

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1086/AHD/2015
(निर्धारण वर्ष / Assessment Year : 2010-11)

CB Doctor Ventilators Pvt. Ltd., 3607-3608, GIDC Estate, Phase – IV, Vatva, Ahmedabad – 382 445	बनाम/ Vs.	ITO, Ward – 1(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCC 3410 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	--None--
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Singh, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	29/01/2018
घोषणा की तारीख/Date of Pronouncement	02/02/2018

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad, vide Appeal No.CIT(A)-VI/Wd-1(3)/148/2013-14 dtd. 18/02/2015 for the Assessment Year (AY) 2010-11.

2. Assessee has taken following Grounds of appeal:

“Your appellant being dissatisfied with the order passed by the learned Commissioner of Income Tax (Appeals)-1, Ahmedabad presents this appeal against the same on the following amongst other grounds:

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1. (a) *The learned Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming disallowance of Rs.2,87,477/- and Rs. 22,076/- being the amounts of employees' Contribution to Provident Fund and Employees' State Insurance Contribution which were belatedly paid but before the end of the relevant previous year and also before the due date for filing the return of income.*

(b) *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in confirming the impugned disallowance by invoking the provisions of Section 36(1)(va) without appreciating the fact that such expenditure is fully allowable as per the provisions of Section 43B and explanation there-under.*

(c) *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in confirming the impugned disallowance in utter disregard to the ratio of the judgments of the Supreme Court, High Court and ITAT in following judicial pronouncements:*

- a) *CIT vs. Vinay Cement Company Limited (SC) 213 CTR 268*
- b) *CIT vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC)*
- c) *CIT vs. Lakhani Rubber Works 326 ITR 415 (P&H)(2010)*
- d) *Hindustan Organics Limited (Tax Appeal No.399 of 2012) Bombay High court*
- e) *Essae Teraoka Private Limited [(2014) 266 CTR (Kar.) 246]*
- f) *Precision Products vs. ACIT (ITA No. 4/Ahd/2011)(Ahd)(2012)*
- g) *CIT v. P.M. Electronics Limited. 15 DTR 258 (Delhi High Court)*
- h) *CIT v. AIMIL Limited & Ors. (2010) 35 DTR (Del) 68 (Delhi High Court)*
- i) *CIT v. ANZ Information Technology 318 ITR 123 (Karnataka)*
- j) *CIT v. Nipso Poly Fabrics Pvt. Ltd. 84 DTR 424 (H.P. High Court)*
- k) *Spectrum Consultants (India) Pvt. Ltd v. CIT 215 Taxman 597 (Karnatka High Court)*

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2. *The learned Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming disallowance of Rs.24,220/- made by the AO by invoking the provisions of Section 40A(3) of the I.T. Act on account of payment made in cash to Shri Kantilal Zaveri on 07/12/2009 towards expenditure, in exceptional circumstances.*

It is therefore prayed that the disallowance made by the learned AO of Rs.24,220/- may please be deleted.

3. (a) *The learned Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming disallowance of Rs.6,16,371/- made by the AO out of expenditure on payment of commission to C. Doctor India Private Limited.*

(b) The learned Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming impugned disallowance of Rs. 6,16, 371/- made by the AO out of expenditure on payment of commission to C. Doctor India Private Limited on the alleged ground that no tax was deducted at source from such payments and therefore the same is disallowable u/s.40(a)(ia) which is factually incorrect. This observation of the CIT(A) is incorrect as the AO in the course of assessment proceedings has verified the deduction of tax at source from payments made on account of such expenditure and was fully satisfied that there was no failure to make TDS.

It is therefore prayed that the disallowance made by the learned AO of Rs.6,16,371/-may please be deleted.

4. *The appellant craves liberty to add/alter/amend any ground at the time of hearing of the appeal.”*

3. The relevant facts as culled out from the materials on record are as under:-

The appellant is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture and sale of

industrial ventilator fans. In respect of its business, the appellant-company had maintained books of accounts systematically and regularly in accordance with the provisions of Income Tax Act and Companies Act.

3.1 For the assessment year under appeal, the appellant-company filed its Return of Income on 15.10.2010 declaring total income at Rs.67,45,820/-. The said Return was processed u/s.143(1) accepting the income as returned. The appellant's case came to be selected for scrutiny and notice u/s. 143(2) was issued on 29.09.2011.

3.2 In response to the notices issued, the appellant caused appearance before the AO and furnished all the details and information as called for by him, to his fullest satisfaction. The appellant has also furnished copies of the audited Profit & Loss Account, Balance Sheet and also the Auditor's Report in Form No.3CA and 3CD. The last hearing of the appellant's case was held on 22/03/2013 when the AO through order-sheet entry asked the A.R. to show cause why the foreign travel expenses of Rs.2,01,140/- and commission of Rs.6,16,371/- paid to C. Doctor India Pvt. Ltd. should not be deleted. Without affording any reasonable opportunity to the appellant for explaining the aforesaid two items, the AO passed the assessment order u/s.143(3) on the very same day i.e. 22/03/2013, determining the total income at Rs.79,86,860/- as against returned income of Rs.67,45,820/-. In the said order, the AO has made the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Late payment of Employees' contribution to Provident Fund u/s. 2(24) (x) r.w.s. 36(l)(va)	2,87,477
2.	Late payment of Employees' contribution to ESIC u/s.43B	22,076
3.	Disallowance u/s. 40A (3)	24,220
4.	Disallowance of expenditure on hospitality	40,000
5.	Disallowance of foreign travel expenses	2,01,140
6.	Disallowance of expenditure on telephone bill	49,574
7.	Disallowance of commission expenses	6,16,371
8.	Total	12,41,038

3.3 The appellant filed appeal against the assessment order and addition made therein. The Commissioner of Income Tax (Appeals)-1, Ahmedabad vide his appellate order no.CIT(A)-VI/Wd-1(3)/148/2013-14 Now-60/CIT(A)-1 dated 18/02/2015 adjudicated the appeal. In respect of additions made at Sr. Nos. 1, 2, 3 and 7 referred to above, the learned CIT(A) confirmed the additions/disallowance made by the AO and the remaining items of addition on account of hospitality, foreign travel expenses and telephone expenses were deleted by the learned CIT(A).

4. Now appeal is before us.

5. We have gone through the relevant record and impugned order. So far as ground no.1 is concerned. A perusal of the audit report furnished in

the form 3CD it was noticed that the employees' contribution to PF was not remitted within due date prescribed under the law:

Sr. No	Months	Employees' cont. to PF	Due Date	Payment Date
1.	April' 2009	48979	20.05.2009	22.09.2009
2.	May' 2009	51330	20.06.2009	22.09.2009
3.	June' 2009	53000	20.07.2009	22.09.2009
4.	July' 2009	57151	20.08.2009	01.10.2009
5.	August' 2009	76977	20.09.2009	
	Total	287477		

5.1 Since the payments of employees' contribution to PF was not remitted within due date or the grace period as extended under the relevant Act. Hon'ble Jurisdictional High Court had decided this kind of ground against the assessee in the matter of **CIT vs. Gujarat State Road Transport Corporation**; relevant Para of the same is reproduced here as under:

"Section 43B, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed on actual payment (Employee contribution) - Whether where an employer has not credited sum received by it as employees' contribution to employees' account in relevant fund on or before due date as prescribed in Explanation to section 36(1)(va), assesses shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 43B i.e., prior to filing of return under section 139(1) - Held, yes - Assessee State transport corporation collected a sum being provident fund contribution from its employees - However, it had deposited lesser sum in provident fund account - Assessing Officer

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disallowed same under section 43B - However, Commissioner (Appeals) deleted disallowance on ground that employee, contribution was deposited before filing return - Whether since assessee had no deposited said contribution in respective fund account on date as prescribed in Explanation to section 36(1)(va), disallowance made by Assessing Officer was just and proper - Held, yes [para 8] [In favour of revenue]"

5.2 Respectfully following the above said judgment of Gujarat High Court, we are not inclined to give any kind of relief to the appellant. Therefore, this ground is dismissed.

6. So far as Ground No.2 is concerned. On verification of the ledger account of miscellaneous expenses furnished along with submissions, it was noticed that Assessee Company has made cash payment of Rs.24,220/- to Shri Kantilal Zaveri on 07/11/2009. Thereafter, AO issued the show-cause notice as to why expenses of Rs.24,220/- made towards misc. expenses should not be disallowed as the same was not paid by account payee cheque or draft. Reply filed by assessee could not convince the authorities below. Hence, an amount of Rs.24,220/- was confirmed.

6.1 We have gone through the relevant record and impugned order. We are not convinced with the reply of the assessee that payment of Kantilal Zaveri made in exceptional circumstances is not convincing as appellant has not clarified that how exceptional circumstances were there at the time of making cash payment of Rs.24,220/-. Therefore, we dismiss this ground of appeal of the assessee.

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7. So far as ground no.3 regarding confirmation of disallowance of Rs.6,16,371/- is concerned. It was noticed that assessee company has made a payment of Rs.6,16,371/- towards commission on sale of Fans to BHEL. In this regard, vide notice dated 08/03/2013 the assessee company was asked to explain the necessity to pay such commission. In this regard, appellant stated before the lower authorities as regard to payment of commission of sale of Fan to BHEL, It is clarified that commission has been paid @5 to the party for securing sale orders worth Rs.1,23,27,422/- of commission has been made in consideration of the services rendered by the person in procuring the orders, without whose service, the assessee company could not have procured the orders from BHEL. When show-cause notice was issued to the appellant, has not given any reply or explanation in this regard. Since assessee has been failed to give any reply or explanation with regard to commission payment of Rs.6,16,371/-. In our considered opinion, this expenditure was rightly disallowed by the authorities below. Therefore, we dismiss this ground of appeal.

8. In the result, appeal filed by the assessee is dismissed.

This Order pronounced in Open Court on	02/02/2018
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 02/02/2018

Priti Yadav, Sr.PS

Sd/
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad