

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.41/Ind/2022
Assessment Year: 2019-20

Shri Prasanna Chandrashekher Shetty, C/o. P. Mogra & Associates Chartered Accountants, 203, D.M. Tower, Janjirwalla Square, 21/1 Race Course Road, Indore (Appellant / Assessee)	Vs.	Asst. Director of Income Tax CPC, Bengaluru (Respondent/ Revenue)
PAN: AHXPS2998B		
Appellant by	Shri Pankaj Mogra, AR	
Respondent by	None	
Date of Hearing	02.08.2022	
Date of Pronouncement	10.08.2022	

ORDER

PER MADHUMITA ROY, J.M.:

The instant appeal filed by the assessee is directed against the order dated 08.12.2021 passed by the Ld. CIT(A), National Faceless Appeal Centre (in short “NFAC”), Delhi arising out of the order dated 23.09.2020 passed by the ADIT, CPC, Bengaluru under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2019-20.

2. The disallowance of Rs. 4,87,962/- on account of delayed payment to employees' contribution to PF and Employees State Insurance Corporation is under challenge before us.

3. The addition has been made under Section 36(1)(va) of the Act which has been wrongly held by the authorities below as contended by the assessee since the same is without appreciating the fact that the assessee has deposited the same to the respective funds within the time limit permitted under Section 43B of the Act i.e. up to the due date under Section 139(1) for filing the return of income as submitted by the Ld. A.R. In that view of the matter though the assessee has not deposited the employees contribution to PF/ESIC within the due dates under the concerned Act the assessee's claim to be allowed in view of the various decisions passed by several judicial forums including the Coordinate Bench. The Ld. A.R. relied upon the orders are as follows:

- (a) Hon'ble Delhi High Court in AIMIL Limited (2010) 321 ITR 508.
- (b) Hon'ble Allahabad High Court in Sagun Foundary Pvt. Ltd. Vs. CIT 145 DTR 265
- (c) Hon'ble Rajasthan High Court in CIT Vs. Rajasthan State Beverages Corporation Ltd. / Rajasthan State Ganganagar Sugar Mill (2017) 250 Taxman 32
- (d) Shri Jai Singh Jadesa vs. DCIT (CPC) in ITA No. 214/Ind/2021

Ld. AR further submitted that the issue is also squarely covered in favour of the assessee by several decisions of this very Bench of ITAT.

4. None appeared on behalf of the department.

5. Having heard the Ld. Counsel appearing for the parties and having regard to the facts and circumstances of the case particularly the order passed by the Coordinate Bench in ITA No. 214/Ind/2021 for A.Y. 2018-19 we find that the

issue is squarely covered in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench was pleased to observe as follows:

“8. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) has confirmed the disallowance on the ground that insertion of Explanation 2 and 5 in Section 43B, 36(1)(va) by Finance Act 2021 is retrospective in nature. Therefore, the payment made to the contribution related to employee’s contribution of PF and ESI and after the due date of statutory limit under those Statute but before filing of the return of income was rightly disallowed by the Assessing Officer. Section 36(1)(va) of the Act has stated that any sum received by the assessee from any of his employees to which the provisions of the sub-clause (x) of clause (24) of Section 2 applies if such sum is credited by the assessee to the employee’s account in the relevant fund or funds on or before the due date. Prior to Finance Act, 2021 there was no explanation to the word “due date” given and, therefore, the due date was interpreted by various High Courts as being the due date of filing return of income. As the due date was not specified in the earlier occasion, the Finance Act, 2021 has inserted explanation 1 to the Section thereby clarifying that due date means the statutory due date given under the specific Statute. This amendment/insertion is not clarificatory in nature and therefore not retrospective as there is clear mention in the Finance Act that this explanation will come w.e.f. 01.04.2021, thus it will be applicable to A.Y. 2021-22 and subsequent A.Ys. The assessee’s appeal is of 2018-19 which is prior to this explanation. The reliance of the Ld. D.R. upon the decision of Hon’ble Apex Court in the case of Zile Singh (supra) in fact supports the assessee’s case and clearly set out that when there is specific effective date given by the Act, the amendment/insertion/deletion will be effective from that date itself and if there is no mention of retrospective word then it will not be applicable to the earlier dates. Though the Ld. A.R. categorically stated that some of the Hon’ble High Courts has decided this issue against the assessee but majority of the Hon’ble High Court decisions are in favour of the assessee where employee’s contribution was paid after the due date but before filing of Income Tax return. The assessee company has not deposited the employees’ contribution within the due date which is prescribed under the said statute i.e. Provident Fund and ESI. This issue is dealt by the Hon’ble Delhi High Court in case of CIT vs. M/s Bharat Hotels Ltd. 410 ITR 417 wherein the issue is decided in favour of the Revenue, without considering the decision of the Hon’ble Delhi High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Del.). But the decision of the Hon’ble Delhi High Court in case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018, the Hon’ble High Court decided the issue in favour of the assessee relying upon the judgment of AIMIL Ltd. (supra). The Hon’ble Delhi High Court held that the legislative intent is to ensure that the amount paid is allowed as 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. It is settled law that when two judgments are available giving different views then the judgment which is in favour of the assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon’ble Supreme Court. Hence, in light of the latest decision in case of Pro Interactive Service (India) Pvt. Ltd., the issue is covered in favour of the assessee. Therefore, the CIT(A) as well as the Assessing Officer was not at all justified in disallowing this claim. As regards to delayed payment in employer’s contribution to PF and ESI is concerned the same is allowable u/s 36(1)(iv) read with Section 43B of the Act and Section 36(1)(va) is not at all applicable. Thus, the entire disallowance does not sustain. Thus, the order of the CIT(A) is not just and proper. The appeal of the assessee is thus allowed.”

Respectfully relying upon the ratio laid down in the above order we allow the appeal in favour of the assessee by deleting the addition made by the authorities. Hence, the appeal preferred by the assessee is allowed.

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

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 10.08. 2022.

Sd/-

Sd/-

(B.M. Biyani)
Accountant Member
Indore, __10.08. 2022
Tanmay, Sr.PS

(Madhumita Roy)
Judicial Member

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	02.08.2022
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	