

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**I.T.A. No. 959/HYD/2017**

Assessment Year: 2011-12

The Deputy Commissioner of Income Tax, Circle-2(2), HYDERABAD	Vs	M/s. Talwar Mobiles Pvt. Ltd., SECUNDERABAD <b>[PAN: AABCT0818P]</b>
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**(Appellant)**

**(Respondent)**

For Revenue	:	Smt. N. Swapna, DR
For Assessee	:	Shri P. Murali Mohan Rao, AR

Date of Hearing : 06-03-2018

Date of Pronouncement : 07-03-2018

**ORDER**

**PER Smt. P. MADHAVI DEVI, J.M. :**

This is an appeal filed by the Revenue for the AY. 2011-12 against the order of the Commissioner of Income Tax (Appeals)-2, Hyderabad, dated 28-02-2017. Revenue is aggrieved by the order of the CIT(A) holding that the payments of employees contribution towards EPF and ESI by the employer-assessee is not in consonance with the explanation to Section 36(1)(va) of the Income Tax Act [Act] and that it is entitled for deduction u/s. 43B of the Act.

2. Brief facts of the case are that, the assessee-company, a dealer for Hundai Motors India, filed its return of income for the AY. 2011-12 on 29-09-2011, declaring total income of Rs. 47,78,147/- as per the normal provisions of the Act and book profit of Rs. 90,48,436/- u/s. 115JB of the Act. During the assessment proceedings u/s. 143(3) of the Act, Assessing Officer (AO) observed that the assessee has paid PF contribution of employees belatedly for the months of April to July, 2010 and similarly the employees contribution of ESI has also been paid belatedly for the months of May, June 2010 and January, 2011. He therefore treated such belated payments of Rs. 6,75,558/- as income of the assessee u/s. 2(24)(x) r.w.s. 36(1)(va) of the Act. Aggrieved, assessee preferred an appeal before the CIT(A), who, deleted the same by following the decision of the 'A' Bench of ITAT, Hyderabad in the case of VBC Industries Ltd., Hyderabad Vs. DY.CIT for the AY. 2008-09 in ITA No. 143/Hyd/2013, dt. 08-05-2015. Against the relief granted by the CIT(A), Revenue is in appeal before us.

3. At the time of hearing, Ld. Counsel for the assessee submitted that addition made by the AO is only of Rs. 6,75,558/- and therefore, the tax effect thereon is less than Rs. 10 Lakhs and in view of the CBDT Circular No.21/2015 dated 10<sup>th</sup> December, 2015, bearing F.No.279/Misc.142/2007-ITJ(Pt). Revenue's appeal is liable to be dismissed. Even otherwise, on merits also, he placed reliance upon the Co-ordinate Bench decision of the Tribunal in the case of Vybrant Digital Limited Vs. Dy.CIT in ITA No. 1769/Hyd/2012 for the AY. 2008-09.

4. Revenue, on the other hand, relied upon the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat State Road Transport Corporation (2014) [41 taxmann.com 100] (Gujarat) and the decision of the Hon'ble Kerala High Court in the case of CIT Vs. Merchem Ltd., (2015) [61 taxmann.com 119] (Kerala) in support of the addition made by the AO.

5. Having regard to the rival contentions, we find that the tax effect in this appeal is less than Rs. 10 Lakhs and therefore, it is liable to be dismissed on those grounds alone. Even on merits, we find that the issue is covered in favour of the assessee by the decision of the Co-ordinate Bench of ITAT in the case of VBC Industries Ltd., Hyderabad Vs. DY.CIT (supra), on which the CIT(A) has relied upon for granting relief to the assessee. In the said decision, the decisions of the Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat State Road Transport Corporation (supra), relied upon by the Ld.DR, has been considered. In view of the same, we see no reason to interfere with the order of the CIT(A) even on merits.

6. In the result, appeal of Revenue is dismissed.

*Order pronounced in the open court on 7<sup>th</sup> March, 2018*

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated 7<sup>th</sup> March, 2018

TNMM

*Copy to :*

- 1. The Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad.*
- 2. M/s. Talwar Mobiles Pvt. Ltd., Patny Plaza, S.P. Road, Secunderabad.*
- 3. CIT(A)-2 , Hyderabad.*
- 4. Pr.CIT-2, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*