

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 559/Del/2019  
Assessment Year: 2015-16**

DCIT, Circle 10(1),  
New Delhi.

Versus G4S Facility Services(India)  
Ltd., C-16, Community Centre,  
Behind Janak Cinema,  
Janakpuri, New Delhi.

**PAN: AABCG8346B**

(Appellant)

(Respondent)

Appellant by : Sh. Salil Kapoor, Ld. Adv.  
Ms. Ananya Kapoor, Ld. Adv.

Respondent by : Sh. Ravi Kant Choudhary, Ld. Sr. DR

Date of hearing : 30.08.2022

Date of order : 30.08.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Revenue against the order dated 22.10.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-4, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

**2.** Brief facts relevant for adjudication of the instant appeal, are that the Assessing Officer during the assessment proceedings noticed that the employees' contribution of ESI, PF and Labour welfare fund (LWF) amounting to Rs.82,51,957/-, Rs.2,82,56,707/- and Rs.12,796/- respectively, aggregating to Rs.3,65,21,460/- was deposited beyond the due date prescribed under the relevant Acts and therefore, after relying upon the CBDT Circular No. 22 of 2015 dated 17.12.2015 and various judicial pronouncements, disallowed the deduction claimed u/s. 26(1)(va) of the Act by treating the same as income u/s. 2(24)(x) of the Act added a sum of Rs.2,65,21,460/- to the total income of the Assessee.

**3.** Being aggrieved, the assessee challenged the addition in first appeal before the Id. Commissioner and contended that there were delays by few days on the part of the Assessee in depositing the employees' contribution towards ESI, PF and LWF to the respective funds, however, the same stood deposited much before the due date of filing the return of income u/s. 139(1) of the Act. The Id. Commissioner, after relying upon the decisions of Hon'ble Supreme Court *in the case of Vinay Cement 313 CTR 268* and of Hon'ble jurisdictional High Court *in the case of CIT vs. AIMIL Limited (2010) 321 ITR 508* and other decisions on the identical issue involved in this case, deleted the addition under challenge by observing that the employees' contribution towards ESI/PF/LWF amounting to Rs.3,65,21,460/- stood deposited well before the due date of filing of return u/s. 139(1) of the Act. For brevity and ready reference, the concluding part of the order is reproduced below:

*“6.2. I have carefully considered the facts of the case in the light of submissions made by the appellant as well as the assessment order and the applicable law in this regard.*

*6.3 Following the decision of Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC), Bombay High Court in the case of Commissioner of Income-tax vs. GhatgePatil Transports Ltd. (2014) 368 ITR 749 (Bom.) and Punjab & Haryana High Court in the case of Commissioner of Income-tax vs. Hernia Embroidery Mills (P) Ltd. (2014) 366 ITR 167 (P&H) have held that - both the employee's and employer's contribution are covered under the amendment to Sec. 43B of the I.T. Act.*

*6.4 Following the principle laid down by the Hon'ble Supreme court in the case of Vinay Cement 213 CTR 268, the Hon'ble High Court, Delhi in CIT vs. AIMIL Limited [2010] 321 ITR 508 has held that-*

*"We may only add that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income-tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principles laid down by the Supreme Court in Vinay Cement (supra)."*

*6.5 Recently, SLP in the case of Pr. CIT, Jaipur vs. Rajasthan State Beverages Corporation Ltd., in which Hon'ble Rajasthan High Court had held that amount of PF & ESI having been deposited on or before the due date of filing returns could not be disallowed u/s 43B or sec. 36(1)(va), was also dismissed in favour of assessee (2017) 84 Taxmann.com 185.*

*6.6 As regards applicability of CBDT's Circular number 22/2015, the circular cannot be conclusive and override judicial decisions as held in Geep Industrial Syndicate Ltd. vs. CBDT (1987) 166 ITR 88 (Del.), CIT vs. Hero Cycles (P) Ltd. (1997) 228 ITR 463(SC) and UCO Bank vs. CIT [1999] 237 ITR 889 (SC).*

*6.7 I have examined the detailed chart of ESI/PF/LWF payments which is also part of the assessment order. Since in the present case, the appellant company has paid the disallowed employee's contribution towards ESI/PF and LWF amounting to Rs 3,65,21,460/- well before the due date of filing of return u/s 139(1), keeping in view the above cited judicial pronouncements, the addition made by the AO on account of delayed payment of contribution of ESI/PF and LWF amounting to Rs 3,65,21,460/- is deleted and Ground No. 4 of appeal is allowed.”*

**4.** Aggrieved with the impugned order, the Revenue is in appeal before us. The Id. DR by raising arguments against the impugned order submitted that since the Assessee failed to deposit the employees' contribution towards PF/ESI/LWF within the period stipulated under the relevant statutory Acts, therefore the Id. Commissioner was not justified in deleting the impugned disallowance/addition.

**5.** Ld. AR, on the other hand, vehemently supported the impugned order and submitted that order under challenge is appropriate and well-reasoned order and do not suffer from any perversity, impropriety and/or illegality, hence needs no interference.

**6.** Heard the parties and perused the material available on record. The only question, raised by the Revenue Department before which needs adjudication is that whether the Assessee is entitled for deduction u/s. 36(1)(va) of the Act, if the employee's contribution qua 'PF', 'ESI' and 'LWF' is deposited by the Assessee to the respective funds after the due dates prescribed in the respective Acts but before the due date of filing of 'Return of Income' u/s 139 of the Act.

**6.1** The Hon'ble Punjab and Haryana High Court in the case of CIT Vs. M/s Hemla Embroidery Mills (P) Ltd. (366 ITR 167) (P&H HC) and in the case of CIT Vs. M/s Mark Auto Industries Ltd. (358 ITR 43) (P&H HC), has clearly held that the Assessee is entitled to claim deduction of employee's share of ESI& PF u/s.43B of the Act, if the same has been deposited, may be after the due dates prescribed under the relevant statutes but prior to the filing of return of income u/s.139(1) of the Act.

**6.2** Jurisdictional High Court as well, in the case of CIT Vs. AIMIL Ltd 321 ITR 508 affirmed the action of the ITAT, in deleting the addition made by the Assessing Officer under Section 36(1)(va) of the Act, on account of employees' contributions qua Provident Fund and ESI, deposited before the due date of filing of return.

**6.3** In the judgment delivered by the jurisdictional High Court in the case of PCIT vs. Pro Interactive Service (India) Pvt. Ltd., (ITA.No.983/2018 order dated 10.09.2018), the decision of the Hon'ble High Court in the case of CIT Versus AIMIL Ltd., (supra), has been followed by holding as under :-

*“In view of the judgment 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(24)(x) of the Act.*

*Appeal is dismissed.”*

**6.4** From the Judgments referred above, it is clear that the Hon'ble Courts have allowed the employees' contributions qua PF and ESI as expenditure on actual payment, may be made after the due date as prescribed in the relevant Acts, but before the due date of filing of return of income u/s.139(1) of the Act and also not drawn any distinction between the employee's and employer's share qua PF &ESI contributions, hence, the conclusion drawn by the Id. Commissioner in directing the Assessing Officer to allow deduction if the payments are made before due date of filing the return, do not require any interference as the impugned order does not suffers from any perversity, impropriety and/or illegality as argued by the Id. AR. Consequently the appeal filed by the Revenue Department is liable to be dismissed.

**8.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 30.08.2022.

Sd/-

**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-