

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1840/Del/2020
(Assessment Year : 2019-20)

Sarvodaya Enterprises D-167, Okhla Industrial Area, Phase – I, New Delhi PAN No. AAPFS 8934 C (APPELLANT)	Vs.	Addl. DIT, CPC Banglore (RESPONDENT)
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Assessee by	Shri N. K. Gupta, C.A.
Revenue by	Shri Abhishek Kumar, Sr. D.R.

Date of hearing:	27.07.2022
Date of Pronouncement:	27.07.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 07.09.2020 passed by the Commissioner of Income Tax (Appeals)-10, New Delhi relating to Assessment Year 2019-20.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a firm stated to be engaged in the business of labour contractor for laying and fixing marble and tiles in the name of Sarvodaya Enterprises and filed the return of income on

30.10.2019 for A.Y. 2019-20 declaring total income of Rs.8,94,88,900/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore vide Identification No. CPC/1920/A5/1976793745 dated 05.03.2020, the total income was determined at Rs. 8,97,96,530/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A) who vide order dated 07.09.2020 in Appeal No.10027/20-21 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That on proper interpretation of the provisions of law it may be held that the CIT (A) was wrong to confirm the addition of Rs.3,07,637/- by CPC pertaining to late deposit of employees share of ESI & PF but paid before the due date of filing of return. That it may be held that as it was a legal issue and not a mistake apparent from record or permissible addition u/s 143(1), the addition being wrongly made in intimation u/s 143(1), be deleted.*
2. **a)** *That in the facts and circumstances of the case and in law the ld CIT(A) has erred in confirming the addition of Rs.3,07,637/- by the CPC in respect of employees share of ESI and Provident Fund deposited late but paid before the due date of filing the return. That the addition being contrary to provisions of law and unwarranted and unjustified be deleted.*
3. **b)** *That on a proper interpretation of provisions of sec 2 (24)(x) read with section 43B, it may be held that as the payments have been made before the due date of filing of return, the addition is bad in law and be deleted.”*
4. Before us, at the outset, Learned AR submitted that the sole grievance of the assessee is the additions on account of delay in deposit of employee’s contribution towards provident fund and ESI fund made by AO and upheld by CIT(A).

5. Before us, Learned AR submitted that additions has been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Act for the reason that the contribution received towards PF/ESIC by the assessee from its employees was not deposited before the due date. He submitted that though there has been delay in deposit of PF/ESIC Contributions but all the contributions received by the assessee from its employees have been deposited with the appropriate authorities before the filing of return of income by the assessee. He therefore submitted that since the amounts have been deposited before the filing of return of income, no disallowance is called for and for aforesaid proposition, he relied on the decision in the case of **Azamgarh Steel & Power vs. CPC in ITA No.1626/Del/2020 dated 31.05.2021** and **CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi) and** various other decisions.

6. Learned DR on the other hand supported the order of lower authorities and also placed reliance on the decision of Delhi Tribunal in the case of **Vedvan Consultants Pvt. Ltd. vs DCIT in ITA No.1312/Del/2020 order dated 26.08.2021**. He also submitted that the amendment brought out by Finance Act 2021 would be applicable to the present case as by the amendment it has been clarified that provisions of Section 43B of the Act shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub clause (x) of Clause (24) of Section 2 applies.

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 the matter, 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 appeal filed by the assessee.**

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.07.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 27.07.2022

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Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI