

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

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 225/JP/2020  
निर्धारण वर्ष/Assessment Year : 2007-08

The DCIT Circle-6 Jaipur	बनाम Vs.	M/s. Jaipur Vidyut Vitaran Nigam Ltd Vidyut Bhawan, Janpath Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6373 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Amrish Bedi, CIT  
निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal, CA

सुनवाई की तारीख / Date of Hearing : 03/08/2020  
उद्घोषणा की तारीख / Date of Pronouncement: 05 /08/2020

आदेश / ORDER

PER: R.C. Sharma, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A)-1, Jodhpur dated 11.12.2019 for the A.Y. 2007-08, in the matter of order passed by the A.O. 143(3) of the Income Tax Act, 1961 (in short, the Act).

2.1 The only dispute of the Revenue relates to deletion of addition made on account of delay in deposit of employees contributions towards CPF, GPF and ESI u/s 36(1)(va) of the Act.

2.2 Rival Contentions have been heard and records perused. The facts of the case in brief are that the assessee is a State Government Undertaking and engaged in the distribution and sale of electricity. The assessee filed the Return of Income for A.Y. 2007-08 on 29.10.2007 claiming unabsorbed depreciation/current year loss of Rs. 7,58,44,627/-. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 25.09.2008. After hearing the assessee, the AO completed the assessment u/s 143(3) of the Act on 10.10.2006 and made the addition on account of amounts deposited in respect of employees contribution towards CPF, GPF and ESI which was alleged to be allowed.

2.3 By impugned order the Id. CIT(A) deleted the addition after observing as under:-

4.2 I have considered the assessment order, facts of the case, submissions of the appellant and case-laws relied on by the appellant. The AO has made the addition of Rs. 19,73,42,499/- observing that the assessee failed to deposit the contribution towards CPF, GPF and ESI within the due date. The appellant has submitted that it had made payment within the grace period or before due date of filing of return of income, hence the same is allowable deduction as per sec. 43B of the Act. I have also gone through various judicial precedents on this issue and I find that the Hon'ble Supreme Court in case of CIT vs. Alom Extrusions Ltd. reported in 319 ITR 306 held that omission of second proviso to sec 43B and the amendment of first proviso by Finance Act,

2003, bringing about uniformity in payment of tax, duty, cess and fee on one hand and contribution to employees' welfare funds on the other, are curative in nature, and thus, effective retrospectively w.e.f. 1-4-88 i.e. the date of insertion of first proviso. It was further held that where Provident Fund and Employees State Insurance Contribution were paid by the assessee before filing of the return and proof of payment was submitted before the Assessing Officer, the amounts were deductible as deduction.

The Hon'ble Delhi High Court in case of CIT vs. Aimil Ltd & Ors. reported in 321 ITR 508 held as under:-

"As soon as employees' contribution towards PF or ESI is received by the assessee by way of deduction or otherwise from the salary/ wages of the employees, it will be treated as 'income' at the hands of the assessee. It clearly follows there from that if the assessee does not deposit this contribution with PF/ESI authorities, it will be tax as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of s. 36(11)(va). Sec. 43B(b), however, stipulates that such deduction would be permissible only on actual payments. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees' contribution is concerned. Deletion of the second proviso has been treated as retrospective in nature and would not apply at all. The case is to be governed with the application of the first proviso. 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 provision are made in the Provident Fund Act as well as the ESI Act. Therefore, the Acts permit the employer to make the deposit with some delays , subject to the aforesaid consequences. Insofar as the I T Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed. CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268, CIT vs. Dharmendra Sharma (2007) 213 CTR (del) 609: (2008) 297 ITR 320 (Del) and CIT vs. P. M. Electronics Ltd. (2008) 220 CTR (del) 635 : (2008) 15 DTR (del) 258 followed."

Apart from the above decisions, the following decisions are also applicable on the issue at hand:-

- (i) DyCIT vs. Orbit Resorts (P) Ltd (48 SOT 23 (URO))
- (ii) ACIT vs. Ranabaxy Laboratories Ltd. (2011) 7 ITR (Trib) 161 (DLH)
  
- (iii) ACIT vs. M/s. Anil Special Steel Industries Ltd. (decision of Jaipur Bench in ITA No. 1100/JP/2011)

Further, I have also gone through the order of the Hon'ble ITAT, Jodhpur Bench passed in the appellant's own case in ITA no. 132/JP/2009 for AY 2006-07 and I find that the issue is squarely covered by the Hon'ble ITAT's findings recorded for AY 2006-07 where similar disallowance was made. For the sake of clarity, the relevant findings of the Hon'ble ITAT are reproduced as under:-

*"After hearing the parties we find that there is no dispute in the present case that the employees contribution to PF and ESI was paid before the due date of filing of return u/s 139(1) though after the statutory dates specified in the respective acts. This is supported by the decision of Karnataka High Court in case of CIT Vs. Sabari Enterprises 298 ITR 141, CIT Vs. P M Electronics 171 Taxman 1 (Delhi), Sunil Goel Vs. ACIT 118 TTJ 415 (Delhi) and also by the decision of this bench including the subsequent decisions dated 31-12-2008 and 13-02-2009 (supra) may also not that against the decision of this bench in assessee's own case dated 30-09-2008, the application u/s 254(2) is pending for disposal. In view of the decision of the High Court supra and the subsequent decisions of this bench on the issue we direct to delete the said disallowance made by the lower authorities. This ground is allowed."*

Since the facts of the present case are almost identical to that of AY 2006-07. therefore. respectfully following the above findings of Hon'ble ITAT, Jaipur Bench 'A', Jaipur, it is held that the AO was not justified in making the addition of Rs. 19,73,42,499/-. Thus, the addition of Rs. 19,73,42,499/- made on account of disallowance for late depositing employees contribution towards CPF & GPF & ESI is deleted. The grounds of appeal raised by the appellant regarding this issue are allowed."

2.4 We have considered the rival contentions and carefully gone through

the orders of the authorities below and found from record that the AO

made an addition of Rs. 19,73,42,499/- on account of delay in deposit of employee's contribution towards CPF/GPF/ESI u/s 36(1)(va). In this regard, the AO noted that there was delay in depositing of employee's contribution to CPF (Rs. 42986497/-), GPF (Rs. 15425088/-) & ESI (Rs.102913). On being asked vide show cause notice, the assessee has submitted that the principles and provisions of section 36(1)(va) and Section 43B of the Act are based on harmonious interpretation and similarity of objectives and consequent to omission of second proviso to section 43B and insertion of the new proviso regarding allowance of any sum paid by him as an employer subject to payment before the due date of furnishing of the return should apply to section 36(1)(va) simultaneously. The reply of the assessee was not found acceptable by the AO. The AO was of the opinion that as per the provisions of section 2(24)(x) of the Act the same is an income of the assessee and can be allowed as deduction only, if such contributions was actually paid on or before due date mentioned in the relevant Act or Rules. In this case, the assessee made the above payments amounting to Rs. 19,73,42,499/- after the prescribed due date. Hence, it forms the

taxable income of the assessee as per section 2(24)(x) or the Act and deduction of this amount is not allowable u/s 36(1)(va) of the Act. Accordingly, the AO disallowed Rs. 19,73,42,499/- and added the same to the total income of the assessee.

2.5 We found that the issue under consideration is squarely covered by the decision of ITAT, Jaipur Bench in assessee's own case for the A.Y. 2006-07.

2.6 We also found that the decision of ITAT Jaipur Bench in assessee's own case has been upheld by the Jurisdictional High Court vide order dated 07-08-2019 in Appeal No. 284/2018. The precise observation of the Hon'ble High Court is as under:-

"Learned Counsel for the parties are at idom that the questions that are proposed in these appeals pertain to contribution towards Provident Fund and ESI and the said issues shave already been decided against the Revenue by this Court vide Judgement dated 06-01-2014 passed in Commissioner of Income Tax Vs. M/s. State Bank of Bikaner and Jaipur (2014) 363 ITR 70 (Raj). However, the Revenue has preferred SLP (C ) No. 016249/2014 against the aforesaid judgement before the Supreme Court. Learned Counsel submit that although this Court has answered the question with respect to interpretation to Section 43-B of the Income Tax Act against the Revenue but correctness of that judgement is to be tested by the Supreme Court in the aforesaid pending SLP. Therefore these appeals may be disposed of making them subject to that final judgement of the Supreme Court on the aforesaid question in pending SLP.

In view of above, all the aforesaid appeals are disposed of accordingly."

2.7 Respectfully following the order of the Coordinate Bench, Jaipur in assessee's own case which has been confirmed by the Hon'ble High Court (supra), we do not find any reason to interfere in the order of the Id. CIT(A)

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

Order pronounced in the open court on 05 /08/2020.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( रमेश सी0 शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 05/08/2020.

\*Mishra.

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

1. अपीलार्थी / The Appellant- The DCIT, Circle-6, Jaipur
2. प्रत्यर्थी / The Respondent- M/s. Jaipur Vidyut Vitaran Nigam Ltd. Jaipur
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. 225/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar