

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" DELHI**

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

I.T.A. No.3035/DEL/2022  
Assessment Year 2020-21

College Shoes, 2168, Gurudwara Road, Karol Bagh, New Delhi-110005.	Vs.	DCIT, Circle-49(1), New Delhi.
TAN/PAN: AAFFC5954N		
(Appellant)		(Respondent)

Appellant by:	Shri R.K. Kapoor, CA		
Respondent by:	Shri N.K. Bansal, Sr. DR		
Date of hearing:	20	06	2023
Date of pronouncement:	20	06	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ("NFAC"), Delhi dated 28/11/2022 arising from intimation dated 30/12/2021 passed u/s 143(1) of the Income Tax Act, 1961 ("the Act") concerning Assessment Year 2020-21. The grounds of appeal raised by the Assessee reads as under:

*"1. That the Ld. Assessing Officer (AO)(CPC) and consequently the Ld. National Faceless Assessment Centre (NFAC)" have grossly erred in law and on facts and circumstances of the appellant's case in proposing and sustaining an addition of the appellant amounting to INR 23,73,348/ under section 36(1)(va) of the Income Tax Act, 1961.*

2. *That the Ld. Assessing Officer (AO)(CPC) and consequently the Ld. National Faceless Assessment Centre (NFAC) has failed to appreciate that the assessee has not routed these expenses through its profit loss account.*

3) *That the Ld. Officer (AO' (CPC) and consequently the Ld. National Faceless Assessment Centre (NFAC) has assumed that the appellant has claimed deduction towards amount of Rs. INR 23,73,348/- u/s 36(1)(va) in its profit & loss account. Infact, it is not routed through profit & loss account at all and never forms part of any head of income/expenditure. It is neither an expense nor a deduction or charge against the profits of the assessee.*

4) *That the Ld. Assessing Officer ('AO)(CPC) and consequently the Ld. National Faceless Assessment Centre ('NFAC") has failed to appreciate the fact that the assessee has not incurred any expenses towards employee's contribution on which PF & ESI was applicable, as the assessee was engaged in the business on Franchisee basis and as per Franchisee agreement all employee related expenses were borne by principal. This was a clerical mistake at the time of uploading the data on income tax portal despite not reported by statutory auditors even the profit & loss account of the assessee does not claim any employee related expenses. The adjustment proposed is wholly illegal, erroneous and untenable in law and on the facts of the case of the appellant and is prayed to be deleted.*

5) *That the order of Ld. CPC and the Ld. NFAC Directions are bad in law and erroneous on the facts of the appellant.*

6) *That the aforesaid grounds are without prejudice to one another raised herein.*

7) *Any other ground with the leave of the bench."*

2. As per grounds of appeal, the assessee has challenged the disallowance of employees contribution to Provident Fund/ESIC u/s 36(i)(va) r.w.s. 43B of the Act.

3. When the matter was calling for hearing, the Ld. Counsel for the assessee contended that the imposed disallowance of Rs. 23,73,348/- under Section 36(1)(va) of the Act has been made on the basis of wrong information provided in the Tax Audit Report. The Tax Auditor inadvertently copied the information from some other clients. The provisions of PF/ESIC are not applicable to the assessee company and

the assessee has not incurred any employee cost nor has incurred any ESI/PF contribution. Therefore, making disallowance towards employee contribution is not applicable where the assessee has not claimed such expenses in the return of income at the first place. It was submitted that these facts were placed before the Ld. CIT(A) vide submissions dated 21.11.2022. The Ld. CIT(A) noted the submissions but completely ignored the fact which was highlighted that the assessee has not incurred any cost as such.

4. In the light of the submissions made, we consider it expedient to restore the matter back to the file of the designated AO. The assessee shall be at liberty to adduce evidences on facts and law in this regard before the AO. The AO shall delete the disallowance when it is satisfied that assessee has not incurred any expense on account of such contribution and has not claimed any expenditure towards PF/ESIC. Needless to say, a reasonable opportunity shall be given to the assessee while determining the issue.

5. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 20/06/2023.**

Sd/-

**[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER**

DATED: 20/06/2023

POOJA

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)

- 4. CIT
- 5. DR

Assistant Registrar

		Date
1.	Draft dictated on	22.06.2023
2.	Draft placed before author	26.06.2023
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	
8.	Uploaded on	
9.	File sent to the Bench Clerk	
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	