

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 456/JP/2017  
निर्धारण वर्ष/Assessment Year :2010-11

Asstt. Commissioner of Income-tax, Circle-1, Kota	बनाम Vs.	M/s Instrumentation Limited, Jhalawar Road, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL4212G		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 457/JP/2017  
निर्धारण वर्ष/Assessment Year :2011-12

ACIT Circle-1 Kota	बनाम Vs.	Instrumentation Limited Jhalawar Road, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL4212G		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से/ Revenue by : Smt Neena Jeph (JCIT)  
निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)

सुनवाई की तारीख/ Date of Hearing : 21/09/2017  
उदघोषणा की तारीख/Date of Pronouncement : 25/09/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the revenue against the order of  
Ld. CIT (A), Kota dated 07.03.2017 for A.Y. 2010-11 and order dated

06.03.2017 for A.Y 2011-12 wherein the respective grounds of the appeal are as under:-

ITA No. 456/JP/17 (Ground of Revenue's appeal):-

*"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:-*

- (i) deleting the disallowance of claim for deduction of PF of Rs. 98,18,748/- for 2008-09 claimed during the year under consideration made by the AO u/s 154 of the Act;"*

ITA No. 457/JP/17 (Ground of Revenue's appeal):-

*"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:-*

- (i) deleting the addition of Rs. 2,40,76,803/- made by disallowing contribution to provident fund u/s 36(1)(va) of the Act."*

2. In its appeal for 2010-11, the Revenue has challenged the action of the Id CIT(A) in deleting the disallowance of claim of deduction of P.F of Rs. 98,18,748/- for A.Y 2008-09 claimed by the assessee during the year by passing an order u/s 154 of the Act.

3. The Id. AR submitted that the company has a practice to claim deduction towards Employees & Company's P.F contribution paid during the previous year & the remaining balance is claimed in the year of actual payment in subsequent year. Accordingly, deduction of Rs. 98,18,748/- was correctly claimed u/s 43B of the I.T. Act, 1961 in the year under appeal towards PF Co's & Employees Contribution of 2008-09 paid during the previous year relevant to assessment year 2010-11.

4. On perusal of the order of the Id. CIT(A), it is noted that the Id. CIT(A) has held that the issue was debatable and also when the matter had already been considered in detail in scrutiny proceedings, the AO was not correct in making the disallowance u/s 154 of the Act and the action of the AO u/s 154 was held to be not valid. The Revenue has not challenged the said finding of the Id. CIT(A). Further, on merits, the Id. CIT(A) has relied on the decision of Hon'ble Rajasthan High Court in case of CIT Vs. State Bank of Bikaner & Jaipur reported in 256 CTR 471 and had deleted the additions against which the revenue is presently in appeal before us.

5. After hearing both the parties and perusing the material available on record, firstly, the action of the AO invoking provisions of section 154 have been held not valid by the Id. CIT(A) against which the Revenue is not in appeal. On this ground itself, the subject appeal deserves to be rejected. Further, on merits, it is noted that provident contribution relates to the assessment year 2008-09 and as per the practice followed by the assessee, it is claimed in the year of payment which is in compliance with the provisions of section 43B of the Act. Accordingly, the assessee has claimed the said amount of Rs. 98,18,748/- which pertains AY 2008-09 as the same was paid during year and claimed u/s 43B of the Act in the year under consideration. We accordingly do not see any infirmity in the stand of the assessee for claiming PF contributions on actual payment basis u/s 43B of the Act. In the result, appeal of the revenue is dismissed.

6. In its appeal for AY 2011-12, the revenue has challenged the deletion of addition of Rs. 2,40,76,803/- towards contribution to provident fund u/s 36(1)(va) of the Act.

7. Briefly the facts of the case are that out of total employees Contribution towards provident fund of Rs 23,16,27,691/-, the assessee has paid Rs 5,56,75,238/- during the financial year. As per the Assessing Officer, out of the amount so paid during the financial year, Rs. 3,15,98,435/- was paid within prescribed due time and the balance amount of Rs. 2,40,76,803/- was paid after the prescribed due time. Accordingly, he disallowed and made an addition of Rs. 2,40,76,803/- u/s 36(1)(va) read with section 43B of the Act.

8. Being aggrieved, the assessee carried the matter in appeal before the CIT(A) who has deleted the disallowance following decision of Hon'ble Rajasthan High Court in case of CIT Vs. State Bank of Bikaner & Jaipur reported in 256 CTR 471. Now the revenue is in appeal before us.

9. The Id. AR submitted that the matter is squarely covered by the decision of the Co-ordinate Bench in assessee's own case in ITA No. 431/JP/2015 for AY 2010-11 wherein Co-ordinate Bench has followed

the decision of Hon'ble Rajasthan High Court in case of CIT Vs. State Bank of Bikaner & Jaipur [256 CTR (Raj.) 471] which has been relied upon by the Id. CIT(A) while granting the necessarily relief to the assessee. It was further submitted that in exactly identical facts whether the matter has been decided by the Hon'ble Rajasthan High Court in Pr. CIT vs Rajasthan State Beverages Corporation Ltd., reported in [2017] 84 taxmann.com 173(Raj.), SLP filed by the revenue has recently been dismissed by the Hon'ble Supreme Court reported in 84 taxmann.com 185 (SC).

10. The Id. DR supported the order of Assessing Officer. At the same time, she fairly submitted that the matter is covered in favour of the assessee in light of the decisions of the Hon'ble Rajasthan High Court.

11. After hearing both the parties and perusing the material available on record, we note that the amount of Rs 2,40,76,803 has been paid during the financial year itself even though beyond the prescribed due date. Respectfully following the decision of the Hon'ble Rajasthan High court in decisions referred supra, we hereby direct the deletion of addition of Rs. 2,40,76,803/- towards the employee's contribution to PF. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25/09/2017.

Sd/-  
(कुल भारत )  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/09/2017.

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- ACIT, Circle-1, Kota
2. प्रत्यर्थी / The Respondent- Instrumentation Limited, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 456 & 457/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar