

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D'(SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 2344/Mds/2017
निर्धारण वर्ष /Assessment year : 2013-2014.

The Income Tax Officer, **Vs.** M/s. Quasar Consultancy Pvt. Ltd,
Ward 5(3) 33, Balammal building,
Chennai 1st floor, Burkit Road, T.Nagar,
Chennai 600 017.

(अपीलार्थी/Appellant) [PAN AAACQ 0062D]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Sagadevan, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. N. Vijayakumaran, CA

सुनवाई की तारीख/Date of Hearing : 04-1-2018
घोषणा की तारीख /Date of Pronouncement : 08-1-2018

आदेश / ORDER

Revenue in this appeal aggrieved on deletion of disallowance made by the Id. Assessing Officer u/s.36(1) (va) r.w.s. 2(24) (x) of the Income Tax Act, 1961 (in short "the Act").

2. Ld. Departmental Representative submitted that the disallowance was made for delayed remittances of employees contribution towards ESI and PF. According to him, by virtue of judgment of Hon'ble Apex Court in the case of CIT vs. Alom Extrusions Ltd, 319 ITR 306 such claim could not be allowed.

- 3.** Per contra, Id. Authorised Representative submitted that delayed remittances towards ESI and PF was eligible for deduction by virtue of judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. M/s. Industrial Security & Intelligence India Pvt. Ltd (Tax Case (Appeal) Nos.585 and 586 of 2015, dated 24.07.2015)*.
- 4.** Ad libitum reply of the Id. Departmental Representative was that Circular No.22/2015, dated 17.12.2015 of Central Board of Direct Taxes did not give room for the type of interpretation canvassed by the Id. Authorised Representative.
- 5.** I have considered the rival contentions and perused the orders of the authorities below. It is not disputed that a sum of Rs.39,05,049/- employees contribution towards PF/ESI was remitted by the assessee prior to the last day of filing of return through after the due date mentioned in the respective amendments. Their lordships in the case of *M/s. Industrial Security & Intelligence India Pvt. Ltd (surpa)* had held as under at paras 5 & 6 of its judgment.

'5. We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, whereby, the Supreme Court held that omission of second proviso to Section 43B and amendment to first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively, i.e., with effect from 1.4.1988 i.e., the date of insertion of first proviso. The Delhi High Court in the case of CIT V. Amil Ltd. reported in 321 ITR 508 held that if the assessee had deposited employee's contribution towards Provident Fund and ESI after due date as prescribed under the relevant Act, but before the due date of filing of return under the Income Tax Act, no disallowance could be made in view of the provisions of Section 43B as amended by Finance Act, 2003.

6. In the present case, the assessee had remitted the employees contribution beyond the due date for payment, but within the due date for filing the return of income. Hence, following the above-said decisions, we find no reason to differ with the findings of the Tribunal. Accordingly, we find no question of law much less any substantial question of law arises for consideration in these appeals. Accordingly, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed”.

Considering the above view taken by the Jurisdictional High Court, I am of the view that Id. Commissioner of Income Tax (Appeals) was justified in allowing the claim of the assessee. Hon'ble Jurisdictional High Court had also considered the judgment of Apex Court in the case of *Alom Extrusions Ltd (supra)* while making the above observations. In the circumstances, I do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

6. In the result, appeal of the Revenue stands dismissed.

Order pronounced on Monday, the 8th day of January, 2018, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: January, 2018

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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