

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 972/JP/2017
निर्धारण वर्ष / Assessment Years : 2001-02

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| 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 |

आयकर अपील सं./ ITA. No. 977/JP/2017
निर्धारण वर्ष / Assessment Years : 2001-02

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| The DCIT, Circle- 6, Jaipur. | बनाम Vs. | M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Vidyut Bhawan, Jaipur. |
| स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AABCR8312A | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Roli Agarwal (CIT)

सुनवाई की तारीख / Date of Hearing : 02/05/2018

उदघोषणा की तारीख / Date of Pronouncement : 03/05/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the respective assessees against the orders of Id. CIT(A), Bikaner of even date i.e 30.8.2017 for AY 2001-02. Since common issues are involved, both these appeals were heard together and are being disposed off by this common order. In ITA No. 972/JP/2017, the Revenue has taken the following grounds of appeal 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. 3,53,31,946/- 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) is justified in holding that the payment of Rs. 26,24,224/- to the Gratuity Fund of M/s Rajasthan Rajya Vidyut Karmchari Gratuity Trust is admissible deduction, particularly when the fund is not in the assessee's name and there is no evidence to show that the fund has been created for the benefit of assessee's employees."*
- (iv) *"Whether on the facts in the circumstances of the case and in law the Id. CIT(A) was justified in allowing the claim of Rs. 57,50,000/- on account of bonus payment without appreciating the fact that the same was not claimed by the assessee in return of income."*

(v) *"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. 1,14,85,104/- made on account of disallowance of pension payment by considering the additional evidence without providing opportunity to the AO as per Rule-46A."*

2. Regarding Ground Nos. 1 and 2, briefly the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the contribution towards CPF, GPF & EPF have not been paid to the credit of Government within the time prescribed under the relevant provisions, accordingly, he disallowed an amount of Rs. 3,53,31,946/- u/s 43B of the Act.

3. During the course of appellate proceedings, the assessee relied on the decisions of Hon'ble Rajasthan High in case of **CIT vs. State Bank of Bikaner & Jaipur 99 DTR 131**, **CIT vs. Jaipur Vidyut vitran Nigam Ltd. 98 DTR 105** and **CIT vs. Udaipur Dugdh Utpadak Sahari Sangh Ltd. 98 DTR 109** and submitted that the assessee has deposited the entire CPF, GPF, EPF and ESI before the due date of filing of the return of income. The Id. CIT(A) has observed 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 Id. CIT(A) further observed that the decisions of the Hon'ble Rajasthan High Court relied upon by the assessee supported its case that if employees contribution towards PF, if paid after the due date under the respective Acts but before filing of return of income U/s 139, the same cannot be disallowed U/s 43B or U/s 36(1)(va) of the Act. Thereafter the Id. CIT(A) referred to the decision of Hon'ble Supreme Court in case of **CIT vs. Alom Extrusions Ltd. 319 ITR 306** and directed the AO

to verify the dates of payments 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.

4. During the course of hearing, the Id. DR has submitted that the Department has not accepted the decision of Hon'ble Rajasthan High Court and the same has been challenged before the Hon'ble Supreme Court in case of JVVNL and the issue is currently pending adjudication before the Hon'ble Supreme Court.

5. Per contra, the Id. AR has reiterated the submissions made before the Id. CIT(A) and submitted that the matter is squarely covered by the decisions of Hon'ble Rajasthan High Court.

6. We have heard the rival contentions and perused the material available on record and we do not think that there is any infirmity in the order of the Id. CIT(A) following the decisions of the Hon'ble Rajasthan High Court referred supra and in directing the AO to verify the dates of payment of employee's contribution and delete the same, if the payments have been made before the due date of filing of the return of income. In the result, the grounds taken by the Revenue are dismissed.

7. Regarding ground No. 3, briefly the facts of the case are that the assessee company has contributed an amount of Rs. 26,24,224/- towards gratuity fund and the same was claimed on payment basis. The Assessing Officer however, disallowed the claim of the assessee on the

ground that though the assessee has filed approval granted of M/s Rajasthan Rajya Karmchari Gratuity Trust, it is however, not established whether it will also apply to the case of the assessee company.

8. During the course of appellate proceedings before the Id. CIT(A), the Id. AR has submitted that the gratuity fund of the assessee company is duly approved and a copy of the approval certificate was filed before the Id. CIT(A). It was submitted that the said gratuity trust is for all the five companies formed as a result of unbundling exercise from the erstwhile RSEB. The Id. CIT(A) has returned a finding that the gratuity fund of the assessee company is duly approved and a certificate to this effect has been placed on record. Accordingly, he deleted the disallowance of Rs. 26,24,224/- made by the Assessing Officer.

9. During the course of hearing both the parties reiterated their respective positions taken before the lower authorities. We have considered the rival contentions and perused the material available on record. We do not see any infirmity in the order of Id. CIT(A) where he has returned a finding that the payment has been made to the approved gratuity trust. During the course of hearing, at the pointed question raised by the Bench, the Id AR submitted that the said gratuity trust though called as M/s Rajasthan Rajya Karmchari Gratuity Trust is for all the five companies formed as a result of unbundling exercise from the erstwhile RSEB and the assessee company has contributed to the said trust in relation to its employees. Hence, the findings of the Id

CIT(A) are confirmed and the ground taken by the Revenue is dismissed.

10. Regarding ground No. 4, briefly the facts of the case are that during the course of assessment proceedings, the assessee vide its letter dated nil has claimed deduction towards bonus payment of Rs. 57,50,000/- pertaining to the earlier year on payment basis. However, the AO did not allow the same and there is no discussion thereof in the assessment order. During the course of appellate proceedings, the assessee submitted that by mistake, it did not claim the deduction of Rs. 57,50,302/- in the return of income however, the claim was made and necessary details of actual payment of the bonus were submitted during the course of assessment proceedings. The Id CIT(A) returned a finding that since the payment is made during the year, the same is allowable as deduction u/s 43B of the Act on payment basis.

11. During the course of hearing, both the parties reiterated their respective contentions as made before the lower authorities and after considering the same, we do not see any infirmity in the order of the Id. CIT(A) who has allowed the claim of bonus on payment basis under the provisions of section 43B of the Act. Hence, the ground taken by the Revenue is dismissed.

12. Regarding ground no. 5, briefly the facts of the case are that the assessee has claimed an amount of Rs. 1,14,85,104/- on account of pension payment during the year in respect of its employees. The AO disallowed the same by observing that the pension/superannuation fund

did not have the approval of the competent authority. During the course of appellate proceedings, the assessee submitted a copy of the approval and submitted that the pension fund of the assessee company is duly approved. The Id. CIT(A) has returned a finding that the pension fund of the assessee is duly approved as evident from the certificate produced before him and accordingly deleted the addition made by the AO.

13. During the course of hearing both the parties reiterated their respective positions as taken before the lower authorities. We have considered the rival submissions and perused the material available on record and we do not see any infirmity in the order of the Id. CIT(A) in allowing the claim of pension payment to an approved pension fund. Hence, the ground taken by the Revenue is dismissed.

ITA No. 977/JP/2017

14. In ITA No. 977/JP/2017 in relation to M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., both the parties fairly submitted that facts and circumstances of the case are exactly identical as in *ITA No. 972/JP/2017* and similar grounds of appeal have been taken by the Revenue. Given the fact that the facts and circumstances are identical, our findings and directions as contained in *ITA No. 972/JP/2017* shall apply *mutatis mutandis* to this matter as well. In the result, the appeal filed by the Revenue is dismissed.

In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 03/05/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2018.

***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./ M/s Rajasthan Rajya Vidyut Prasaran 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. 972 & 977/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar