

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 835/Del/2021
(Assessment Year : 2019-20)

Pasupati Spinning and Weaving Mills Ltd., 127-128, Tribuvan Complex, Mathura Road, Ishwar Nagar, New Delhi-110065 PAN No. AAACP 0164 H (APPELLANT)	Vs.	DCIT CPC Bengaluru (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	04.08.2022
Date of Pronouncement:	17.08.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 23.06.2021 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), 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 company who electronically filed its return of income for A.Y. 2019-20 on 07.10.2019 declaring Nil taxable income and total income u/s 115JB of the Act at Rs.1,05,72,981/-. The return of income was processed by CPC vide intimation dated 09.04.2020 u/s 143(1) of the Act and the total taxable income was determined at Rs.46,73,130/- and income u/s 115JB at Rs.1,05,72,981/-.

4. Aggrieved by the intimation passed by CPC, assessee carried the matter before CIT(A) who vide order dated 23.06.2021 in Appeal No. NFAC/2018-19/10005265 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 the Ld DCIT CPC Bangalore has erred in computing the income of the assessee company u/s 143(1), at Rs. 46,73,130, as against return filed showing NIL. No opportunity was provided to the assessee company before making the addition. Addition made to income is bad in law, and is liable to be deleted.*
2. *That the Learned DCIT CPC Bangalore has erred to hold that the assessee company did not deposit the ESI and PF amounts aggregating Rs 45,22,668 before the “due date” within the meaning of section 36(1)(va), read with section 2(24)(x) and section 43B of the I Tax Act 1961, and failed to consider the decision of the jurisdictional Delhi High Court in 321 ITR 508 and The Hon’ble Supreme Court in Vinay Cement Ltd 313 ITR (St.)on the subject.*
3. *That the Learned CIT(A) has erred in confirming the addition of Rs.45,22,668 made to income by the Ld DCIT CPC Bangalore by erroneously holding that the amendments made to section 43B read with section 36(1)(va) and section 2(24)(x) of the I tax Act, by the Finance Bill 2021, were retrospective in nature, and were applicable to the assessment year 2019-2020 (year under appeal),*

even though the said amendments were made effective from 01.04.2021.

4. *That despite request made, the Ld CPC Bangalore did not provide details and did not state any reasons for making addition of Rs 1,50,463 (4,52,541 - 3,02,078) to income, and the Ld CIT(A) has erred in confirming the addition made to income on other fallacious ground.*
5. *That the assessee company craves leave to be permitted to amend, modify, delete, all or any of the above grounds of appeal, or add any fresh ground of appeal, at any time during or before the appeal proceedings.”*

5. On the date of hearing, none appeared on behalf of the assessee nor there was any adjournment application. The case file further reveals that the matter was also listed earlier on 3rd Aug 2022 but there was no appearance on behalf of the assessee. Considering the aforesaid facts, we proceed to dispose of the appeal *ex parte qua* the assessee and after considering the submissions made by the Learned DR.

6. **Ground No.1** seems to be general in nature and require no adjudication therefore, the same is dismissed.

7. **Ground No.2 & 3** are with respect to addition made u/s 36(1)(va) of the Act at Rs.45,22,668/-.

8. In the intimation passed u/s 143(1) of the Act, AO had disallowed Rs.45,22,668/- being the employee's Contribution to PF/ESI which not deposited before the due date u/s 36(1)(va) of

the Act.

9. Aggrieved by the intimation passed u/s 143(1), assessee carried the matter before CIT(A). Before CIT(A), it was *inter alia* submitted that though there has been delay in deposit of employee's contribution towards PF & ESI but however all the amounts have been deposited before the due date of filing the return of income. The submissions of the assessee was not acceptable by CIT(A). He upheld the order passed in the intimation u/s 143(1) of the Act. Aggrieved by the order of CIT(A), assessee is now in appeal.

10. Before us, Learned DR 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. He thus supported the order of CIT(A).

11. We have heard the Learned DR 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.”

12. 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.

13. 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 thus allow both the grounds of the appeal filed by the assessee.**

14. **Ground No. 4** is with respect to the addition of Rs.1,50,463/- made by CPC and upheld by CIT(A).

15. Vide this Ground, the grievance of the assessee is that the CPC did not provide any detail and reasons for making addition of Rs.1,50,463/- to the income and the same was confirmed by CIT(A). On this issue, we find that before CIT(A), assessee had reiterated that no details were provided before making the addition of Rs.1,50,463/- but CIT(A) upheld the order passed u/s 143(1) of the Act. On perusing the order of CIT(A), we find that no proper opportunity was made available to assessee to place on records its contentions. In such a situation, we are of the view that in the interest of natural justice, the matter with respect to the addition in the impugned ground be restored back to the file of jurisdictional CIT(A) to decide the issue afresh after granting opportunity of hearing to the assessee. The assessee is also directed to furnish all the required details called for by the

authorities. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 17.08.2022

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 17.08.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI