

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER**

**ITA No.1297/Hyd/2017
Assessment Year: 2013-14**

Swapna Health Care,
Hyderabad.
PAN- AACFS9098Q

vs. ACIT, Circle-6(1),
Hyderabad.

(Appellant)

(Respondent)

Assessee by : Shri V. Sivakumar
Revenue by : Shri K. Gopala Krishna

Date of hearing : 19-01-2018
Date of pronouncement : 24-01-2018

ORDER

PER P. MADHAVI DEVI, J.M.:

This is assessee's appeal for the A.Y 2013-14, the assessee is aggrieved by the order of the CIT(A)-6, Hyderabad, dated 26-04-2017 in confirming the disallowance of Rs. 1,84,406/- towards delayed payment of employees contributions of PF and ESI to the Government account, beyond the due dates under the respective Acts.

2. Brief facts of the case are that the assessee, a partnership firm, furnished its return of income for the A.Y 2013-14 electronically on 01-11-2013 admitting total income of Rs. 3,27,28,570/-. During the assessment

proceedings u/s 143(3) of the IT Act, the A.O observed that the assessee has recovered a sum of Rs. 5,61,281/- and Rs. 1,60,916/- from its employees being their contribution towards PF and ESI respectfully. Further, he observed from Annexure-II of the 3CD report that the assessee has remitted the amounts belatedly the payment of PF to the tune of Rs. 1,55,413/- and payment to ESI to the tune of Rs. 28,993/-. As the payment was made by the assessee after due dates under the respective accounts and even after the grace period, the A.O disallowed the same under 36(1)(va) of the IT Act, and added it to the income returned by the assessee. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O and the assessee is in further appeal before.

3. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted the details of the employees share of contributions to PF and ESI which have been disallowed by the A.O. and submitted that the delay in remitting the amounts in Government account is only of a few days and therefore, it should not have been disallowed. Further, he submitted that the issue is covered in favour of the

assessee by the Coordinate Bench of this Tribunal in the case of M/s GVK Technical and Consultancy P. Ltd., in ITA No. 1248/HYD/2015 wherein the Tribunal has held that such payments are allowed if they are remitted before filing of the return of income. A copy of the said order is also filed before us.

4. The Ld. DR supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that the following employees share of contribution to PF and ESI have been disallowed:

Details of Employee's share of contributions to PF disallowed:

S.No	Relevant month	Amount	Due date	Date of payment
1	July, 2012	35,581	20-08-2012	21-08-2012
2	January 2013	60,528	20-02-2013	11-03-2013
3	February 2013	59,304	20-03-2013	23-03-2013
Total		1,55,413		

Details of Employee's share of contributions to ESI disallowed:

S.No	Relevant month	Amount	Due date	Date of payment
1	January, 2013	14,666	21-02-2013	27-02-2013
2	February 2013	14,327	21-03-2013	23-03-2013
Total		28,993		

5.1. As seen above, the delay ranges between one day to one week in most of the cases and only in the case of PF contribution for the month of January 2013 it is delay by a period of nearly 20 days. But all of them have been remitted before the due date of the filing of the return of income. The Coordinate Bench of this Tribunal, in the case of M/s GVK Technical and Consultancy P. Ltd. (supra), has held that the decision of the Hon'ble Supreme Court in the case of Alom Extrusions 319 ITR 306 is applicable to the employees contribution to PF and ESI as well. For the sake of ready reference the relevant portion is reproduced hereunder:

4. *Having regard to the rival contentions and the material on record, we find that the Hon'ble Supreme Court in the case of Alom Extrusions 319 ITR 306 has 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. Thereafter, the issue arose as to whether the decision of Alom Extrusions (cited supra) was applicable only to the employer's contribution and not to the employees contribution. Various High Courts have held that the decision of Hon'ble Supreme Court in the case of Alom Extrusions (cited supra) is applicable to both the employer's as well as employees' contribution to P.F. and ESI. The respective High Courts, in the following cases, have held that the employees contribution is also an allowable deduction, provided, it is paid before the due date of filing of the return.*

(i) [CIT vs. Sabari Enterprises](#) (2007) 298 ITR 141 (Kar.).

(ii) *Magus Customers Dialog P. Ltd.*, (2015) 371 ITR 242 (Kar.)

(iii) *Yum Restaurant India P. Ltd.*, (2015) 371 ITR 139 (Del.)

(iv) [CIT vs. Nipso Poly Fabriks Ltd.](#), (2013) 350 ITR 327 (HP)

(v) [CIT vs. Nuchem Ltd.](#), (2015) 371 ITR 164 (P&H).

4.1. We find that the Coordinate Bench of this Tribunal in the case of *VBC Industries Limited, Hyderabad vs. DCIT, Circle-3(3), Hyderabad in ITA.Nos.143 & 144/H/2013 etc.*, dated 08.05.2015 and also in the case of *M/s. Veljan Denison Limited, Hyderabad vs. Addl. CIT, Range-3, Hyderabad in ITA.No.1251/Hyd/2015* dated 16.12.2015, has followed the Hon'ble Karnataka, Rajasthan and Himachal Pradesh High Courts to hold that the contribution of the employees contribution to P.F. and ESI is also allowable if it is paid before the due date of filing of the income tax return. In the case before us, we find that the assessee has filed its return of income on 28.09.2012 i.e., before the due date of filing of the return of income while the payments were made by 05.01.2012. Therefore, the above judgments are applicable to the facts of the case before us and we do not see any reason to interfere with the order of the Ld. CIT(A). Accordingly, Revenue's appeal is dismissed.

5.2. Since the facts and circumstances of the case before us are similar, respectfully following the above decision, the grounds of the appeal of the assessee are allowed.

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

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

Sd/-

(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 24th January, 2018

KRK

- 1 Swapna Health Care, 6-3-1111/19, Begumpet, Hyderabad.
- 2 ACIT, Circle-6(1), Hyderabad.
- 3 CIT(A)-6, Hyderabad
- 4 Addl.CIT, Range-6, Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File