



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.1312/Mum./2017
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-15(3)(1), Mumbai

..... Appellant

v/s

M/s. Techno Process Equipments (I) Ltd.
C/o M/s. Minhaz & Co., C.As
7/10, Botawala Building
Opp. Horniman Circle, Fort
Mumbai 400 023 PAN – AABCT2398C

..... Respondent

Revenue by : Shri Ram Tiwari
Assessee by : Shri Minhazali N. Ladiwala

Date of Hearing – 02.07.2018

Date of Order – 06.07.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the Revenue is against order dated 25th November 2016, passed by the learned Commissioner (Appeals)-24, Mumbai, for the assessment year 2012-13.

2. The issue in dispute in the present appeal is confined to allowance of assessee's claim of deduction of ₹ 3,46,807, towards payment of employees' contribution to Provident Fund and ESIC.

3. Brief facts are, the assessee a company is engaged in the business of fabricators, engineers and contractors, etc. For the assessment year under dispute, the assessee filed its return of income on 17th August 2012, declaring total income of ₹ 4,19,22,980. During the assessment proceedings, the Assessing Officer while verifying various expenditures debited to the Profit & Loss account found that as per the audit report in Form no.3CD, the assessee has not deposited employees' contribution to Provident Fund and ESIC amounting to ₹ 3,46,807 within the due date prescribed under the relevant Acts. The Assessing Officer, therefore, called upon the assessee to show cause why the deduction claimed should not be disallowed as per section 36(1)(va) r/w section 2(24)(x) of the Income Tax Act, 1961 (for short "*the Act*"). Though, the assessee objected to the proposed disallowance, however, the Assessing Officer rejecting the objections of the assessee disallowed the amount of ₹ 3,46,807. Being aggrieved of such allowance, assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee and following the decision of the Hon'ble Supreme Court in CIT v/s Alom Extrusion Ltd., 319 ITR 306 (SC), the learned Commissioner (Appeals) having found that the employees contribution to Provident Fund and ESIC was

paid within the due date of return of income to be filed under section 139(1) of the Act, allowed assessee's claim of deduction.

5. The learned Departmental Representative relied upon the observations of the Assessing Officer and grounds of appeal.

6. The learned Authorised Representative supported the finding of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. It is evident, the Assessing Officer disallowed the deduction claimed towards employees' contribution to Provident Fund and ESIC on the reasoning that they have not been paid within the time limit prescribed under the relevant Acts, hence, the conditions of section 36(1)(va) of the Act are not fulfilled. However, the Department has not disputed the fact that the employee's contribution to Provident Fund and ESIC were paid by the assessee within the due date prescribed for filing of return of income under section 139(1) of the Act for the impugned assessment year. The Hon'ble Jurisdictional High Court in CIT v/s Hindustan Organics Ltd., [2014] 366 ITR 001 (Bom.) and CIT v/s Ghatge Patil Transports Ltd., [2014] 368 ITR 749 (Bom.), following the decision of the Hon'ble Supreme Court in CIT v/s Alom Extrusions Ltd. (supra) have held that if the employee's contribution to Provident Fund and ESIC is paid before the due date of filing of return

of income under section 139(1) of the Act, no disallowance under section 36(1)(va) of the Act can be made. While doing so, the Hon'ble Jurisdictional High Court interpreting the provisions of section 43B of the Act have held that the first proviso to the said provision which carves out an exception by providing that such payment are to be allowed as deduction if they are paid within the prescribed date of filing of return of income under section 139(1) of the Act, will apply retrospectively. Thus, in view of the aforesaid binding judicial precedents, we do not find any infirmity in the order of the learned Commissioner (Appeals) in allowing assessee's claim of deduction. Grounds raised are dismissed.

8. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 06.07.2018

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.07.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai