

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.399/Mds/2017
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Jayem Automotives Pvt. Ltd.,
No.2, Ondipudur Roa,
Singanallur,
Coimbatore-641 005.

Vs. The Asst. Commissioner of
Income Tax, Corporate
Circle-2, Coimbatore,
(Previously DCIT, Crop.
Circle-2, CBE)

[PAN: AAACJ 8290 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mrs.Nitya Sankaran, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr.Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.04.2017

घोषणा की तारीख /Date of Pronouncement

: 08.06.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 30.11.2016 of Commissioner of Income Tax (Appeals)-1, Coimbatore, in Appeal No.28/16-17 for the AY 2013-14 and raised the following grounds:

1. The order of the Honourable Commissioner of Income Tax (Appeals) is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.

2. a) The Honourable Commissioner of Income Tax (Appeals) erred in concluding that the due date for remitting the employee's contribution is covered by explanation to section 36(1)(va) and not by explanation to section 43B.

b) The Honourable Commissioner of Income tax (Appeals) ought to have followed the decision of the Jurisdictional High Court, where there are conflicting judgments rendered by Jurisdictional and Non-Jurisdictional High Courts.

In view of the above grounds and such other additional grounds as may be adduced at the time of hearing with the leave of the Honourable Income Tax Appellate Tribunal, the appellant prays before the Honourable Income Tax Appellate Tribunal that;

- a) The Order of the Honorable Commissioner of Income Tax (Appeals) upholding the action of the learned assessing officer denying the claim u/s.43B be set aside,
- b) Directions be given to the learned Assessing Officer to treat the remittance made by the appellant towards employee's contribution as paid within the due date and allow the claim u/s.43B, and
- c) Such other consequential orders may be passed as the Honourable Income Tax Appellate Tribunal may deem fit to render justice.

2.0 All the grounds of the appeal are related to the belated payment of PF & ESI to the tune of Rs.48,79,388/- to the respective fund accounts. The AO brought the above amount to tax since the amounts were remitted to the respective accounts beyond the due date prescribed under PF & ESI acts. The details of deduction and the date of remittance to the respective accounts are furnished as under:

7.1 On a perusal of the details filed, it is noticed from the Annexure to 3CD report that the assessee company had delayed the remittance of Provident Fund & ESI collected from its employees during the following months:

S.No.	Name of the Fund	Amount	Actual date of remittance	Due Date for Remittance
1	PF	Rs.4,31,880	21-05-2012	15-05-2012
2	PF	Rs.4,63,383	21-06-2012	15-06-2012
3	PF	Rs.5,34,327	21-08-2012	15-08-2012
4	PF	Rs.5,71,367	21-09-2012	15-09-2012
5	PF	Rs.6,02,736	23-11-2012	15-11-2012
6	PF	Rs.5,90,893	24-12-2012	15-12-2012
7	PF	Rs.6,00,633	31-01-2013	15-01-2013
8	PF	Rs.6,04,078	21-03-2013	15-03-2013
9	ESI	Rs.51,425	28-06-2012	20-06-2012
10	ESI	Rs.54,688	23-07-2012	20-07-2012
11	ESI	Rs.57,488	31-08-2012	20-08-2012
12	ESI	Rs.63,840	27-09-2012	20-09-2012
13	ESI	Rs.64,912	26-11-2012	20-11-2012
14	ESI	Rs.62,024	24-12-2012	20-12-2012
15	ESI	Rs.63,448	02-02-2013	20-01-2013
16	ESI	Rs.62,266	28-03-2013	20-03-2013
Total		Rs.48,79,388		

3.0 The Ld.CIT(A) confirmed the addition as under:

6. As regards the balance amount of Rs.44,47,508/- which was not paid within the due date as prescribed in Section 43B of the Income Tax Act, 1961. The employees' contribution is covered by Explanation 36(1)(va). The Hon'ble High Court in the case of CIT Vs Gujarat State Transport Corporation (41 taxmann.com 100 (Guj) and court in the case of CIT Vs Merchem Ltd (378 LTR 443) have specifically held that employees contribution not credited in the specified account within due date as provided under relevant statute cannot be allowed. In view of the detailed decisions rendered by the Gujarat High Court and the Kerala High court as well as the CBDT Circular No.22/2015 dated 17.12.2015 wherein the CBDT has clarified that the said Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by Section.36(1)(va) of the Income Tax Acts 1961, the amount of Rs.44,47,508/- as detailed by the Assessing Officer in the assessment order stands confirmed in the hands of the appellant.

4.0 We heard the rival submissions and perused the material placed before us.

Though the assessee has remitted the amounts beyond the prescribed due dates of PF & ESI Acts, the assessee has remitted the amounts before filing the return of income and before the due date of filing the return of income. This issue is squarely covered in favour of the assessee by the Hon'ble jurisdictional High Court in the case of CIT v. Industrial Securities & Intelligence India Pvt. Ltd. (2015) 7 TML 1063 Madras HC.

5.0 Respectfully following the decision of the Hon'ble jurisdictional High Court, we allow the appeal of the assessee and set-aside the orders of the lower authorities.

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

Order pronounced in the Open Court on June 08, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 08, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF