



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 299/CTK/2017
Assessment Year : 2010-2011

Epari Sadashiv Pvt Ltd., Plot No.78, Janpath, Unit-III, Kharavel Nagar, Bhubaneswar	Vs.	DCIT, Corporate Circle1(1), Bhubaneswar
PAN/GIR No.AABCE 6450 A		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri S.K.Pradhan, DR

Date of Hearing : 10/05/ 2018
Date of Pronouncement : 14 /05/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)- 1,Bhubaneswar dated 19.6.2017 for the assessment year 2010-2011.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the disallowance of employees contribution to EPF of Rs.4,56,160/- and ESI of Rs.65,167/- deposited before the due date of filing of return u/s.36(1)(va) read with section 2(24)(x) of the Act.

3. None appeared on behalf of the assessee when the case was called for hearing. Since the appeal can be decided exparte qua the assessee,



we proceed to dispose of the same after hearing Id D.R. and on the basis of materials available on record.

4. The Assessing Officer found that the assessee has not deposited the employee's contribution to provident fund of Rs.4,65,160/- and ESI of Rs.65,167/-, which was deposited beyond the period prescribed in the relevant statute as under:

EPF

Month	Employees' share	Date of deposit
April, 2009	33,134	27.05.2009
May, 2009	40,076	06.07.2009'
June, 2009	39,086	25.07.2009
July, 2009	37,742	11.09.2009
August, 2009	41,052	25.09.2009
September, 2009	47,315	22.10.2009
October, 2009	49,839	25.11.2009
November, 2009	42,292	29.12.2009
December, 2009	43,043	25.01.2010
February, 2010	46,401	22.03.2010
March, 2010	45,180	21.04.2010/
Total	4,65,160	

ESIC

Month	Employees' share	Date of deposit
April, 2009	5,002	27.05.2009
May, 2009	5,704	06.07.2009
June, 2009	5,565	25.07.2009
July, 2009	4,945	01.09.2009
August, 2009	5,625	25.09.2009
September, 2009	6,532	22.10.2009
October, 2009	6,907	25.11.2009
November, 2009	5,803	29.12.2009
January, 2010	6,465	20.02.2010
February, 2010	6,400	23.03.2010
March, 2010	6,219	21.04.2010
Total	65,167	

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer.



6. After hearing Id D.R. and perusing the materials available on record, we find that the Assessing Officer disallowed the payment on the ground that the employee's contributions to EPF and ESI have not been deposited within due date, prescribed in the respective Acts, which was confirmed in appeal by the CIT(A). We find from a perusal of the assessment order that the amount has been deposited by the assessee before the due date of filing the return of income u/s.139(1) of the Act.

7. We find that the Hon'ble Supreme Court in the case of Pr. CIT vs Rajasthan Beverage Corporation Ltd.(supra), has held as under:

"Section 43B, read with section 36(1)(va), of the Income Tax Act, 1961-Business disallowance-certain deduction to be allowed only on `actual payment (PF & ESI construction)- High Court by the impugned order held that amount claimed on payment of PF and ESI having been deposited on or before due date of filing of returns, same could not be disallowed under section 43B or under section 36(1)(va)- Whether SLP against said impugned order was to be dismissed-Held yes (para 2) in favour of assessee.

8. Respectfully following the decision of Hon'ble Supreme Court in the case of Rajasthan Beverage Corporation Ltd(supra), we hold that the learned CIT(A) was not justified in sustaining the aforesaid disallowance representing the employees contribution to EPF and ESIC, where the amounts were admittedly paid before the due date u/s 139(1). We, therefore, set aside the orders of the lower authorities and direct the Assessing officer to delete the addition of Rs.4,65,160/- and Rs.65,167/- and allow the ground of appeal of the assessee.



9. In the result, appeal filed by the assessee is allowed.

Order pronounced on 14 /05/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 14 /05/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Epari Sadashiv Pvt Ltd., Plot No.78, Janpath, Unit-III, Kharavel Nagar, Bhubaneswar
2. The Respondent. DCIT, Corporate Circle1(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack