

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No. 724/Hyd/2016
Assessment Year: 2011-12

GDC Advertising Pvt. Ltd.,
Hyderabad.

Dy. Commissioner of
Income-tax, Circle – 2(3)
Hyd.

PAN – AAACG 7409A

Appellant

Respondent

Assessee by: Shri S. Rama Rao
Revenue by: Smt. Suman Malik

Date of hearing: 18/01/2018
Date of pronouncement: 24/01/2018

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal, filed by the assessee against the order of CIT(A) - 2, Hyderabad, dated 29/01/2016, relates to the AY 2011-12. CIT(A) has dismissed the appeal of the assessee due to non-appearance on the date of hearing. It is noticed from his order that CIT(A) has given number of opportunities.

2. Before us, the Id. AR of the assessee submitted a letter claiming to be submitted before CIT(A) seeking adjournment on the date of hearing. However, this letter does not contain any confirmation of such submission, we cannot accept the evidence submitted before us. However, CIT(A) has dismissed the appeal on merits also.

3. Ld. AR brought to our notice that in this AY there were two issues, viz., i) relating to commission payment to agencies

and ii) relating to delay in remittance of PF. He submitted that in earlier AY similar issue of payment of commission was raised by the assessee in AY 2010-11, when assessee appealed against the order of AO before the ITAT, the ITAT in its order in ITA No. 1690/Hyd/2013, dated 16/05/2014 (refer page 42 of paper book) remitted the issue back to the file of the AO for necessary enquiry with the concerned department/PSUs to find out the genuineness of the payment towards commission. Accordingly, the then AO, verified the issue and allowed the claim of the assessee in AY 2010-11 by passing a consequential order, which is placed on record at pages 46 to 48 of the paper book.

4. On the other hand, Id. DR objected to the submissions of Id.AR and submitted that some of the payments were made to employees also.

5. Considered the rival submissions and perused material on record. We find that similar payments were made in AY 2010-11 and the coordinate bench of this Tribunal has remitted this issue back to the file of the AO to make necessary enquiry for the payment of commission and, the then AO has verified the issue in detail, which was discussed in the consequential order passed by him dated 30/12/2016. We find that the payments were made to the similar agencies in current AY also. Since the AO's predecessor has made enquiries on the payment of commission and collected the detailed information from agencies u/s 133(6) of the Act, we are inclined to accept the contention of the assessee and allow the ground raised by the assessee.

5.1 With regard to delay in payment of PF, we find that the assessee has made payment relating to PF beyond the due

date as stipulated in the PF Act, with a delay of few days, but, remitted the same before filing of return of income. The coordinate benches of Tribunal have consistently followed the decision of the Hon'ble Supreme Court in the case of Alom Extrusions 319 ITR 306 wherein it was held that the contributions to P.F. and ESI are allowable under section 43B of the Act if they are paid before the due date of filing of the return of income and allowing the payments towards PF, if they are paid before filing of the return of income. Therefore, we allow this ground of appeal of the assessee as the assessee has remitted the payments towards PF before filing of the return of income.

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

Pronounced in the open court on 24th January, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 24th January, 2018

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Copy forwarded to:

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2. DCIT, Circle – 2(3), IT Towers, AC Guards, Hyderabad
3. CIT(A) - 2, Hyderabad
4. Pr.. CIT - 2, Hyderabad
5. The DR, ITAT, Hyderabad
6. Guard File