

**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.1708/Del/2020
[Assessment Year : 2019-20]**

Indu Anand, C-25, G.K Part-I, New Delhi-110048. PAN-AADPA2051L	vs	Circle-30(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Manoj Kumar, CA	
Respondent by	Shri Gurpreet Shah Singh, Sr. DR	
Date of Hearing	27.07.2022	
Date of Pronouncement	27.07.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2019-20 is directed against the order of Ld. CIT(A)-10, New Delhi dated 17.08.2020.

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

1. "1. That the Ld AO(CPC) has erred in facts and in law in making an addition of Rs. 2,40,800.00 on illegal and untenable grounds. Hence, the addition as such may be deleted.
2. The Ld AO has erred in law and on facts in invoking the provisions of section 36(va) for making addition of late deposits of ESI and EPF as per due date under respective act which is against the spirit of law and intention of legislature. The Honorable CIT(A) has erred in confirming the same. Hence, the addition as such may be deleted.
3. The Ld AO has erred in law and on facts for making addition of late deposits of ESI and EPF ignoring the facts that under PF act employer contribution includes employee contribution and hence the

section 43B will apply and not 36(va). The Honorable CIT(A) has erred in confirming the same. Hence, the addition as such may be deleted.

4. That the LD AO(CPC) has erred in facts and in law in making an addition of Rs. 2,40,800.00 while processing u/s 143(1) on illegal and untenable grounds. The Honorable CIT(A) has erred in confirming the same. Hence, the addition as such may be deleted.
5. That the LD AO(CPC) has erred in facts and in law in making an addition of Rs. 2,40,800.00 while processing u/s 143(l)(iv) on illegal and untenable grounds. The Honorable CIT(A) has erred in confirming the same. Hence, the addition as such may be deleted.
6. That the Honorable CIT(A) has erred in law and on facts in sustaining the addition of Rs. 2,40,800.00 following the judgement of Bharat Hotel of honorable DHC ignoring the latest judgement of Honorable DHC in the case of Pro Interactive Services (India) Pvt Ltd. Hence, the addition as such may be deleted.
7. That the Honorable CIT(A) has erred in law and on facts in sustaining the addition of Rs. 2,40,800.00 ignoring the facts that condition stipulated in section 36(va) is impossible to be performed by him. Hence, the addition as such may be deleted.
8. That the appellant craves leave to add, substitute, modify or delete any ground of appeal on or before the date of hearing. All the above grounds of appeal are without prejudice to each other.”

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the assessee filed return of income declaring income of Rs.59,96,904/- on 24.10.2019 and the same was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”) on 23.01.2020 by disallowing Rs.2,40,800/- on account of payment of employees contribution to

EPF & ESI by the Central Processing Centre (“CPC”), Bangalore on the basis that the same was deposited after due dates, 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 contentions of 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 27th 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