

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 1282/HYD/2017

Assessment Year: 2006-07

The Deputy Commissioner
of Income Tax,
Circle-2(2),
HYDERABAD

M/s. Granules India
Vs Limited,
HYDERABAD
[PAN: AAACG7369K]

(Appellant)

(Respondent)

For Revenue : Shri M. Naveen, DR
For Assessee : NONE

Date of Hearing : 09-05-2018
Date of Pronouncement : 09-05-2018

ORDER

PER D. MANMOHAN, Vice-President:

This appeal, filed at the instance of the Revenue, is directed against the order passed by the Commissioner of Income Tax (Appeals)-9, Hyderabad and it pertains to AY. 2006-07. Disallowance of a sum of Rs. 31,51,667/-, comprising of employees share of PF and employees share of ESI u/s. 36(1)(va) of the Income Tax Act [Act] paid beyond the stipulated date before the filing of the return of income is the subject matter.

2. In this regard, the Assessing Officer (AO) observed as under:

“7. On perusal of the Annexure-III(a) and III(b) to the Form 3CD, there is a delay in remittance of employees contribution of PF and ESI together to the extent of Rs.31,51,667/- which are disallowable u/s.36(1)(va) of the Act. The delayed remittances are liable to be disallowed u/s.36(1)(va) r.w.s 2(24)(x) of the Act as they are paid well beyond due date. These belated payments are disallowable as per decision of ITAT, Special Bench in case of JCIT vs ITC Ltd (2008-ITOL-128jITAT-Kol-SB). However, the assessee company did not disallow these payments in its computation of income.

7.1 Further, the Gujarat High Court in its recent decision in the case of Gujarat State Road Transport Corporation held that if employees contribution received by the assessee is not credited to the employees' account in the relevant fund or funds on or before the due date mentioned in the Explanation to section 36(1)(va), the assessee shall not be entitled to deduction of such amount in computing the income referred to in section 43B.

7.2 As such, such sums which were not credited by the assessee to the employee's accounts in the relevant fund or funds (Provident Fund and /or ESI Fund) on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the assessee was required as an employer to credit employee's contribution to the employee's account in the Provident Fund Act/ESI are required to be disallowed.

7.3 In view of the above, belated payment of employees' contribution to ESIC and Provident Fund amounting to Rs. 31,51,667/- is treated as income from other sources of the assessee as per the provision of Section 2(24)(x) r.w.s. 36(1)(va) of the Income Tax Act”.

3. Ld.CIT(A) on the other hand observed that payments having been made before the due date of filing of returns of income u/s. 139(1), disallowance cannot be made u/s. 36(1)(va) of the Act. In this regard, we followed the decision of the ITAT Hyderabad Bench in assessee's own case for the AYs. 2007-08 & 2008-09. Aggrieved, Revenue is in appeal before the Tribunal.

4. Ld.DR strongly relied upon the decision of the Hon'ble Kerala High Court in the case of CIT Vs. Merchem Ltd., [378 ITR 443] and also Circular No. 22/2015, dt. 17-12-2015, issued by the CBDT to submit that the decision of the Hon'ble Apex Court in the case of CIT Vs. Alom Extrusions Limited [319 ITR 306] (SC) is limited to the application of Section 43B, whereas in the instant case, Section 36(1)(va) was applied by the AO which is independent on the provisions of Section 43B.

5. None appeared on behalf of the assessee.

6. We have carefully considered the rival contentions and perused the record. Identical issue was decided by the Co-ordinate Bench of the Tribunal to-day i.e., on 09-05-2018 in the case of Annapurna Studios Private Limited in ITA No. 1290/Hyd/2017, wherein we observed as under:

“6. We have carefully considered the rival contentions and perused the record. In the case of Smt. Aruna Jyothi Vedire Vs. Addl. CIT, the Tribunal noticed the conclusion arrived at by the Hon'ble Karnataka High Court in the case of Spectrum Consultants India (P.) Ltd., Vs. CIT [34 Taxman.com 20] (Karnataka) as well as the decision in the case of CIT Vs. Sabari Enterprises [298 ITR 141] to hold that even though payments were made beyond the stipulated period as contemplated under the mandatory provisions of Section 36(1)(va) r.w.s. 2(24) of the Act, no disallowance can be made. In the case of VBC Industries Ltd., (supra) also the Tribunal has considered the decision of the Hon'ble Gujarat High Court as well as the decision of the Hon'ble Himachal Pradesh High Court decision in the case of CIT Vs. Nipso Polyfabriks Ltd., [350 ITR 327] and held that the decision rendered in the case of CIT Vs. Nipso Polyfabriks Ltd., (supra) is one possible view of the matter and hence, no disallowance is called for in the circumstances of the case. In consonance with the view taken, we are of the view that the addition made by the AO u/s. 36(1)(va) deserves to be deleted and we direct accordingly”.

6.1. For the reasons stated therein, we uphold the order of Ld.CIT(A) and dismiss the appeal filed by the Revenue.

Order pronounced in the open court on 9th May, 2018

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated 9th May, 2018

TNMM

Copy to :

- 1. The Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad.*
- 2. M/s. Granules India Limited, 2nd Floor, 3rd Block, My Home Hub, Madhapur, Hyderabad.*
- 3. CIT (Appeals)-9, Hyderabad.*
- 4. CIT(Exemptions)-Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*