

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

BEFORE

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2361/Del/2019
Assessment Year: 2014-15

Hari Prakash, House No. 598, Sector-10, Gurgram, Haryana, Pin 122 001 PAN AHKPP8457D	Vs.	Income Tax Officer, Ward 62(1), New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri J.S. Kochar, CA
Department by :	Ms. Anupama Singla, Sr. DR
Date of Hearing	25.05.2022
Date of pronouncement	25.05.2022

ORDER

PER ASTHA CHANDRA

The appeal by the assessee arises out of the order dated 29.12.2017 of the Ld. Commissioner of Income Tax (Appeals)- 20, New Delhi (**"CIT(A)"**) pertaining to the assessment year (**"AY"**) 2014-15.

2. The assessee has raised the following grounds:-

"1. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in sustaining the disallowance of a sum of Rs. 81,25,958/- being Employees' contribution to PF and ESI, which were deposited before the due date of filing the return of income, against the law settled by the Hon'ble Delhi High Court and Rajasthan Court (against which the SLP*

filed by the department has been dismissed by the Hon'ble Supreme Court).

2. *That the Ld. CIT(A) was in contempt of the Hon'ble Delhi High Court in not following the binding judgments in the cases of CIT vs. AIMIL Ltd. and CIT vs. SPL Industries Ltd., which were specifically cited by the Assessee during the course of hearing as is evident from the impugned order."*

3. Briefly stated, the assessee is an individual. He is a proprietor of M/s. Shree Hanuman Enterprises engaged in the business as a contractor. He filed his return for AY 2014-15 on 29.09.2014 declaring income of Rs. 24,97,910/-. His case was selected for scrutiny through CASS. The Ld. Assessing Officer ("**AO**") completed the assessment on 27.12.2016 under section 143(3) of the Income Tax Act, 1961 (**the "Act"**) on total income of Rs. 1,08,97,603/- including therein, inter-alia disallowance of Rs. 81,25,958/- under section 36(1)(va) of the Act. The appeal by the assessee before the Ld. CIT(A) challenging the said disallowance of Rs. 81,25,958/- under section 36(1)(va) of the Act was unsuccessful. Being aggrieved, the assessee is before the Tribunal.

4. Ld. AR submitted that it is a covered issue decided in favour of the assessee by various Benches of Delhi Tribunal and Ld. DR relied on CIT(A)'s order.

5. We have heard the Ld. Representative of the parties, considered their arguments, perused the orders of the Ld. AO/CIT(A) and the material on records. The Ld. AO noticed that there were delay in some monthly payments of employees' contribution towards EPF and ESI viz. a viz. the due date(s) prescribed under the respective statute which amounted in all to Rs. 81,25,958/-. On query, the assessee submitted that all payments had been made before the due date of filing the return of income under section 139(1) of the Act and therefore it is an allowable deduction. He placed reliance on a number of decisions including the decision of Hon'ble Delhi High Court in CIT vs. AIMIL Ltd. (ITA No. 1063/2008) dated 04.12.2009) and submitted

that even if the two views are possible, the view which favours the assessee must be adopted as held by the Hon'ble Supreme Court in CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC).

6. The submissions of the assessee were not acceptable to the Ld. AO who made the impugned disallowance observing that the employees' contribution is deemed income as per section 2(24)(x) of the Act and deduction under section 36(1)(va) is only available as per the respective EPF Act, as per the 'due date' stated therein and not as per section 139(1) which in this case has been made belatedly. He also referred to the CBDT Circular No. 22/2015 dated 17.12.2015.

7. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and submitted before him that from the point of allowability of expense under section 43B and section 36(1)(va) there is no difference if the payments had been made before the due date of filing the return of income under section 139(1) as section 43B has overriding effect on the provisions of section 36(1)(va) of the Act. The assessee relied on the decision of Hon'ble Delhi High Court in CIT vs. AIMIL Ltd., since reported in (2010) 188 Taxman 265 (Delhi); the decision of Hon'ble Rajasthan High Court in Pr. CIT vs. Rajasthan State Beverage Corporation Ltd. (2017) 84 taxmann.com 173 (Raj.), the SLP of the revenue against which stands dismissed by the Hon'ble Supreme Court reported in (2017) 84 taxmann.com 185; decision of Hon'ble High Court of Uttrakhand in CIT vs. Kichna Sugar Co. Ltd. (2013) 35 taxmann.com 54 (Uttrakhand) and number of other decisions. However, relying on the decision of Hon'ble Gujarat High Court in CIT vs. Gujarat State Road Transport Corporation 366 ITR 170 (Guj.) and CBDT Circular No. 22/2015 dated 17.12.2015, the Ld. CIT(A) confirmed the impugned disallowance which brought the assessee before us.

8. We agree with the submission of the assessee that various Benches of Delhi Tribunal have taken a view on the issue which favours the assessee. We find that recently identical issue came up for consideration before 'A'

Bench of the Tribunal in the case of Benson Movers Pvt. Ltd. (ITA No. 318/Del/2022 AY 2018-19) and the Tribunal vide its order dated 25.04.2022 decided the matter in favour of the assessee by observing as under:-

*“7. We 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, we are of the view that the amendment brought out by Finance Act 2021 does not apply to the assessment year under consideration.

*9. Before us, 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. In view of the above, Respectfully following the decision of the Hon’ble High Court cited hereinabove, **we allow the appeals filed by the assessee.**”*

9. Following the decision (supra) of the Tribunal, we allow the appeal of the assessee.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25th May, 2022.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 28/07/2022

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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