

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
and
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA Nos.1963 & 1964/Del./2021
(ASSESSMENT YEARS : 2018-19 & 2019-20)**

Wellman Employment India Private Ltd., vs. ADIT CPC,
A – 28 F/F, Ali Vihar Badarpur, Ward 25 (1),
Badarpur Near MCD School, New Delhi.
New Delhi – 110 044.

(PAN : AABCW5648J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajesh Jain, CA

Shri Neelesh Jain, CA

REVENUE BY : Shri Ajay Kumar, Senior DR

Date of Hearing : 15.02.2022

Date of Order : 16.02.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeals have been filed by the assessee against the separate impugned orders dated 27.10.2021 & 25.10.2021 for AYs 2018-19 & 2019-20 respectively, passed by the National Faceless Appeal Centre (NFAC), Delhi.

2. Since in both the years the issues are common arising out of identical set of facts, therefore, both the appeals are heard together

and disposed off by this consolidated order. For the sake of ready reference, the grounds of appeal for AY 2018-19 are reproduced as under :-

“1. That on the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeal) (CIT(A)) under Section 250(6) of I.T. Act, 1961, upholding addition of Rs.67,38,309/- on account of deposit of P.F. contribution by employees before the last date of filing Income Tax Return u/s. 139(1) of the Act is arbitrary, unjustified, bad in law as binding judgements of Hon'ble High Courts and various Benches or Learned I.T.A.T have not been considered judicially.

2. That on the fact and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming disallowance u/s 36(1)(va) of the Act of Rs.67,38,309/- without considering the various Judicial pronouncements by the Jurisdictional Delhi High Court and other Hon'ble High Courts which is arbitrary, unjustified and bad in law.

3. That the learned Commissioner of Income Tax (Appeals) has further erred both on facts and in law while disposing of the appeal in ignoring the submissions and explanations. Thus, the order of CIT (A) is vitiated in law for non consideration of the factual and legal submissions made and thus suffers from the vice of arbitrariness.

4. The above ground, or appeal are without prejudice to one another.”

3. Similarly, in AY 2019-20, the assessee has challenged the disallowance/addition of Rs.30,36,210/- made u/s 36(1)(va) of the Act.

4. The facts in brief are that the assessee company is engaged in providing Manpower Services to its clients and filed the return of income on 15.10.2018 & 26.10.2019 for the AYs 2018-19 & 2019-20 respectively. Assessing Officer CPC, Bengaluru vide its intimation u/s 143(1) has made the disallowance on account of delay of payment

towards employees' contribution towards EPF/ESIC as the same was not deposited and credited to the employees' account before the due date prescribed under the respective statute. From the perusal of the details as appearing in the paper book, we find that all the payments were made with a marginal delay of few days and otherwise, the same have been deposited much before the filing of due date of return which is an admitted fact. The 1d. First Appellate Authority, NFAC has confirmed the disallowance relying upon the amendment brought by the Finance Act, 2021 holding it to be clarificatory made u/s 43B and Explanation 2 of section 36(1)(va) which was inserted from AY 2021-22.

5. We have heard both the parties and also perused the relevant facts given in the impugned orders as well as various judgments referred to before us. It is an undisputed fact that payments made to the employees' contribution towards EPF/ESIC have been made after the due date under the PF Regulation but much before the due date of filing the return of income. It is evident from the chart given by the First Appellate Authority and the law as was prevalent during the filing of return of income for AYs 2018-19 & 2019-20 as settled by various Hon'ble Courts including that of Hon'ble jurisdictional High Court that if the payment towards EPF/ESIC has been made before the due date of filing of return, then the same is allowable.

6. In the judgment of **PCIT vs. Pro Interactive Service (India) Pvt. Ltd. in ITA No. 983 of 2018 (Delhi)**, the Hon'ble High Court vide judgment and order dated 10th September, 2018 following the earlier judgment of **CIT vs. AIMIL Ltd. (supra)** had decided this issue in the following manner:

“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.

Appeal is dismissed.”

7. Ld. First Appellate Authority has strongly relied upon the amendment brought into the statute by the Finance Bill, 2021 by bringing amendment in Section 36(1)(va) by way of insertion of Explanation 2 wherein it has been provided that Section 43B shall not apply for the purpose of determining the due date under this clause. However, the said amendment has been brought w.e.f. Assessment Year 2021-22 as explained in clauses (8) and (9) of the memorandum explaining the Finance Bill, 2021. Once the amendment has been brought from prospective dates and also explained in the said memorandum of the Finance Bill, then the decision of Hon’ble Jurisdictional High Court would be applicable prior to the assessment year 2021-22.

8. Thus, prior to the amendment, the law which has been upheld by various High Courts as well as by the Hon’ble jurisdictional High Court, the same cannot be held to be retrospective which has been specifically brought w.e.f. AY 2021-22. This view has been upheld by catena of judgments of this Tribunal, which has been referred to in the

written submissions filed by the assessee and also in the order of the First Appellate Authority. Therefore, this issue is decided in favour of the assessee and the disallowances/additions as upheld by the First Appellate Authority are deleted.

9. In the result, both the appeals filed by the assessee are allowed.

Order was pronounced in open court on 16TH day of February, 2022.

**SD/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**SD/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 16.02.2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi

AR, ITAT
NEW DELHI.