

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 973 & 974/JP/2017
निर्धारण वर्ष/Assessment Year : 2002-03 & 2003-04

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Vidyut Bhawan, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR 7436 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri L.R. Meena (CIT)

सुनवाई की तारीख / Date of Hearing : 20/02/2018
उदघोषणा की तारीख / Date of Pronouncement: 23/02/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These appeals by the Revenue are directed against two separate orders of CIT (A), Bikaner both dated 29.08.2017 for the assessment years 2002-03 & 2003-04 respectively. The Revenue has raised the common grounds in these appeals as under:-

(i) Whether on the facts in the circumstances of the case and in law the Id. CIT(A) was justified in deleting the addition of Rs. 5,28,47,010/- made by the AO for depositing the employees

contribution to PF & ESI beyond the prescribed time limit provided in respective Act.

(ii) Whether on the facts in the circumstances of the case and in law the Id. CIT(A) was justified in holding that employee's contribution to PF & ESI are governed by the provision of section 43B and not by section 36(1)(va) r.w.s. 2(24)(x) of the I.T. Act.

(iii) The appellant craves its rights to add, amend, alter any of the grounds on or before hearing."

2. The only common issues raised in these two appeals by the Revenue is regarding the disallowance made by the AO in respect of employee's contribution to PF & ESI beyond the prescribed time limit provided in respective Acts but before the due date of filing the return of income which was deleted by the Id. CIT(A).

3. We have heard Id. DR as well as Id. AR and considered the relevant material on record. At the outset we note that this issue is now covered by the decision of Hon'ble jurisdiction High Court in case of CIT vs. State bank of Bikaner & Jaipur 99 DTR 131 as well as the decision in case of CIT Jaipur Vidyut Vitran Nigam Ltd. 98 DTR 105. The Id. CIT(A) has considered and decided this issue by following decisions of Hon'ble jurisdiction High Court in para 2.3 is as under:-

" 2.3. I have considered the facts of the case and the submission made. It is seen that the assessee has deposited the contribution towards CPF, GPF, EPF and ESI before the due date of filing of

the income tax return. The decision of Rajasthan High Court relied by the Ld. AR supports the case of the appellant wherein it is held that if Employee's contribution towards PF, if paid after the due date under the respective Acts but before filing of return of income U/s 139(1), cannot be disallowed U/s 43B or U/s 36(1)(va) of the Act. During the course of appellate proceedings, the appellant submitted that ESI & PF were deposited with in the Financial year and hence deduction could not be denied in view of decisions of various courts, ratio of which have held that payment of ESI and PF before the due date of filing of return of income is an allowable deduction. On overall appreciation of the facts, I tend to agree with the appellant's claim. The Hon'ble Supreme Court in case of CIT vs. Alom Extrusions Ltd. reported in 319 ITR 306 held that omission of second proviso to sec 43B and the amendment of first proviso by Finance Act, 2003, bringing about uniformity in payment of tax, duty, cess and fee on one hand and contribution to employees' welfare funds on the other, are curative in nature, and thus, effective retrospectively w.e.f. 1-4-88 i.e. the date of insertion of first proviso. It was further held that where Provident Fund and Employees State Insurance Contribution were paid by the assessee before filing of the return and proof of payment was submitted before the Assessing Officer, the amounts were deductible as deduction.

The Hon'ble Delhi High Court in case of CIT vs. Aimil Ltd & Ors. reported in 321 ITR 508 held as under:-

"As soon as employees' contribution towards PF or ESI is received by the assessee by way of deduction or otherwise from the salary/ wages of the employees, it will be treated as 'income' at the hands of the assessee. It clearly follows there from that if the assessee does not deposit this contribution with PF/ESI authorities, it will be tax as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of s.

36(1)(va). Sec. 43B(b), however, stipulates that such deduction would be permissible only on actual payments. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees' contribution is concerned. Deletion of the second proviso has been treated as retrospective in nature and would not apply at all. The case is to be governed with the application of the first proviso. If the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provision are made in the Provident Fund Act as well as the ESI Act. Therefore, the Acts permit the employer to make the deposit with some delays , subject to the aforesaid consequences. Insofar as the I T Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed. - CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268, CIT vs. Dharmendra Sharma (2007) 213 CTR (del) 609 : (2008) 297 ITR 320 (Del) and CIT vs. P. M. Electronics Ltd. (2008) 220 CTR (del) 635 : (2008) 15 DTR (del) 258 followed."

Apart from the above decisions, the following decisions are also applicable on the issue at hand:-

- i. Dy CIT vs. Orbit Resorts (P) Ltd (48 SOT 23 (URO)*
- ii. ACIT vs. Ranabaxy Laboratories Ltd. (2011) 7 ITR (Trib) 161 (DLH)*
- iii. ACIT vs. M/s. Anil Special Steel Industries Ltd. (decision of Jaipur Bench in ITA No. 1100/JP/2011)*

From the above decisions, it is clear that payment or contribution made to the provident fund authority any time before filing of the return for the year in which the liability to pay accrued is an allowable expenditure. Likewise, in the present case, the employees' contribution was deposited by the appellant before due date for filing of return of income, therefore, in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Alom

Extrusions Ltd (supra) and decision of the Hon'ble Delhi High Court in the case of CIT vs. Aimil Ltd & Ors (supra), the payments made before due date for filing of return of income are allowable. The AO is directed to verify the dates of payment of employee's contribution towards PL and ESI and delete the addition made on this account if the payments have been made before the due date of filing of return of income by the appellant. Considering the factual and legal position as discussed above, the AO is directed to verify and allow as per law. This ground of appeal is allowed."

Though the Revenue has not accepted the decision of Hon'ble jurisdiction High Court, however, in view of the binding precedent of the Hon'ble jurisdiction High Court in case of CIT vs. State bank of Bikaner & Jaipur (supra) we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 23/02/2018

Sd/-
(भागचंद)
(Bhagchand)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur

दिनांक/Dated:- 23/02/2018.

*Santosh.

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

1. अपीलार्थी/The Appellant- DCIT, Circle-6, Jaipur.

2. प्रत्यर्थी / The Respondent- M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 973 &974/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar