

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

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1120/JP/2016
निर्धारण वर्ष/Assessment Year : 2013-14

The ITO Ward- 6(1), Jaipur	बनाम Vs.	M/s. Professional H.R. Services (P) Ltd. 1/1081, Malviya Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCP 3030 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT-DR
निर्धारिती की ओर से / Assessee by: Shri Rajeev Sogani, CA

सुनवाई की तारीख / Date of Hearing : 22/02/2017
घोषणा की तारीख / Date of Pronouncement : 22 /02/2017

आदेश / ORDER

PER BHAGCHAND, AM

The Revenue has filed an appeal against the order of the Id. CIT(A)-2 , Jaipur dated 26-10-2016 for the assessment year 2013-14 raising following grounds of appeal.

“On the facts and in the circumstances of the case and in law the Id. CIT(A)-II, Jaipur has erred in:-

(i) Whether on the facts and circumstances of the case and in law the Id. CIT(A) was justified in deleting addition of Rs. 40,04,259/- made for depositing the

employee's contribution to PF & ESI beyond the prescribed time limit provide in the respective Act.

(ii). Whether on the facts and in the circumstances of the case and in law the ld. CIT(A) was justified in holding that employee's contribution to PF & ESI are governed by the provisions of Section 43B and not by Section 36(10)(va) r.w.s. 2(24)(x) of the I.T. Act.”

2.1 Apropos Ground No. 1 and 2 of the Revenue, the facts as emerges from the order of the ld. CIT(A) is as under:-

“2.3 I have perused that facts of the case, the assessment order and the submission of the appellant. Admittedly, employee's contribution to ESI and PF has been paid by the appellant, in all instances, before the due date of filing the return of income u/s 139(1). This fact is therefore, not in dispute. In view of the judgments of the Rajasthan High Court in the case Jaipur Vidhyut Vithran Nigam Ltd., 265 CTR 62 (Raj.), CIT Vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131 (Raj.) and ITAT, Jaipur, in the case of the assessee, the claim of the appellant is allowable. Accordingly, the disallowance made by the Assessing Officer is directed to be deleted. This ground is allowed.

2.2 During the course of hearing, the ld. DR relied on the order AO.

2.3 On the other hand, the ld. AR of assessee supported the order of the ld. CIT(A).

2.4 I have heard the rival contentions and perused the materials available on record. In this case, the AO noticed during assessment proceedings that the assessee had failed to deposit EPF amounting to Rs.

33,58,280/- and ESI amounting to Rs. 6,45,979/-, totaling to Rs. 40,04,259/- on or before the prescribed due dates. Hence, the AO in terms of Section 36(1)(va) read with Section 2(24)(x) of the I.T. Act disallowed the amount of Rs. 40,04,259/- and added the same to the total income of the assessee which has been deleted by the Id. CIT(A) in first appeal. The Revenue is in appeal before this Bench praying that the Id. CIT(A) has erred in deleting the amount of Rs. 40,04,259/- disallowed by the AO. It is observed that that such issue has already been decided in favour of the assessee by the ITAT Jaipur Bench in the case of ITO vs. M/s. S. Brothers Facilities Management in ITA No. 957/JP/2016 for the assessment year 2013-14 vide order dated 5 /01/2017 by observing as under:-

“2.5 I have heard the rival contentions and perused the materials available on record. I have gone through the order of the Id. CIT(A) and the case laws submitted before the Id. CIT(A) which finds favour of the assessee. It may further be noted that such issue has also been decided by the ITAT, Coordinate Bench, Jaipur in favour of the assessee vide its order dated 27-09-2016 in the case of ACIT vs. Shri Shailendra Garg, C/o M/s. Garment Craft India (P) Ltd. (ITA No. 804/JP/2015 for the assessment year 2010-11). It may be further noted that the Hon'ble Hon'ble Jurisdictional High Court in the case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. (2014) 265 CTR 59 had considered this issue in detail at para 7 to 9 of its order as under:-

“7. Further, the hon'ble Supreme Court in *CIT v. Vinay Cement Ltd.* [2009] [313 ITR \(St.\) 1](#) (SC) while dismissing the special leave petition preferred by the Revenue against the judgment of the Gauhati High Court observed as under :

“In the present case, we are concerned with the law as it stood prior to the amendment of section 43B. In the circumstances the assessee was entitled to claim the benefit in section 43B for that period particularly in view of the fact that he has contributed to provident fund before filing of the return.”

8. Following the observations of the hon'ble Supreme Court in *Vinay Cement (supra)*, the Delhi High Court in *CIT v. AIMIL Ltd.* [2010] [321 ITR 508](#) (Delhi) held at page 518 as under :

*“We may only add that 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 Funds Act as well as the Employees' State Insurance 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](#) (SC).”*

9. In view of the settled legal position, the appeal preferred by the Revenue has no substance and the same is, therefore, dismissed. No costs. ‘

In view of the above facts, circumstances of the case and the decisions mentioned above, I find no reason to interfere with the

order of the Id. CIT(A). Thus the appeal of the Revenue is dismissed. “

In view of the above deliberations and respectfully following the orders of Hon'ble Jurisdictional High Courts in the cases of CIT vs. JVVNL 265 CTR 62 (Raj), and CIT vs. State Bank of Bikaner & Jaipur (2014), 99 DTR 131 (supra) and also the order of ITAT Jaipur Bench (supra), I find no reason to interfere with the order of the Id. CIT(A) on the issue in question. Thus Ground No. 1 and 2 of the Revenue are dismissed.

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

Order pronounced in the open court on 22 /02/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22 /02/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- The ITO, Ward- 6(1), Jaipur
2. प्रत्यर्थी / The Respondent- M/s. Professional H.R. Services (P) Ltd. Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1120/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar