

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. 978 to 980/JP/2017 & 1011/JP/2017
निर्धारण वर्ष / Assessment Years : 2002-03 to 2005-06

Deputy Commissioner of Income Tax, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Vidyut Bhawan, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR 8312 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Richa Khoda (CIT)
निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 27/02/2018
उद्घोषणा की तारीख / Date of Pronouncement : 27/02/2018

आदेश / ORDER

PER: BENCH

ITA No. 978 to 980/JP/2017 filed by the revenue emanates from the separate orders of the Id. CIT(A), Bikaner dated 30/08/2017 and ITA No. 1011/JP/2017 also filed by the revenue emanates from the order of the Id. CIT(A), Bikaner dated 29/09/2017 for the A.Ys. 2002-03 to 2005-06. In all these appeals, the revenue has taken following grounds of appeal:

Grounds of ITA No. 978/JP/2017

- (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. 16,09,72,970/- made by the AO for depositing the employee's contribution to PF & ESI beyond the prescribed time limit provided in respective Acts.*
- (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."*

Grounds of ITA No. 979/JP/2017

- (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. 9,82,06,710/- made by the AO for depositing the employee's contribution to PF & ESI beyond the prescribed time limit provided in respective Acts.*
- (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."*

Grounds of ITA No. 980/JP/2017

- (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. 10,68,39,650/- made by the AO for depositing the employee's contribution to PF & ESI beyond the prescribed time limit provided in respective Acts.*
- (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) *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. 31,99,182/- made on account of prior period expenses without appreciating the fact that the assessee has failed to produce bills and vouchers amounting to Rs. 31,99,182/- out of Rs. 8,74,66,348/- and that*

dispute is not with regard to year of admissibility but non verifiable is nature of expenditure.”

Grounds of ITA No. 1011/JP/2017

- (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. 11,44,36,494/- made by the AO for depositing the employee’s contribution to PF & ESI beyond the prescribed time limit provided in respective Acts.*
- (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.”*

2. Grounds No. (i) and (ii) of all these appeals are common and against deleting the addition made by the Assessing Officer on account of depositing the employee’s contribution to PF & ESI beyond the prescribed time limit provided in the respective Acts. It is objected by the revenue that the Id. CIT(A) was not justified in holding that the employees’ contribution to PF and ESI are governed by the provisions of Section 43B and not by Section 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961 (in short the Act). The Id. CIT(A) has granted the relief to the assessee by holding as under:

“2.3 I have considered the facts of the case and the submissions 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 PF 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.”

Similar identical findings has also been given by the Id. CIT(A) in the other appeals.

3. The Bench have heard both the sides on this issue. Since this issue is covered by the decision of the Hon'ble Jurisdictional High Court on which the Id. CIT(A) has relied to grant relief to the assessee, therefore, we sustain the order of the Id. CIT(A) on this issue and dismissed the grounds No. (i) and (ii) of all these appeals.

4. In the ground No. (iii) of ITA No. 980/JP/2017, the issue involved is deleting the addition of Rs. 31,99,182/- made on account of prior period expenses. The Id. CIT(A) has granted relief to the assessee by holding as under:

5.2. *I have considered the facts of the case and the submission made. The facts that emerge therefrom are that the assessee company has its units spread at various places in the State of Rajasthan and looking to the volume of the transactions and the activity involved, some expenses remain unadjusted for want of necessary approval. The expenses have been incurred and their genuineness has not been doubted by the AO, considering which such expenditure deserve to be allowed even if pertaining to the prior period as necessary approval for the same came during the year under consideration and without approval it was not possible for the appellant to make the payment.*

It is seen that the Hon'ble ITAT in the various Government Corporation cases has been consistently holding that prior period expense is an allowable expenses as in these organization the expenses are booked only in the year in which approval is obtained. In the case of ACIT, Circle-6 vs. M/s Rajasthan State Seeds Corporation, Jaipur in ITA No. 307/JP/2009, the Hon'ble ITAT while adjudicating this issue has observed and decided the matter as under:-

"From the details we note that the approval for payment of these expenditure were given during the year and therefore the liability crystallized during the year. In view of these facts and the consistent view of this Bench that the liability crystallized on approval of payment, we find no infirmity of Ld. CIT(A) deleting the disallowance."

The similar decision has been given in subsequent years also.

Considering the entire facts and circumstances of the case and the case laws referred by the A/R for the appellant, the disallowance made by the AO is held to be unjustified and the same is deleted. The appellant succeeds on this ground."

5. The Id. CIT DR has submitted that the Id. CIT(A) has allowed the ground of assessee without appreciating the fact that the assessee has not produced any bills and vouchers for amounting to Rs. 31,99,182/-. On the other hand, the Id AR has vehemently supported the order of the Id. CIT(A).

6. After considering the pleadings of both the sides on this issue, we find that the Id. CIT(A) has granted relief to the assessee for the reason

that some of the expenses remained unadjusted for want of necessary approval. The assessee had not submitted any such details. If such details are submitted to Id. CIT(A) then A.O. had not been provided any opportunity. However, before the Bench, no evidence in support of this was available, therefore, considering these facts of issue and in the interest of justice and equity, we restore this issue to the file of the Assessing Officer to be decided de novo. The assessee is directed to produce all necessary documents/evidences before the Assessing Officer to decide the issue on merit.

7. In the result, ITA Nos. 978/JP/2017, 979/JP/2017 & 1011/JP/2017 stand dismissed and ITA No. 980/JP.2017 is partly allowed for statistical purposes only.

Order pronounced in the open court on 27/02/2018.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur

दिनांक / Dated:- 27th February, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- The DCIT, Circle-6, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 978 to 980 & 1011/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar