

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 1149/Del/2021
(Assessment Year: 2019-20)

Inder Pratap Singh HUF, 13/14, Windsor Mansion, Janpath, New Delhi (Appellant)	Vs. ACIT, CPC, Bangalore (Respondent)
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PAN: AAAHI1320K

Assessee by :	Shri Baldev Raj, CA
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	14/09/2022
Date of pronouncement	14/09/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Assessee against the order dated 23.08.2021 of CIT(A), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') against the order dated 07.07.2020 passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the Id AO, DCIT, CPC, Bangalore (hereinafter referred as the Ld. AO).

2. Brief facts of the case is that the Assessee is a HUF filed its return of income on 04.10.2019 declaring total income of Rs. 1,00,18,620/- after claiming set-off of current year business losses to the tune of Rs. 47,99,557/-. An intimation u/s 143(1) of the Act was passed on 07.07.2020, wherein the total income was determined

at Rs. 1,02,94,260/- after restricting the claim of business loss to Rs. 45,23,911/-. During the computation of total income an amount of Rs. 2,75,646/- was disallowed u/s 36(1)(va) of the Act on account of amount received from employees as contribution to the employees provident fund and ESI which was not credited to the employees account before the due date. The Assessee had challenged the same and the impugned order of the Id CIT(A), NFAC, Delhi who had sustained the addition u/s 36(1)(va) relying on the various judgment of the jurisdictional Hon'ble High Court

3. The Assessee is now raising following grounds of appeal:-

- "1. That on the facts and circumstances of the case, the order dated as 07.07.2020 passed by the CPC, Bangalore [hereinafter for the sake of brevity referred to as "The Ld. A.O."] under section 143(1) of the Income-tax Act, 1961 [hereinafter for the sake of brevity referred to as "The Act"] and as upheld by the Ld. Commissioner of Income-tax*
- 2. That on the facts and in circumstances of the case, the Ld. CIT(A) erred in upholding the aggregate addition to the tune of Rs. 2,75,646/- on account of employee's contribution of PF and ESI under section 36(1)(va) of the Act and the same is not sustainable on various legal and factual ground .*
- 3. That on the facts and in circumstances of the case, the Ld. CIT(A) ought to have quashed the order u/s 143(1) passed by DCIT/ CPC Bangalore.*
- 4. That on the facts and in circumstances of the case, the Ld. CIT(A) erred In upholding the increase in surcharge to the tune of Rs. 1,36,833/- and not accepting and allowing marginal relief on surcharge.*
- 5. That on the facts and in circumstances of the case, the Ld. CIT(A) erred in charging excess interest u/s 234B and 234C by Rs. 40,142/- and Rs. 11,858/-."*

4. Heard and perused the record.

5. On behalf of the Assessee it was submitted that the admitted fact is that the amounts were deposited beyond the due date of

payment prescribed under the ESI/PF Act but well before the due date for filing return of income u/s 139(1) for the year under consideration. It was submitted that in assessee's own case for AY 2018-19 vide ITA no 1148/Del/2021 he has been benefitted by order of coordinate Bench dated 17/5/22. Ld counsel submitted that the Id CIT(A) had failed to take into consideration the judgment of Hon'ble Delhi High Court in **CIT Vs. AIMIL Ltd 321 ITR 508**. It was submitted that after the Bharat Hotel Ltd (supra) case in **PCIT Vs. Pro Interactive Service India Pvt. Ltd in ITA 98/2018** Hon'ble High court has held that "*the legislative intent was/ is 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 u/s 2(24)(x) of the Act.*"

6. On the other hand the Id DR has submitted that there is no error in the findings of the Tax Authorities below. The reliance was placed by Ld. DR on judgment date 6/9/18 in **CIT Vs. Bharat Hotels Ltd (2019) 410 ITR 417 (Delhi) (HC)**.

7. In regard to this issues of PF/ESI giving thoughtful consideration to the matter on record and the contentions as raised it can be observed that, admittedly the assessee has deposited the impugned contributions to the PF/ ESI though after due date as prescribed under the relevant provisions of PF / ESI Act but within the time allowed u/s 43B i.e. up to the due date u/s 139(1) for filing of income.

8. Regarding the amendments made through Finance Act, 2021, it is specifically mentioned by the legislature that the amendments are effective from 01.04.2021. Further the Memorandum explaining the Provisions in the Finance Bill, 2021 clearly prescribes thus:

"These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years."

9. Thus, the legislature itself has categorically stated that the amendments shall apply to the assessment year 2021-22 and subsequent assessment years. Therefore these amendments are not applicable to the assessment years preceding the assessment-year 2021-22 i.e. not applicable upto assessment-year 2020-21. This has also been held so in decisions of ITAT Benches including following:

- (a) ITAT Kolkata in Harendra Nath Biswas Vs. DCIT, ITA No. 186/Kol/2021 for A.Y. 2019-20, order dated 16.07.2021
- (b) ITAT Hyderabad in Salzgitter Hydraulics Private Limited Vs. ITO, ITA No. 644/Hyd/2020 for A.Y. 2019-20, order dated 15.06.2021
- (c) ITAT Jodhpur in Akbar Mohammad Vs. ACIT, CPC, Bangalore ITA No. 108 & 109 / Jodh / 2021 for A.Y. 2018-19 and 2019-20, order dated 31.01.2022

10. The Co-ordinate Bench at Delhi in ITA No. ITA No.5570/Del/2017, M/s. Express Roadway V. ACIT Circle – 8(2) New Delhi, has discussed the relevant law as below :

"We find that Hon'ble Delhi High Court in the case of CIT vs. AIMIL Limited (2010) 321 ITR 508 (Del) held as under:

"17. 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 the 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 principle laid down by the Supreme Court in Vinay Cement (supra).1

18. We, thus, answer the question in favour of the assessee and against the Revenue. As a consequence, the appeals filed by the assessee stand allowed and those filed by the Revenue are dismissed.”

9. We further find that Hon’ble Delhi High Court in the case of *SPL Industries vs. CIT (2011) 9 Taxmann.com 195 (Delhi)* held as under:

“7. It is apt to note that the Division Bench has taken note of the submission advanced by the revenue that the distinction between employers’ contribution on the one hand and the employees’ contribution on the other. On the foundation that when employees’ contribution was recovered from their salaries / wages that is the trust money in the hands of the assessee and, therefore, recourse of law providing for treating the same as income that the assessee received as the employees’ contribution would only enable the assessee to claim deduction only on actual payment made by due date specified under the provisions of the Act. The Bench while dealing with the same has opined thus: “11. Before we delve into this discussion, we may take note of some more provisions of the Act. Section 2(24) of the Act enumerates different components of income. It, inter alia, stipulates that income includes any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees’ State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees. It is clear from the above that as soon as employees contribution towards provident fund or ESI is received by the assessee by way of deduction or otherwise from the salary / wages of the employees, it will be treated as ‘income’ at the hands of the assessee. It clearly follows therefrom that if the assessee does not deposit this contribution with provident fund/ESI authorities, it will be taxed as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of Section 36(1)(va) of the Act. Section 43B(b), however, stipulates that such deduction would be permissible only on actual payment. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees’ contribution is

concerned. It is in this backdrop we have to determine as to at what point of time this payment is to be actually made."

8. Upon perusal of the aforesaid, we are of the considered opinion that the decisions rendered in P.M. Electronics Ltd.(supra) and AIMIL Limited (supra) have correctly laid down the law and there is no justification or reason to differ with the same. In the result, we do not perceive any merit in this appeal and accordingly the same stands dismissed."

11. Hon'ble Delhi High Court in **Pr. CIT Vs. Pro Interactive India Pvt. Ltd (supra)** decided on dated 10.09.2018, had re-affirmed the aforesaid findings while relying judgment in **CIT Vs. AIMIL Ltd (supra)**, the reliance by Ld. DR on judgment date 6/9/18 in **CIT Vs. Bharat Hotels Ltd.(supra)** cannot be sustained. In the light of the aforesaid the grounds raised stand decided in favour of the Assessee.

12. Resultantly, the **appeal of the Assessee is allowed.** Impugned addition is directed to be deleted by the Ld. AO and the consequential effects be given to issues covered by ground No. 4 and 5.

Order pronounced in the open court on 14/09/2022.

-Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 14/09/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi