

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “C” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1657/Del/2020  
[Assessment Year : 2018-19]**

Krishan Pal, 8A, Shiv Mandir, Govind Mohalla, Haidarpur, New Delhi-110052. <b>PAN-AHZPP4577F</b>	vs	DCIT, CPC, Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri P.C.Yadav, Adv.	
<b>Respondent by</b>	Shri Gurpreet Shah Singh, Sr. DR	
<b>Date of Hearing</b>	27.07.2022	
<b>Date of Pronouncement</b>	27.07.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2018-19 is directed against the order of Ld. CIT(A)-12, New Delhi dated 31.07.2020.

2. The assessee has raised following grounds of appeal:-

1. *“That the learned Commissioner of Income Tax (Appeals) 12, New Delhi has erred both in law and on fact in sustaining addition of Rs. 15,85,084/- representing addition on account of late deposit of EPF and ESI for Rs. 27,22,071/- u/s 36(l)(va) read with section 2(24)(x) of the Income-tax Act, 1961*
- 1.1. *That while sustaining the aforesaid addition and denying the amount paid learned Commissioner of Income Tax (Appeals) has failed to appreciate that amount deposited by the assessee on account of contribution towards PF & ESI would qualify for deduction even though paid after the due dates prescribed under the Provident Fund and ESI Act but before filing of the income-tax return.*

*In the instant case, assessee has admittedly deposited the amount of provident fund and ESI before filing the return.*

- 1.2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the evidence tendered by the appellant to support the payment of EPF and ESI and hence, findings mechanically recorded on borrowed inference in disregard of evidence and based on irrelevant and extraneous considerations are misconceived and, misplaced.*
- 1.3. That the learned Commissioner of Income Tax (Appeals) has confirmed the above addition and without appreciating that neither the material/investigation relied upon was confronted to appellant and nor cross examination of the parties on whose statements reliance had been placed in impugned order of assessment was granted and therefore order so made in disregard of principles of natural justice was vitiated.*
- 1.4. That further more the learned Commissioner of Income Tax (Appeals) has sustained the addition on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.*
- 1.5. That the learned Commissioner of Income Tax (Appeals) while sustaining the above addition has arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition and denied exemption by drawing subjective, premeditated and preconceived inferences therefore the same are not sustainable.*
- 1.6. That various adverse findings and conclusions recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect and contrary to record, legally misconceived and untenable.*

*It is therefore, prayed that it be held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant be allowed.”*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the assessee filed online return declaring total taxable income of Rs.12,69,680/- on 16.10.2018 on which tax payable of Rs.1,97,661/- was due which was adjusted against TDS amount of Rs.7,96,104/-. While processing return of income u/s 143(1) of the Income Tax Act, 1961 (“the Act”), the Central Processing Centre (“CPC”), Bangalore had disallowed the addition of Rs.15,85,084/- u/s 36(1)(va) of the Act for late deposit of employee’s contribution of EPF and ESI, as per the respective Acts.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who confirmed the addition.

5. Now, the assessee is in appeal before this Tribunal.

6. Ld. Sr. DR vehemently submitted that law is clear in this respect and he relied upon the decision of Ld.CIT(A).

7. At the outset, Ld. Counsel for the assessee submitted that issue is squarely covered in favour of the assessee. He relied on various case laws.

8. We have heard the Ld. authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The issue in this appeal is related to disallowance of expenditure on account of delay in deposit of employees contribution related to

EPF & ESI. The issue is squarely covered by the judgement of Hon'ble Jurisdictional High Court of Delhi in the case of *PCIT vs Pro Interactive Service (India) Pvt.Ltd. in ITA No.983/2018 [Del.]* order dated 10.09.2018 held 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."*

Therefore, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court in the above-mentioned binding precedent, we hereby direct the Assessing Officer to delete the disallowance. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 27<sup>th</sup> July, 2022.

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI