that the distinction between employers" contribution on the one hand and the employees" contribution on the other. On the foundation that when employees" contribution was recovered from their salaries / wages that is the trust money in the hands of the assessee and, therefore, recourse of law providing for treating the

same as income that the assessee received as the employees' contribution would only enable the assessee to claim deduction only on actual payment made by due date specified under the provisions of the Act. The Bench while dealing with the same has opined thus: "11. Before we delve into this discussion, we may take note of some more provisions of the Act. Section 2(24) of the Act enumerates different components of income. It, inter alia, stipulates that income includes any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees. It is clear from the above that as soon as employees contribution towards provident fund or ESI is received by the assessee by way of deduction or otherwise from the salary / wages of the employees, it will be treated as 'income' at the hands of the assessee. It clearly follows therefrom that if the assessee does not deposit this contribution with provident fund/ESI authorities, it will be taxed as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of Section 36(1)(va) of the Act. Section 43B(b), however, stipulates that such deduction would be permissible only on actual payment. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees' contribution is concerned. It is in this backdrop we have to determine as to at what point of time this payment is to be actually made."

8. Upon perusal of the aforesaid, we are of the considered opinion that the decisions rendered in P.M. Electronics Ltd.(supra) and AIMIL Limited (supra) have correctly laid down the law and there is no justification or reason to differ with the same. In the result, we do not perceive any merit in this appeal and accordingly the same stands dismissed."

9. In the light of aforesaid, this Bench is of the considered view that there is no error in the findings of Ld CIT(A). **The appeal is dismissed**

Order pronounced in the open court on 06/07/2022.

-Sd/-
(Anil Chaturvedi)
Accountant Member

-Sd/-
(Anubhav Sharma)
Judicial Member

Dated: 06/07/2022

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi