

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1464/DEL/2021  
[Assessment Year: 2018-19]**

Gorkha Security Services, M-8 Vardhman City-2, Plaza, ASAF Ali Raod, Turkman Gate Central Delhi Delhi-110002	Vs	DCIT, CPC, Income Tax Department, Bangalore,
<b>PAN-AAGFG4234J</b>		
Assessee		Revenue

Assessee by	Sh. C.S. Anand, Adv. & Sh. Ombir Panwar, CA
Revenue by	Sh. Anuj Garg, Sr. DR

<b>Date of Hearing</b>	<b>15.09.2022</b>
<b>Date of Pronouncement</b>	<b>15.09.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, New Delhi, dated 06.09.2021 pertaining to Assessment Year 2018-19.

2. The issue raised is that the Ld. CIT(A) erred in sustaining the addition of Rs.29,09,838/- which was made on the ground of late deposit of the employee's contribution to PF & ESIC.

3. At the outset, before us, the Ld. counsel for the assessee contended that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court and other decisions of

the ITAT Delhi Bench. In this case, the Assessing Officer disallowed a sum of Rs.29,09,838/- paid by the assessee towards employees contribution to the PE & ESIC after the due date mentioned u/s 36(1)(va) before the due date of filing of Income Tax Return. We find that the Coordinate Bench of the Tribunal, in the case of M/s. Express Roadway V. ACIT Circle in ITA No. ITA No.5570/Del/2017, 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).*

*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."*

4. In the light of aforesaid, we are of the considered view that the interpretation given by the Tax Authorities Below with regard to application of provision the section 36(1)(va) of the Act is not correct. The

grounds of appeal deserve to be sustained. The impugned order, to the extent of grounds raised in appeal, is set aside.

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

Order pronounced in the open court on 15<sup>th</sup> September, 2022.

**Sd/-**  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 15.09.2022.

*Shekhar*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi