

IN THE INCOME TAX APPELLATE TRIBUNAL “G”, BENCH MUMBAI
BEFORE SHRI B.R.BASKARAN, AM & SHRI PAWAN SINGH, JM
ITA No.7178/Mum/2014

(Assessment Year: 2010-11)

M/s Gannon Dunkerley & Co. Ltd., 3 rd Floor, New Excelsior Building, A. K. Nayak Marg, Fort, Mumbai- 400001.	Vs.	ACIT CC-35, Room No. 105, Aayakar Bhavan, M.K. Road, Mumbai-400020.
PAN/GIR No.: AAACG1846P		
(Appellant)	..	(Respondent)

Assessee by : None.

Revenue by : Shri Vivek Perampurna (DR)

Date of Hearing : 27/07/2016

Date of Pronouncement: 07/09/2016

ORDER

PER PAWAN SINGH, JM:

1. The present appeal filed by the assessee against the order of CIT(A)-1, Mumbai dated 02.09.2016 for Assessment Year (AY) 2010-11.

2. Brief facts of the case are that the assessee filed return of income for relevant AY on 15.10.2010. The return of income was selected for scrutiny. While framing the assessment, the AO besides the addition/disallowance made a disallowance of Rs. 10,10,837/- on account of delay in deposit of Employee Provident Fund Contribution in the assessment order dated 01.03.13. Aggrieved by the order of AO, assessee filed appeal before the CIT(A) but without any success. Thus, the present appeal is filed before us raising the following Grounds of appeal.

The Learned CIT(A) erred in law, in fact and under the circumstances of case:-

- i) By not allowing claim of deduction of Rs. 10,10,837/- in respect of contribution to provident fund which were collected and paid before due date of filing return of income.*
- ii) Appellant submit that claim made by appellant during the course of assessment stage is to be allowed.*

Appellant prays that

i) Deduction of payment of Rs. 10,10,837/- made to PF Authorities before due date of filing Return of Income for Employees Contribution to Provident should be allowed u/s 43B of Income Tax Act and claim made by appellant during the assessment stage be allowed to appellant.

3. None appeared on behalf of assessee despite repeated calls. We have heard the Ld. DR for Revenue and perused the material available on record. Ld. DR for Revenue supported the order of authorities below and argued that the assessee made the claim after filing return of income and after expiry of time allowed for filing revised return of income and the claim of assessee was not acceptable. On specific queries, if the contribution of PF was deposited by the assessee, before due date of filing of return of income. Ld. DR for Revenue replied that there is no such evidence available on record.

4. We have perused the material available on record and considered the argument advanced by the Ld. DR for Revenue. The AO made the disallowance holding that the assessee made claim after filing of return of income and after expiry of time allowed for filing of revised return of income. The Ld. CIT(A) also concluded that assessee has not filed revised return claiming deduction u/s 36(1)(va). The Hon'ble Delhi High Court in case of CIT vs. P.M. Electronics Ltd. in ITA No. 475/2007 dated 03.11.2008 held that if the contribution of Provident Fund is paid by assessee before due date of filing of return, the assessee would be entitled for the deduction of said amount. As none appeared on behalf of assessee nor any document showing that the contribution of PF allowable u/s 36(1)(va) of the Act is placed on record, we direct the AO to allow the claim of contribution of EPF of Rs. 10,10,837/- in accordance with the decision of Hon'ble Delhi High Court in P.M. Electronics Ltd.(supra), if the amount of Provident Fund Contribution was deposited by assessee before filing the return of income. With these observations, the appeal filed by the assessee is allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 7th September, 2016.

Sd/-

Sd/-

(B.R.BASKARAN)

(PAWAN SINGH)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Mumbai; Dated :07/09/2016

SK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

/BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai