

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 713/Del/2021  
(Assessment Year : 2019-20)

Nitrex Chemicals India Ltd. 1116, Ansal Tower, 38 Nehru Place, New Delhi-19	Vs.	NeAc New Delhi
<b>PAN No. AAACF 7820 L</b>		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	-None-
Revenue by	Shri Jitender Chand, Sr. D.R.

Date of hearing:	29.08.2022
Date of Pronouncement:	29.08.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 17.05.2021 passed by 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 firm and filed its return of income for A.Y. 2019-20 declaring total income of Rs.10,75,91,380/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore dated 28.02.2020, the total income was determined at Rs.5,63,557/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A) who vide order dated 17.05.2021 in Appeal No.CIT(A) 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 CIT(A) has erred in law and facts by confirming the addition of Rs.5,63,557/- of payment of Employees Contribution of Provident Fund and therefore the Learned AO/CPC be directed to delete the addition while computing the total income.”*

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed despite the fact that the notice of hearing was issued to the assessee. Since the issue raised in appeal is a covered issue, we proceed to dispose of the appeal *ex parte qua* the assessee, after considering the submissions of Learned DR and the material on record.

5. The intimation issued u/s 143(1) reveals 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. Before CIT(A), it was *inter alia* 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. Before CIT(A), it was further submitted that since the amounts have been deposited before the filing of return of income, no disallowance is called for and for aforesaid proposition, various decisions of Delhi High Court were relied upon. CIT(A) did not agree with the contentions of assessee. He upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal.

6. Before us, Learned DR 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 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.”*

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 decision of Hon’ble Delhi High Court 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 ground raised by the assessee and direct the AO to delete the addition.**

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

**Order pronounced in the open court on 29.08.2022**

**Sd/-**

**(CHALLA NAGENDRA PRASAD)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 29.08.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI