

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.374/Viz/2017
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

ACIT
Circle-3(1)
Visakhapatnam

M/s Eastern Power
Distribution Company of
AP Ltd.
P&T Colony
Seethammadhara
Visakhapatnam- 530 013
[PAN: AAACE9876B]

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

CO.No.73/Viz/2017
Arising out of I.T.A.No.374/Viz/2017
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

M/s Eastern Power Distribution Company
of AP Ltd.
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[PAN: AAACE9876B]

ACIT
Circle-3(1)
Visakhapatnam

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

राजस्व की ओर से/ Revenue by
निर्धारिती की ओर से / Assessee by

: Shri R.S. Aravindakshan, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 14.09.2017

घोषणा की तारीख/ Date of Pronouncement

: 20.09.2017

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam dated 30.3.2017 for the assessment year 2012-13.

2. All the grounds of appeal are related to the addition of Rs.55,24,096 made by the assessing officer towards belated remittance of employees' contribution of PF & ESI /s 36(1)(va) r.w.s.2(24)(x) of the I.T.Act.

3. During the assessment proceedings, the assessing officer found that the assessee has remitted employees contribution to PF belatedly. However, remittances were made before filing the return of income. The assessing officer was of the view that the employees contribution to PF is deductible only if the same is paid within the due date as prescribed under Provident Fund Act, in accordance with the provisions of Section 36(1), sub clause (va) of I.T.Act. Since the assessee

remitted the same beyond the time limit allowed under PF Act, the assessing officer disallowed the sum of Rs.55,24,096/- and added back to the income. Aggrieved by the order of the assessing officer, the assessee went on appeal before the CIT and the Ld.CIT deleted the addition made by the assessing officer holding that the assessee is entitled for deduction if the payment is made before the due date of filing the return of income. For the sake of clarity and convenience, we extract the relevant paragraphs of the Ld.CIT(A) order which is made available in page no.2 and 3 of the CIT(A) order.

" I have considered the submissions made. The only issue to be resolved is / whether the assessee would be entitled to claim deduction for the employees contribution made to PF after the due date prescribed under the PF Act and before the due date prescribed for filing of income tax return in the light of the provisions contained in Sec.36(1)(v)(a) and Sec.43B(b) of the I.T.Act. In the case of Essae Teraoka (p) Ltd. Vs. DCIT 43 Taxmann 33, the Hon'ble Karnataka High Court took the view that the word contribution occurring in Sec.43B of the I.T. Act would include employees contribution to PF, in the light of the definition of the word, 'contribution' by Sec.2(c) of P.F. Act, as per which contribution would mean both the employers' contribution and employees' contribution. Accordingly, it was held that the provision of Sec.43B allowing deduction for payment made before the filing of the income tax return cannot be ignored. In the case of CIT Vs. Kichha Sugar Co. Ltd.35 Taxmann 54, the Hon'ble High Court of Uttarakhand held that the due date referred in Sec.36 (v)(a) should be read in conjunction with Sec.43B(b) of the I.T. Act, and that deduction should be allowed for payment made before the due date for filing of the return of income. In the case of Cit Vs. Udaipur Dugdhd Utpadak Sahakari Sangh Ltd. 35 Taxmann 616, the Hon'ble High Court of Rajasthan after referring to the Apex Court decision in the case of CIT Vs. Alom Extrusions Ltd. (319 ITR 306) & CIT Vs. Vinay Cement Ltd.

held that the deduction should be allowed for the payment of employee's contribution made before the due date of filing of return. Similarly in the case of CIT Vs. State Bank of Bikaner, the Hon'ble Rajasthan High Court held that the P.F. contribution paid after the due date under the respective Act but before filing of the return of income u/s.139(1) cannot be disallowed u/s. 43B or u/s 36(1)(v)(a) of the I.T. Act. Similar views were taken by the Hon'ble Calcutta High Court In the the case of CIT Vs Vijay Shree Ltd. 43 Taxmann 396, the Hon'ble Delhi High Court in the case of CIT Vs. Dharmendra Sharma 297 ITR 328, the Hon'ble Madras High Court in the case of CIT Vs. Nexus Computer Pvt.Ltd.313 ITR 144 & the Hon'ble Himachal Pradesh High Court in the case of CIT Vs. Nipso Poly fabric Pvt. Ltd. The Hon'ble ITAT, Mumbai, Pune, Chennai have taken similar views. In the light of the above judicial pronouncements, it is held that the assessee would be entitled for deduction of the employees contribution of PF made before the due date of filing of the return of income u/s 139(1) of the I.T. Act."

3.1. Aggrieved by the order of the Ld.CIT(A), the department is in appeal before this Tribunal. Ld.AR appearing for the assessee submitted that the case is squarely covered by the decision of this Tribunal in ITA 609/Viz/2014 in assessee's own case for the assessment year 2011-12.

4. We have heard the rival submissions and perused the material placed on record. The identical issue has come up before this Tribunal for adjudication for the assessment year 2011-12 and the ITAT allowed the appeal of the assessee following the decision of the Hon'ble Karnataka High Court in the case of Essae Teraoka (P) Ltd. Vs. DCIT[366 ITR 408] and the decision of Hon'ble ITAT, Hyderabad in the case of

Tetra Soft (India) Pvt. Ltd. Vs. ACIT(2015) [40 ITR (Trib) 470]. For ready reference, we reproduce hereunder the relevant paragraph no.10 of the order of this Tribunal cited supra.

"10. Considering the facts and circumstances of this case and also following the judicial precedents as discussed above, we are of the view that there is no distinction between employees' and employer contribution to PF, and if the total contribution is deposited on or before the due date of furnishing return of income u/s 139(1) of the Act, then no disallowance can be made towards employees' contribution to provident fund. The CIT(A) after considering the relevant details rightly deleted the additions made by the A.O. We do not see any reasons to interfere with the order of the CIT(A). Hence, we inclined to uphold the CIT(A) order and dismiss the appeal filed by the revenue."

4.1. Respectfully following the decision of this Tribunal on the assessee's own case for the earlier year, we uphold the order of the Ld.CIT and allow the appeal of the assessee.

5. In the result, appeal of the revenue is dismissed and cross objection of the assessee is allowed.

The above order was pronounced in the open court on 20th Sep
2017.

Sd/-

(वी.दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 20.09.2017

L. Rama, SPS

Sd/-

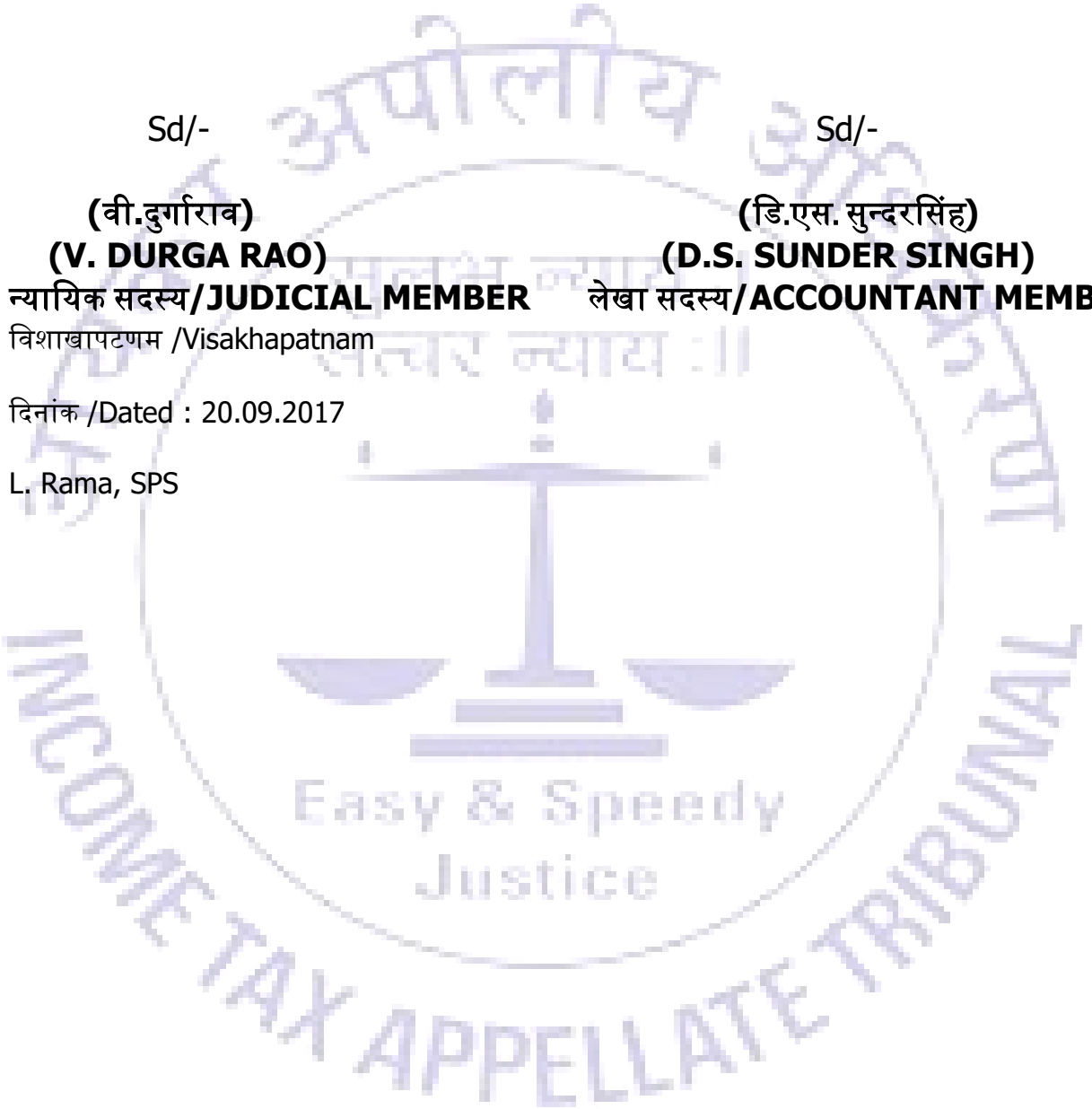
(डि.एस. सुन्दरसिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

दिनांक /Dated : 20.09.2017

L. Rama, SPS



आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

- 1 राजस्व / The Revenue – ACIT, Circle-3(1), Visakhapatnam
2. निर्धारिती /The Assessee - M/s Eastern Power Distribution Company of AP Ltd. P&T Colony, Seethammadhara, Visakhapatnam- 530 013
- 3.The Chief Commissioner of Income Tax, Visakhapatnam
- 4.The Commissioner of Income Tax (Appeals)-2, Guntur
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
5. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
ITAT, VISAKHAPATNAM

