

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.1049/Bang/2015
(Assessment Year : 2008-09)

Deputy Commissioner of Income tax,
Circle -12(1), Bangalore .. Appellant

v.

M/s. Maini Material Movement P. Ltd,
131, 6th floor, Devatha Plaza, Residency Road,
Bangalore .. Respondent
PAN : AABCM8922D

Assessee by : Ms. Susan Matew, CA
Revenue by : Shri. Sunil Kumar Agarwala, JCIT

Heard on : 24.11.2015
Pronounced on : 27.11.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue its grievance is that CIT (A) had allowed claim of the assessee u/s.36(1)(va) of the Income-tax Act, 1961 ('the Act' in short), though assessee defaulted in remitting the employees'

contribution towards PF and ESI within the due date mentioned in the respective statutes.

02. Case of the Revenue is that employees contribution is different from employers' contribution. As per the Revenue, if employees contribution is not remitted within the due dates then by virtue of Section 36(1)(va) of the Act, claim for deduction could not be allowed.

03. We find that there is a delay of four days in filing this appeal. An affidavit has been filed by the Revenue stating therein the reasons for the delay. We are convinced with the reasons stated therein. We condone the delay of four days in filing the appeal.

04. We have heard the rival contentions. What we find is that CIT (A) had followed the judgment of Hon'ble jurisdictional High Court in the case of CIT v. ANZ Information Technology (P) Ltd [(2010) 189 ITR 391].

Relevant part of the judgment is reproduced hereunder :

“Appeal by the revenue under section 260A of the Act. Questions of law raised in this appeal are as under:—

“(1)Whether the Appellate Authorities were correct in holding that the contribution made towards provident fund by the employer belatedly and contribution towards ESI contribution i.e., beyond

the stipulated period provided under the Provident Fund Act, is an allowable deduction in view of section 43B of the Act ?

(2)Whether the Appellate Authorities were correct in holding that the deposit made by the employer of the employee's contribution belatedly and contribution towards ESI contribution i.e., beyond the stipulated period under the Income-tax Act and under the Provident Fund Act and Employees State Insurance Act cannot be treated as the income of the assessee under section 36(1)(va) read with section 2(24)(x) in view of section 43B of the Act ?"

3. Sri Aravind, learned counsel appearing for the appellant fairly submits that while answering similar questions, a Division Bench of this Court has already taken a view against the revenue in ITA Nos. 1087 and 1088 of 2006 and judgment rendered in this case of CIT v. Sabari Enterprises [2008] [298 ITR 141](#)(Kar.) virtually covers the present case also.

4. However, the learned counsel would submit that the revenue having not accepted the correctness of the decision has sought for grant of leave before the Supreme Court and as of now Special Leave Petition is pending before the Supreme Court and therefore, submits this matter can be admitted and kept pending awaiting the decision of the Supreme Court.

5. While the special leave petition is not yet examined and leave itself is not given, we do not find it proper to admit and keep this appeal pending in this Court on the premise of a special leave petition being pending examination by the Supreme Court and would rather dismiss the appeal at the admission stage itself following the Judgment of the earlier Division Bench of this Court in the case of Sabari Enterprises (supra)."

05. May be it is true that Hon'ble jurisdictional High Court had followed its earlier judgment in the case of CIT v. Sabari Enterprises (298 ITR 141), which dealt with an issue if employers' contribution. Nevertheless, we are

of the opinion that this Tribunal being an inferior forum to the High Court, has to follow the judgment of Hon'ble jurisdictional High Court. CIT (A) was justified in allowing the claim of the assessee. We do not find any reason to interfere.

06. In the result, appeal of the Revenue stands dismissed.
Order pronounced in the open court on 27th day of November, 2015.

Sd/-

(VIJAYPAL RAO)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar