

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK  
'SMC' BENCH, CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.126/CTK/2017**  
Assessment Year : 2011-12

Orissa Pisciculture Corporation Ltd., Plot No.D, Nayapali, Bhubaneswar.	Vs.	ITO, Ward 2(1), Bhubaneswar.
PAN/GIR No. AAACO 6404 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shr Niranjan Mishra, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 01 /08/ 2017**  
**Date of Pronouncement : 04 /08/ 2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 18.11.2016, for the assessment year 2011-12.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the order of the Assessing officer disallowing deduction of employee's share of EPF and ESI amounting to Rs.13,27,148/- on the ground that same was not deposited to the PF and ESI authorities within the due date prescribed under the respective Act.

3. The brief facts of the case are that the Assessing Officer found that during the year under consideration, employee's contributions to EPF and ESI amounting to Rs.13,27,148/- were not paid to the respective

authorities within the due date as prescribed under the Act but were deposited later on as under:

EPF (Account No 134368)  
Code -OR2655

MONTH	EMPLOYEES' SHARE	DATE OF DEPOSIT
April 2010	93326	06.07.2010
May2010	90130	21.07.2010
June 2010	94067	19.08.2010
July 2010	99656	06.09.2010
August2010	86176	22.09.2010
September 2010	90829	25.10.2010
Jan2011	90690	22.02.2011
Total	644874	

Code -OR3020

MONTH	EMPLOYEES' SHARE	DATE OF DEPOSIT
April 2010	93115	06.07.2010
May2010	87500	21.07.2010
June 2010	87653	19.08.2010
July 2010	91076	06.09.2010
August2010	86388	22.09.2010
September 2010	102571	25.10.2010
January 2011	98744	22.02.2011
Total	647647	

ESI Contribution

St. Mo	MONTH	EMPLOYEES' SHARE	DATE OF DEPOSIT
1.	April 2010	3782	29.06.2010
2.	May2010	3661	22.07.2010
3	June 2010	3608	17.08.2010
4	July &August2010	8085	29.09.2010
5	September 2010	3292	29.10.2010
6	October 2010	3230	26.11.2010
7	Nov 2010	3406	23.12.2010
8	Jan2011	3177	28.02.2011
9	Feb2011	2986	31.03.2011
	Total	35,227	

4. Therefore, he added Rs.13,27,148/- to the income of the assessee under section 43B r.w.s 2(24)(x) of the Act.

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

6. Before me, Id A.R. of the assessee argued that employee's contribution to PF and ESI was allowable deduction to the assessee if the same was deposited within the due date of filing the return of income u/s.139(1) of the Act. He submitted that it will be observed from the assessment order that the payments are made by the assessee before due date of filing the return of income u/s.139(1) of the Act and, therefore, the deduction should be allowed.

7. Ld D.R. supported the orders of lower authorities.

8. I have heard rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, it is not in dispute that the employees' contributions to PF and ESI were deposited by the assessee before due date of filing the return of income u/s.139(1) of the Act. The Hon'ble Delhi High Court in *CIT Vs. AIMIL Limited [2010] 321 ITR 508 (DEL)* has held that the employees' contribution towards EPF and ESI etc. deposited after the due date but before the time allowed for filing the return u/s.139(1) will not call for any disallowance u/s.36(1)(va). Therefore, I set aside the orders of lower authorities and delete the disallowance of employees contribution to PF and ESI of Rs.13,27,148/-- and allow this ground of appeal of the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 04/08/2017.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 04/08/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant : Orissa Pisciculture Corporation Ltd., Plot No.D, Nayapali, Bhubaneswar
2. The Respondent. ITO, Ward 2(1), Bhubaneswar.
3. The CIT(A) -1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**