

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No. 2075, 2076 & 2077/DEL/2022
Assessment Years 2017-18, 2019-20 & 2020-21

ITO, Ward-4(1), Gurgaon, Haryana.	v.	Sandeep Sandha, 99/277/2, Gali No.4, Opp. Utsar Garden, Atul Kataria Chowk, Gurgaon.
TAN/PAN: ASYPS1366D		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Ms. Kajal Singh, Sr.DR		
Date of hearing:	21	09	2022
Date of pronouncement:	21	09	2022

ORDER

PER BENCH:

The captioned appeals have been filed at the instance of the Revenue against the orders of the Commissioner of Income Tax (Appeals), Gurgaon [‘CIT(A)’ in short], dated 15.04.2019, 20.05.2020 and 21.09.2021 arising from the assessment order passed under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18, 2019-20 and 2020-21 respectively.

2. As per its grounds of appeal in all the three appeals, the Revenue has challenged the reversal of disallowance made by the Assessing Officer under Section 36(1)(va) r.w. Section 2(24)(x) of the Act on account of delayed deposit of employee’s contribution towards PF and ESIC.

3. The CIT(A) has reversed the action of the Assessing Officer in

its appellate order.

4. Both the parties were heard in length on the issue in dispute.

5. On perusal of the records, we observe that the Assessing Officer has made the impugned addition on the ground that the assessee has deposited employee's contribution towards Provident Fund and ESI after due date as prescribed under the relevant Act/ Rules in breach of Explanation 5 to Section 43B of the Act. The Assessing Officer accordingly resorted to the additions under Section 36(1)(va) read with Section 2(24)(x) of the Act.

6. It is the case of the assessee before lower authorities that it has deposited the employee's contribution in EPF and ESI before the due date of filing of return of income stipulated under Section 139(1) of the Act.

7. We find that the identical issue has been decided in favour of the assessee by the Hon'ble Delhi High Court in the case of **Pr.CIT vs. Pro Interactive Service (India) Pvt. Ltd. vide order dated 10.09.2018 in ITA No.983/2018**. The extract of the judgment is reproduced as under:

"In view of the judgment 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(24)(x) of the Act. ”

8. We also take note of the plea of the assessee that delayed payment of employee's contribution to PF/ESIC is not disallowable as the amendments to Section 36(1)(va) and Section 43B effected by Finance Act, 2021 were applicable prospectively in relation to Assessment Year 2021-22 and subsequent years. Therefore, the claim of deduction of contribution to Employee's State Insurance Scheme (ESI) and Provident Fund u/s.36(1)(va) could not be denied to the assessee in Assessment Years 2017-18, 2019-20 and 2020-21 in question on the basis of amendments made by Finance Act, 2021. For this proposition, we find support from the decision of the Co-ordinate Bench of Tribunal in the case of **The Continental Restaurant and Café Company vs. ITO as reported in (2021) 91 ITR (Trib.)(S.N.) 60 (Bang.) and Adyar Ananda Bhavan Sweets India P. Ltd. vs. ACIT, ITA No.402 and 403/Chny/2021 order dated 08.12.2021**. Consequently, we see no error in the orders of the CIT(A) and therefore decline to interfere.

9. In the result, all three appeals of the Revenue are dismissed.

Order was pronounced in the open Court on 21/09/2022.

Sd/-
[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: **21/09/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER