

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

ITA No. 1469/Del/2021
(Assessment Year: 2017-18)

Hero Ecotech Ltd,
Ludhiana (Punjab),
Phase-VIII, Chandigarh
Road Focal Point, Mangli,
Ludhiana
(Appellant)

Vs. DCIT,
CPC, Bengaluru,
Kannataka, Bengluru

(Respondent)

PAN: AACCH1308R

Assessee by :
Revenue by :

Shri Sumit Bangal, CA
Shri Anuj Garg, Sr. DR

Date of Hearing
Date of pronouncement

15/09/2022
15/09/2022

ORDER

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Assessee against the order dated 18.08.2021 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 23.04.2019 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 engaged in the business of manufacturing of cycles/ cycle parts and medical equipment. It filed its revised return of income on 07.11.2017 declaring total income of Rs. 25,94,86,405/-. The return of income

was processed u/s 143(1) of the Act by making the addition of Rs. 9,13,722/- on account of late deposit of ESI and EPF contribution to employee. 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 judgments of different Hon'ble High Courts.

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

"1. *That the Ld. CIT(A), NFAC Delhi has wrongly confirmed the disallowance of employees contribution of ESI for the month of July 2016 at Rs. 73512/- which was due on 22/8/2016 but deposited on 23/8/2016 & EPF for the month of November 2016 at Rs. 840208/- which was due on 15/12/2016 but deposited on 16/12/2016.*

(b) *That the Ld. CIT(A), NFAC Delhi has wrongly not followed the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Jaipur v/s Rajasthan State Beverages Corporation Ltd, 84 Taxmann.com 185 (SC)*

(c) *That the Ld. CIT(A) has wrongly considered and applied the amendments made by Finance Act 2021 in section 36(i)(va) & explanation 5 to section 43B for the assessment year under consideration instead of applicable from 01.04.2021 as specified.*

2. *That the above disallowance has wrongly been made u/s 143(1)(a), & confirmed by Ld. CIT(A), as these adjustments are not covered as prescribed in the section and also being a disputed issue."*

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 within 1 to 3 days beyond the due date of payment prescribed under the ESI/PF Act but well before the due date i.e. 30.10.2017 for filing return of income u/s 139(1) for the year under consideration. Ld counsel submitted that the Id CIT(A) had failed to take into consideration the judgment of Hon'ble Supreme Court in case of CIT Vs. Alom Extrusions Ltd (2009) 319 ITR 306 (SC), Hon'ble Bombay High Court in **CIT Vs. Ghatge**

Patil Transports Ltd (2014) 368 ITR 749 (Bom) and Punjab & Haryana High Court in case of CIT Vs. Hernia Embroidery Mills (P) Ltd (2014) 366 ITR 167 (P&H). 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 (EPD) 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. Reliance was placed on the judgment in **CIT v. 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)**, so the reliance by 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** and impugned addition is directed to be deleted.

Order pronounced in the open court on 15/09/2022.

-Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 15/09/2022
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi