

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. 957/JP/2016
निर्धारण वर्ष/Assessment Year : 2013-14

The ITO Ward- 2(3) Jaipur	बनाम Vs.	M/s. S.Brothers Facilities Management S-201-202, Vankteshwar Tower Central Spine, Vidhyadhar Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABQFS 7809 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri Rajendra Jha, Addl.CIT-DR
निर्धारिती की ओर से / Assessee by: Shri Anil Sharma, CA

सुनवाई की तारीख / Date of Hearing : 30/12/2016
घोषणा की तारीख / Date of Pronouncement : 5 /01/2017

आदेश / ORDER

PER BHAGCHAND, AM

The Revenue has filed an appeal against the order of the Id.
CIT(A)-I , Jaipur dated 31-08-2016 for the assessment year 2013-14
raising following grounds of appeal.

“1. (i) Whether on the facts and in the circumstances of the case in law the Id. CIT(A) has erred in deleting the addition of Rs. 33,78,972/- made for depositing the employee’s contribution to PF and ESI beyond the prescribed time limit provided in the respective Acts.

(ii) Whether on the facts and in the circumstances of the case in law the Id. CIT(A) has erred in holding that employees contribution under PF and ESI are governed by the provision of Section 43B and not by Section 36(1)(va) read with Section 2(24)(x) of I.T. Act.’’

2.1 Brief facts of the case are that the AO during the course of assessment proceedings observed that the assessee had not paid PF of employee’s contribution amounting to Rs. 29,46,250/- and ESI of employee’s contribution amounting to Rs. 4,32,722/- within the stipulated period for which the AO required to assessee to submit its reply for not depositing the above contributions within the stipulated time. The assessee filed the reply before the AO on the issue in question. According to the AO, the reply of the assessee was not acceptable to him and as per provisions of Section 2(24)(x) read with Section 36(1)(va) of the I.T. Act the assessee had to deposit employees contribution to PF and ESI before due date and thus the assessee failed to deposit the same within the stipulated time. The AO thus treated the above late deposits of employees contribution to PF and ESI (Rs.29,46,250/- PF + Rs. 4,32,722/- = Rs. 33,78,972/-) as income of the assessee and added an amount of Rs. 33,78,972/- to the total income of the assessee.

2.2 In first appeal, the Id. CIT(A) had deleted both the additions relating to ESI contribution and PF by observing as under:-

3.1.2. Determination

(i) I have duly considered the submissions of the appellant, assessment order and the material on record. The AO disallowed a sum of Rs. 33,78,972/- u/s 36(1)(va) by observing that employee contribution to Provident Fund and ESI has not been deposited in the Government Account by the due date as prescribed in the relevant Acts.

(ii) During appellate proceedings, it was submitted by the appellant that the entire amount of Rs. 33,78,972/- was deposited by the appellant before the due date of filing of return of income and thus the AO was not justified in making the said disallowance. The A.R. placed reliance upon a number of judicial pronouncements. It may be mentioned that the Hon'ble Rajasthan High Court in the case of CIT vs. SBBJ (2014) 265 CTR (Raj) 471 and CIT vs. Udaipur Dugdh Utpadak Sangh Ltd. (2014) 265 CTR 59 has held that where PF/ ESI were paid after due date under respective Acts but before due date of filing of return of income u/s 139(1), these cannot be disallowed u/s 43B or u/s 36(1)(va) of the Act, 1961. In the instant case under consideration, the employee's contribution on account of PF / ESI were paid by the appellant prior to due date of filing of return of income u/s 139(1) of the Act. Respectfully following the decision of Hon'ble Rajasthan High Court, the addition of Rs. 33,78,972/- cannot be sustained and hence deleted.”

2.3 The Id. DR relied on the order of the AO.

2.4 The Id. AR of the assessee relied on the order of the Id. CIT(A) and the case laws placed before the Id. CIT(A) to this effect. The Id. AR of the assessee has also filed the written submission which has been taken into consideration.

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 ld. CIT(A). Thus the appeal of the Revenue is dismissed.

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

Order pronounced in the open court on 5 /01/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 5 /01/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- The ITO, Ward- 2(3), Jaipur
2. प्रत्यर्थी / The Respondent- M/s. S. Brothers Facilities Management 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. 957/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar