

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1777/DEL/2020  
Assessment Year 2018-19

Alqimi India Pvt. Ltd., One Horizon Centre, Golf Course Road, Level-18, DLF Phase-5, Sector-43, Gurgaon, Haryana.	v.	Deputy Commissioner of Income Tax, CPC.
TAN/PAN: AHZPP4577F		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri Kanav Bali, Sr.DR
Date of hearing:	25 07 2022
Date of pronouncement:	27 07 2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-I, New Delhi ('CIT(A)' in short) dated 24.08.2020 arising from the intimation order dated 16.10.2019 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

2. As per its grounds of appeal, the assessee has challenged the correctness of disallowance of EPF and ESIC amounting to Rs.3,87,347/- and Rs. 27,22,071/- under Section 2(24)(x) r.w. Section 36(1)(va) of the Income Tax Act.

3. None attended for the assessee. Accordingly, the matter was proceeded *ex-parte*.

4. We have heard the contentions raised on behalf of the Revenue 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 *Pr. CIT v. Pro Interactive Services (India) (P.) Ltd.* [IT Appeal No. 983 of 2018, dated 10-9-2018] held as under:-

*"In view of the judgment 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."*

5. As far as reliance by Ld. 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 01st April 2021 and will prospectively apply in relation to the assessment year 2021-22 and subsequent assessment year. In such a situation, we are of the view that the

amendment brought out by Finance Act, 2021 does not apply to the assessment year under consideration.

6. Before us, the 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, we are 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 all the above-stated matters, the Revenue had not contended that the assessee has deposited the contribution after the filing of the return of income.

7. It is also simultaneously noticed that the impugned addition has been made while processing the return of income under section 143(1) of the Act. The Co-ordinate Bench of the Tribunal in the case of *Kalpesh Synthetics (P.) Ltd. v. Dy. CIT [2022] 137 taxmann.com 475 (Mum. - Trib.)* observed that scope of *prima facie* disallowance under section 143(1) is inherently very limited and only such disallowance can be made under this statutory provision as can be conclusively held to be inadmissible based on material on record. The claim of the assessee for allowability of employee's contribution to PF/ESIC under section 36(1)(va) r.w.s. 2(24)(x) of the Act is backed by binding judicial precedent of the Hon'ble Jurisdictional High Court and hence such adjustments under section 143(1), at the minimum, cannot fall in this category. Hence on this score also, the adjustments towards employees' contribution to PF/ESIC

resulting in disallowance thereof is not permissible in law.

8. We have proceeded to conclude the issue of allowability of expenses attributable to employee provident fund and employee state insurance scheme on the belief that the employee's contributions towards PF & ESI have been deposited before the due date of filing of return of income. However, the Revenue shall be at liberty to seek restoration of the appeal where it is found as a matter of fact that the assessee has failed to deposit the employee's contribution before the due date of filing of return of income stipulated u/s 139(1) of the Act in accordance with law. In view of the above and respectfully following the decision of the Hon'ble Jurisdictional High Court of Delhi cited hereinabove, we allow the appeals filed by the captioned assessees.

9. In the result, captioned appeal of the assessee is allowed *ex-parte*.

**Order pronounced in the open Court on 27/07/2022.**

Sd/-  
**[CHANDRA MOHAN GARG]**  
**JUDICIAL MEMBER**

DATED: /07/2022

*Prabhat*

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**