

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2707/Del/2022, A.Y. 2018-19

ITO, Ward 5(1), Delhi	Vs.	M/s. Broad Ways Security and Detective Pvt. Ltd. 48A, DDA Flats, Shahpurjat, New Delhi PAN : AAACB5053F
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Varun Gupta, CA
Revenue by	Sh. Kanv Bali, Sr. DR

ITA No.2726/Del/2022, A.Y. 2019-20

DCIT Circle -1(1), New Delhi	Vs.	M/s. ACB (India) Limited, C-102, Lower Ground Floor, ACB(India) Ltd. Former Spectrum Coal and Power Ltd., New Multan Nagar, South West Delhi, New Delhi- 110057 PAN : AABCA0043K
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Karan Kumar, CA
Revenue by	Sh. Kanv Bali, Sr. DR

ITA No.2721/Del/2022, A.Y. 2020-21

DCIT, Circle-4(2), New Delhi	Vs.	M/s. Blackmelon Advance Technology Company P. Ltd. 92, C/1, 3 rd Floor, Gali No. 7 East Azad Nagar, Krishna Nagar, Delhi PAN: AAFCB1281J
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Paresh Gupta, CA
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	28.08.2023
Date of Pronouncement:	04.09.2023

ORDER**PER ANUBHAV SHARMA, JM:**

These appeals bearing ITA No. 2707/Del/2022, 2726/Del/2022 & 2721/Del/2022 are preferred by the Revenue against orders passed by the Learned Commissioner of Income Tax (Appeals), Delhi for Assessment Year 2018-19, 2019-20 & 2020-21 respectively.

2. The issues involved in all the appeals is the challenge of relief given by Ld. CIT(A) to the assessee with regard to the deletion of addition made by Assessing Officer on account of delayed deposit of the EPF/ESI share of the employees.

3. Heard. Ld. Counsels for assessee have mentioned that the tax effect in the appeals is below 50 lakhs so the same makes the appeals not maintainable.

4. The CBDT vide Circular No.17/2019 dated 08.08.2019 has revised the monetary limit for filing the appeals before the Tribunal to Rs.50 Lacs. Further, CBDT vide letter dated 20.08.2019 has also clarified that Circular No. 17/2019 would be applicable to all pending appeals.

5. There is no dispute to the fact that the tax effect in all three appeals is below Rs. 50 lacs. In such circumstances, the present appeals filed by the Revenue fall in low tax effect appeals.

6. Ld DR however, submitted that when report was sought from the Ld. AO for the reasons for preferring and contesting the appeals, inspite the fact that the appeals fall into the category of low tax effect and upon which the Board Circular dated 08.08.2019 is specifically applicable, the Ld. DR has submitted that the Ld. AO in their wisdom have pointed out that the dispute involved in the appeals fall in the exception mentioned in the Circular, as the appeal involves a case where the Constitutional validity of the provisions of any legislation has been challenged.

7. The Bench has given thoughtful consideration to the submissions of Ld. DR and is constrained to observe that Ld. AO seems to be not aware as to when and before which authority the questions involving Constitutional validity of the provisions of any legislation can be raised and challenged. The tax authorities can be presumed to be aware,, that if the provisions of the statute are alleged to be violative of any article of the Constitution, which is touchstone for the validity of all laws, the Hon'ble Supreme Court

and the Hon'ble High Courts alone are empowered to strike down the said provisions. Reference for this may still be made to the judgment of Hon'ble Supreme Court in **L. Chandra Kumar v. Union of India & Others, (1997) 3 SCC 261.**

8. In fact Sub-Section (2) of Section 253 of the Act, which gives jurisdiction to this Tribunal to hear the appeals restrict the scope of remedy of Appeal to the Revenue, as the Principal Commissioner or Commissioner only may direct the Assessing Officer to appeal before Tribunal against the order, if Pr. CIT objects to any order of First Appellate Authority. As CIT(A) cannot decide the question of Constitutional validity of provisions of any legislation, certainly then, with regard to the question of Constitutional validity of provisions of any legislation, the PrCIT cannot approach the Tribunal u/s 253(2) of the Act.

9. Keeping this in mind as the Bench takes into consideration the grounds raised by the Ld. AO in the appeals before us, there is no mention of the fact as to which provision of the Act or any other legislation lacks Constitutional validity and for which Ld. PCIT, Delhi-1, New Delhi, has given the authorization for filing the Appeal. In the present cases, the appeals decided u/s 250 of the Act by Ld. CIT(A) merely dealt with the issue of delayed deposited ESI and PF contributions, as a valid deduction, in terms of Section 36(1)(va) of the Act. No question of validity of any provision of the Act was disputed by assessee so as to be decided against the Revenue so as to challenge the same here in Tribunal. Grounds do not show if Ld. CIT(A) has relied any law which is under challenge for its constitutional validity. Rather, the ground raised is more in the form of a mixed question of

fact and law and has nothing to do with the Constitutional validity of provisions of legislation, relevant to the issues.

10. In the light of aforesaid, the bench is of considered opinion that on the basis of challenge of Constitutional validity of the provisions of any legislation, no exception can be taken by the Revenue, before the Tribunal, so as to file or contest the appeals suffering with low tax effect. **Accordingly, the appeals of Revenue are dismissed barred by CBDT Circular no. 17/2019 dated 08.08.2019.**

Order pronounced in the open court on 4th September, 2023.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Date: 4.09.2023

Binita, SR.P.S

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI