

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 848/Del/2022
(Assessment Year : 2019-20)

Mahinder Kumar Dixit VPO-Bhainsra Wali, Ballabgarh, Faridabad Haryana-121 004 PAN No. AIWPD 2160 I (APPELLANT)	Vs.	Ward – 1(5) Faridabad (RESPONDENT)
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Assessee by	Shri Mukul Kedia, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	05.09.2022
Date of Pronouncement:	05.09.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 27.09.2021 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 an individual and stated to be engaged in the business of providing services of Manpower supply and security service and labour contractor services and electronically filed his

return of income on 19.10.2019 for A.Y. 2019-20 declaring total income of Rs.5,43,470/-. In the intimation issued u/s 143(1) of the Act by CPC, Bangalore vide Identification No. CPC/1920/A3/1972497487 dated 21.02.2020, the total income was determined at Rs.14,35,750/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A) who vide order dated 27.09.2021 in Appeal No.CIT(A), Faridabad/10146/2020-21 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. *“On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the addition of Rs.7,94,458/- made by the AO(CPC) on account of late deposit of employees’ contribution towards provident fund and ESI Fund.*
3. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the addition of Rs.97,823/- made by the AO (CPC) on account of non deposit of GST u/s 43B which was already added in computation of income.*
4. *On the facts of case, the Ld CIT(A) has erred in confirming the addition made by AO, that employees contribution of PF and ESI Fund would disallow when paid after the due date prescribed under relevant Act but before due date prescribed under relevant Act but before due date of filing ITR.*
5. *On the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts by applying amendments to section 36(1)(va) and “Explanation 5” inserted to Section 43B introduced in the Finance Act 2021 retrospectively.*

6. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the various judicial pronouncement brought on record by the assessee in this regard.*
7. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in passing the order without providing reasonable opportunity of being heard to the assessee in clear violation of principle of natural justice.*
8. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.”*

4. Before me, at the outset, Learned AR submitted that the first 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 me, 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. I 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, I am of the view that the amendment brought out by Finance Act 2021 does not apply to the assessment year under consideration.

9. Before me, 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, I am 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, **I allow the ground raised by the assessee and direct the AO to delete the addition.**

10. **Next ground** is with respect to the addition of Rs.97,823/- on account of non deposit of GST u/s 43B of the Act.

11. Before me, Learned AR submitted that though assessee has raised the ground with respect to the addition made by AO u/s 43B of the Act but however CIT(A) has not adjudicated the issue.

12. Learned DR on the other hand submitted that since the issue has not been adjudicated by CIT(A), the matter may be remitted back to jurisdictional CIT(A) to decide the issue.

13. I have heard the rival submissions and perused the material available on record. I find that assessee had raised ground with respect to the disallowance u/s 43B of the Act but however CIT(A) has not decided the issue. I therefore restore the issue back to the file of jurisdictional CIT(A) to decide the issue after considering the submissions made by assessee. Learned AR is also directed to file necessary details called for by CIT(A). Needless to state that the CIT(A) shall grant adequate opportunity of hearing to both the sides. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 05.09.2022

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 05.09.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	05.09.2022
Date on which the typed draft is placed before the dictating Member	05.09.2022
Date on which the approved draft comes to the Sr.PS/PS	05.09.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	05.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	05.09.2022
Date on which the final order is uploaded on the website of ITAT	05.09.2022
Date on which the file goes to the Bench Clerk	05.09.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	