

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.1168(B)/2015
(Assessment year : 2007-08)**

The Deputy Commissioner of Income-tax,
Circle-2(1) (2), 4th Floor, RP Bhanavan,
Bangalore

Appellant

Vs

M/s DI fortification Pvt.Ltd.,
No.6 & 7, Ambady, 1st Main, 1st Cross,
Doctor's Layout, B.Channasandra,
Bangalore-560 043.

PAN No.AACCD4963G

Respondent

**Revenue by : Shri B. Saravanan, Addl.CIT
Assessee by : Shri Rajith Balakrishna, Director of the
assessee firm**

**Date of hearing : 25-02-2016
Date of pronouncement : 29-02-2016**

ORDER

PER SHRI VIJAY PAL RAO, JM:

This appeal of the revenue is directed against the order dated 28-05-2015 of the CIT(A)-2, Bangalore for Assessment year: 2012-13. The revenue has raised the following grounds;

"1. The order of the CIT(A) is contrary to the facts and circumstances of the case and hence not sustainable.

2. The CIT(A) has erred in the decision with regard to the addition u/s 2(24)rws36(1)(va) which is not acceptable since the department has not accepted the decision of the jurisdictional High Court in the case of M/s Esae Teraoka Pvt.Ltd (ITA No.480/2012) and has filed an SLP before the Apex Court which is still pending.

3. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) insofar as it relates to the above grounds may be reversed and that of the AO may be restored.

4. The assessee craves leave to add, alter, amend and/or delete the grounds mentioned above.

2. We have heard the learned DR as well as the representative/Director of the assessee company and considered the material on record.

3. At the outset, we note that the CIT(A) has decided the issue by following the decision of the Hon'ble jurisdictional High Court in the case of M/s Essae Teraoka Pvt.Ltd Vs DCIT (ITA No.480/2012) in para-3.2 to 3.4 as under;

“ 3.2 In its written submissions filed at the time of appeal hearing, the assessee states that its stand is supported by judicial decisions in M/s Essae Teraoka Pvt.Ltd Vs DCIT (ITA No.480/2012) a copy of which has been furnished.

3.3 I have carefully considered the assessee's submissions and perused the assessment order. In the case law relied on by the assessee (supra), it has been held as under;

".....in law the payment of contribution by the employer to the fund under the scheme means both employers contribution and also employees contribution. Whether he deducts the employees contribution or not, in law, he is liable to pay the said amount. Though such contributions are not paid within the time prescribed under the relevant Act, if those contributions are paid before the due date prescribed under section 139(1) of the Act, the employers shall be entitled to the deductions as provided under section 36(1) of the Act. While extending such benefits, the Parliament has not made any distinction between the 'employees' contribution and the employer's 'contribution'.

3.4 I find merit in the assessee's submissions since it is covered by the case law referred to above. Respectfully following the decision of the jurisdictional High Court referred to above, I delete the disallowances made in this regard by the AO for the assessment year 2012-13".

4. No contrary decision has been brought to our notice by the revenue, except raising objection that the revenue has not accepted the judgment of the Hon'ble jurisdictional High Court. Accordingly, when the issue is covered by the Hon'ble jurisdictional High Court, as relied upon by

the learned AR, we do not find any reason to interfere with the order of the learned CIT(A) on this issue.

5. In the result, the appeal filed by the revenues is dismissed.

Order pronounced in the open Court on the 29th February, 2016.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

D a t e d : 29-02-2016

Place: Bangalore

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

By order

AR, ITAT, Bangalore