

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE DR. B.R.R.KUMAR, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1094/Del/2020  
(Assessment Year : 2018-19)

Well Protect Manpower Services Pvt. Ltd. F 22, 2 <sup>nd</sup> Floor Khasra 737/3 and 737/6 Near MCD School 100 Futa Road, Burari, Delhi-34 PAN : AAACW4672R	Vs.	DCIT, CPC, Bangalore
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. C.S.Anand, Adv. & Sh. Ombir Panwar, CA
Revenue by	Sh. M. Baranwal, Sr. DR

Date of hearing:	18.07.2022
Date of Pronouncement:	22.07.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Assessee against order dated 31.01.2020 in appeal no. 10218/2019-20 in assessment year 2018-19 passed by Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 16/10/2019 u/s 143(3) of the Income Tax Act, 1961 (herein after referred as 'the Act') by

the DCIT-CPC, Bangaluru (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are the Assessee has been engaged in the business of providing manpower security services and cleaning services etc. assessee had filed its ITR for A.Y. 2018-19 on 18.08.2018, declaring total income of Rs. 1,48,74,061/- and claiming refund of Rs. 23,93,440/- and received communication of proposed adjustment u/s 143(1)(a) of the Income tax act on dated 27.02.2019 for making addition of Rs. 1,76,34,871/- on account of late deposit of Employee Contribution to PF & ESI u/s 36(1)(va). Assessee had filed its response to the said communication, stating the payments towards the provident fund and ESI were made within few days of the due date for depositing the PF/ESI, positively much earlier, before due date of filing the income tax return. The Assessee has also placed reliance upon decision of Delhi high court in case of CIT vs AIMIL Ltd 2009 (12). The DCIT, CPC Bengaluru has not considered the response submitted by the Assessee and made the adjustment on account of disallowance of Rs. 1,81,77,791/- (Which is late deposit of employees' contribution to PF and ESI of Rs. 1,57,32,118/- and Rs.24,45,672/-) accordingly determined. In appeal same was sustained.

3. Now the assessee is in appeal raising following grounds :-

*"1 That on the facts of the case and under the law, the ld. CIT(A) has erred in affirming the addition of Rs. 1,81,77,791/- which was made by CPC Bangalore vide intimation u/s 143(1) dt. 16.10.2019, on the ground that the appellant had failed to deposit the employee's contribution to PF & ESIC before the due dates.*

*2. That the ld. CIT(A) has erred in not appreciating that the CPC had made adjustment (addition on the ground that the*

*appellant had failed to deposit the employees's contribution to PF & ESIC before the due dates), while ignoring the response which was filed by the appellant (wherein it was claimed that the entire payments were made well within the due date for filing ITR and the reliance was placed upon the decision of Hon'ble Delhi High Court in the case of AIMIL Ltd.)*

*3. That the ld. CIT(A) has erred in not giving an opportunity to the appellant to explain as to why the decision of Hon'ble Delhi High Court in the case of Bharat Hotels Ltd. be not applied to its case and also as to why the decisions of various courts being relied upon by the appellant (as listed herebelow) be not ignored.*

Sl.No.	Title	Citation No.
1.	Allied Motors (P.) Ltd. Vs. CIT	[1997] 224 ITR 677 (SC)
2.	CIT vs. Vinay Cement Ltd.	[2007] 213 CTR 268 (SC)
3.	CIT vs. Alom Extrusions Ltd.	[2009] 319 ITR 306 (SC)
4.	CIT vs. AIMIL LTD.	[2010] 321 ITR 508 (Del.)
5.	CIT vs. George Williamson (Assam) Ltd.	[2006] 284 ITR 619 (Gau)
6.	CIT vs. Other vs. Sabari Enterprises	[2008] 298 ITR 141(Kar)
7.	CIT vs. Jaipur Vidyut Vitaran Nigam Ltd.	[2014] 363 ITR 307 (Raj)
8.	Essae Teraoka P. Ltd. vs. DCIT	[2014] 366 ITR 408 (Kar)
9.	CIT vs. Ghatge Patil Transports Ltd.	[2014] 368 ITR 749 (Bom)
10.	CIT vs. Rajasthan State Beverages Corporation Ltd.	[2017] 393 ITR 421 (Raj)
11.	Sagun Foundry (P) Ltd. vs. CIT	[2017] 291 CTR 557 (All)

*4. That on the facts of the case and under the law, the addition of Rs.1,81,77,791/- (which was made on the ground that the appellant had failed to deposit the employee's contribution to PF & ESIC before the due dates) deserves to be deleted because the entire amount on a/c of PF & ESIC were deposited within few days, positively before the due date of filing of ITR.*

*5. That the Id CIT(A) has erred in not considering various decisions ( as listed herein above) which were relied upon by the appellant in support its claim that such addition deserves to be deleted because the entire amount on a/c of PF & ESIC were deposited within few days, positively before the due date of filing of ITR.*

6. *That the Id CIT(A) has erred in giving utmost importance to the decision of Hon'ble Delhi High Court in the case of Bharat Hotels Ltd., without appreciating that the said decision was made per incuriam .*

7. *The assessee craves the leave to amend/modify the aforementioned ground(s) of appeal, and/or to raise additional ground(s) of appeal, at any time during the course of appellate proceedings.”*

4. Heard and perused the record. As with regard to the grounds arising out of one question of law, on behalf of the assessee it was submitted that the Id. Tax Authorities below have failed to take into consideration the judgments of Hon'ble High courts and also of Jurisdictional Delhi High Court and Co-ordinate Benches of the Tribunal where it is held that the explanation to Clause (va) of Section 36(1) of the Act makes it clear that the amount actually paid by the assessee on or before the due date applicable for submitting of return of income u/s 139 of the Act to the revenue in respect of the previous year can be claimed by the assessee for deduction out of their gross income.

5. On the other hand Ld. DR submitted that the Id. Tax Authorities below have appropriately gone by the provisions of the relevant Sections which were not ambiguous and he submitted that he stands by the order of Ld. Tax Authorities Below.

6. 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.

7. 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.”*

8. 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

9. 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 has 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).<sup>1</sup>*

*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.”*

10. 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."*

11. In the light of aforesaid, this Bench is of the considered view that the interpretation given by the Ld. Tax Authorities Below with regard to application of provision the section 36 (1) (va) of the Act is not correct. The ground deserve to be sustained. **The appeal is allowed** and the impugned addition of Rs. 1,81,77,791/- , is set aside.

**Order pronounced in the open court on 22<sup>nd</sup> July, 2022.**

**Sd/-**

**(DR. B.R.R.KUMAR)**

**ACCOUNTANT MEMBER**

*Date:- 22 .07.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

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

**Sd/-**

**(ANUBHAV SHARMA)**

**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI