

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos. 1603 & 1604/DEL/2021

[Assessment Years: 2018-19 & 2019-20

Guardian India Solutions Pvt. Ltd., Y-14/1-201, Ioha Mandi Naraina, New Delhi-110028.	<u>Vs</u>	DCIT, CPC, Bangalore
PAN- AAECG2446D		
APPELLANT		RESPONDENT
Appellant by	Shri P. roychoudhary, Adv.	
Respondent by	Sh. Sanjiv Mahajan, Sr. DR	
Date of hearing	28.02.2022	
Date of pronouncement	09.03.2022	

ORDER

PER KUL BHARAT, JM:

These two appeals, by the assessee, pertaining to the assessment year 2018-19 and 2019-20 are directed against separate orders dated 31.08.2021 of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. First we take up the assessee's appeal being ITA no. 1603/Del/2021 for assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. That in the facts of the case and as per law, the learned CIT(A) erred in upholding the additions/disallowances made by CPC in the returned income while processing the ITR under section 143(1) of the IT Act.

2. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 18,06,399/- for the PF and ESIC of the employees which was deposited after the due date under the PF and ESIC Act but before within the due date for filing of the Income Tax Return under section 139(1) of the IT Act.

3. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 18,06,399/- as it is against the dictum laid down by the Hon’ble Jurisdictional High court in the case of PCIT Vs. pro Interactive Service India Pvt. Ltd., ITA no. 983/2018 dated 10.09.2018 and CIT vs. AIMIL Ltd. 321 ITR 508 (Delhi High Court)

4. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 12,50,929/- by holding that the amendment and explanation in section 36(1)(va) of the Income Tax Act by the Finance Act, 2021 is clarificatory in nature and thus it will be applicable for the A.Y. 2018-19.

5. That the appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before during the course of hearing of the appeal.”

3. At the outset learned counsel for the assessee contended that the issue in this appeal is squarely covered in favour of the assessee by the judgment of the Hon’ble Jurisdictional High Court. Learned counsel for the assessee further reiterated the submissions as made in the brief synopsis. For the sake of clarity, the brief synopsis is reproduced herein below:

“The Appellant Company filed its ITR for the A.Y. 2018-19 on 29.10.2018.

The Centralized Processing Centre, Bangalore processed the return of income of the Appellant Company under section 143(1) of the Income Tax

Act on 04.03.2020 by disallowing a sum of Rs. 18,06,399/- by invoking provisions of Section 43B read with section 36(l)(va) of the Income Tax Act for not depositing the employees contributions to PF & ESI within time specified under the respective acts but it was deposited before the due date for filing ITR.

Against this disallowance Appellant Company preferred appeal before CIT (Appeals).

The Appellant Company before CIT(A) contended that this issue is settled in favour of Appellant Company by the judgment of Hon'ble High Court of Delhi in the case of CIT Vs. AIMIL Limited in ITA No. 1063 of 2006 dated 23.12.2009.

The CIT(A) observed that there are decisions of various High Courts for and against the Appellant Company and finally held that the insertion of Explanation 2 inserted by Finance Act, 2021 to Section 36(l)(va) of the Act is clarificatory, which clarify that the definition of 'due date' as per Section 43B of the Act is deemed to have been applied for the purpose of employees contribution. Therefore, the CIT(A) held that the payment of employees contribution made after the due date but before due date for filing ITR needs to be disallowed.

The Appellant Company thereafter came in appeal before the Tribunal.

ARGUMENTS

(1)The issue whether PF/ESIC Contribution of employees deposited after the due date specified in PF/ESIC Act but before the due date of filing the Return of Income is settled in favour of taxpayers by various decisions of the Hon'ble Delhi High Court which is the jurisdictional High Court. The decisions are as follows:

- (i) CIT Vs. AIMIL Limited in ITA No. 1063 of 2006 dated 23.12.2009.*
- (ii) CITVs.SPL Industries Ltd. in ITA No. 794/2010 dated 07.07.2010.*

(2) The second issue i.e. whether the insertion of Explanation 2 inserted by Finance Act, 2021 to Section 36(1)(va) of the Act is prospective or retrospective in nature has also been settled by various judgments of this Ld. Tribunal in the following cases:

(i) *Indian Geotechnical Services Vs. ACIT, Circle - 61(1), Delhi in ITA No. 622/Del/2018 dated 27.08.2021. (ITAT, Delhi).*

(ii) *Adyar Ananda Bhavan Sweets India Pvt. Ltd. Vs. ACIT, Central Circle - 3(4), Chennai in ITA No. 622/Del/2018 dated 08.12.2021. (ITAT, Chennai).*

In these cases it has been held that the explanation inserted by Finance Act, 2021 is prospective in nature and cannot be applied retrospectively.

In view of the aforesaid position, the PF/ESIC Contribution of employees deposited after the due date specified in PF/ESIC Act but before the due date of filing the Return of Income which has been disallowed by CPC Bangalore and upheld by the Ld. CIT (Appeals) should be deleted and the appeal of the Appellant Company may be allowed”.

4. Learned DR opposed the submissions and supported the orders of the authorities below.

5. I have heard the rival submissions, perused the material on record and gone through the orders of authorities below. The issue in this appeal is regarding disallowance of Rs. 18,06,399/- on account of delay in depositing of employees' contribution to PF and ESIC. Learned CIT(A) disallowed the grounds of the assessee in para 4.19 of his order by observing as under:

“4.19 Thus, it can be safely concluded that the clarificatory amendment brought out by the Finance Act, 2021 will be applicable to the issue in the instant appeal also. It is also clear that the scope of Section 43B and Section 36(1)(va) are different and thus, there is no question of reading both provisions together to consider as to whether the taxpayer is entitled to deduction in respect of the sum belatedly paid towards such contribution, especially when such sum is, admittedly, a sum received by the taxpayer/employer from his employee. Therefore, for considering such question, application of Section 36(1)(va) read with Section 2(24)(x) alone is the proper course and any other interpretation would only defeat the object and scope of both the provisions viz., 43B and 36(1)(va). If the payment was

not done within the stipulated time prescribed under the relevant enactment, the benefit of deduction cannot be claimed, since such belated payment is not a valid payment to attract deduction, under the purview of the Income Tax Act.

In view of the discussion in the preceding paragraphs, the Finance Act, 2021 is held to be applicable to the present pending appeal.”

6. I find that this issue is covered in favour of the assessee by the judgment of the Hon’ble Jurisdictional High Court in the case of CIT Vs. AIMIL Ltd. (2010) 321 ITR 508 and also the judgment in the case M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018.

7. The Hon’ble Jurisdictional High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Delhi), has held as under:

“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. In so far 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 [2009] 313 ITR (St.) 1.”

8. The Hon’ble Jurisdictional High Court in the case of Pr.CIT Vs. M/s Pro Interactive Services (India) Pvt. Ltd. in ITA no. 983/2018 vide order dated 10.09.2018 in ITA no. 983/2018 has held as under:

“In view of the judgment of the Division Bench of Delhi High Court in Commissioner of Income Tax Vs. 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 employer under section 2(24)(x) of the Act."

9. Therefore, respectfully following the binding precedent, I hereby delete the addition. The grounds raised in this appeal are allowed.

10. In ITA no. 1604/Del/2021 for assessment year 2019-20, the assessee has raised following grounds of appeal:

"1. That in the facts of the case and as per law, the learned CIT(A) erred in upholding the additions/disallowances made by CPC in the returned income while processing the ITR under section 143(1) of the IT Act.

2. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 12,50,929/- for the PF and ESIC of the employees which was deposited after the due date under the PF and ESIC Act but before within the due date for filing of the Income Tax Return under section 139(1) of the IT Act.

3. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 12,50,929/- as it is against the dictum laid down by the Hon'ble Jurisdictional High court in the case of PCIT Vs. pro Interactive Service India Pvt. Ltd., ITA no. 983/2018 dated 10.09.2018 and CIT vs. AIMIL Ltd. 321 ITR 508 (Delhi High Court)

4. That the Ld. CIT(A) erred in the facts and in law in sustaining the addition/disallowances of Rs. 12,50,929/- by holding that the amendment and explanation in section 36(1)(va) of the Income Tax Act by the Finance Act, 2021 is clarificatory in nature and thus it will be applicable for the A.Y. 2019-20.

5. That the appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before during the course of hearing of the appeal."

11. The facts and the grounds raised in this appeal are identical to ITA no. 1603/Del/2021, except change into figure. Learned representatives of the parties have also quoted the same arguments as in ITA no. 1603/Del/2021. In ITA no.

1603/Del/2021 the issue has been decided in favour of the assessee. Therefore, taking into consistent view the addition in this appeal also is hereby deleted.

Grounds raised in this appeal are allowed.

12. In the result, assessee's appeals are allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated:09.03.2022.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI