

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2595/CHNY/2017
निर्धारण वर्ष /Assessment year : 2014-2015.

The Assistant Commissioner
of Income Tax,
Corporate Circle 5 (2)
Chennai 600 034.

Vs. M/s. R P Telebuy Skyshop
Private Limited,
Tower B, 5th floor,
India Land Tech Park,
No.14, 3rd Main Road,
Ambattur,
Chennai 600 058.

(अपीलार्थी/Appellant)

[PAN AADCR 4633C]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R.V. Aroon Prasad, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Veerabathran
Prasanth, Advocate.

सुनवाई की तारीख/Date of Hearing : 09-07-2018
घोषणा की तारीख /Date of Pronouncement : 09-07-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:-

In this appeal filed by the Revenue, which is directed against an order dated 31.07.2017 of Id. Commissioner of Income Tax (Appeals)-3, Chennai.

2. Grounds taken by the Revenue are reproduced hereunder:-

“1. The order of the Id. Commissioner of Income Tax (Appeals) is contrary to law and facts and circumstances of the case.

2.1 The Id CIT(A) erred in deleting the disallowance u/s 36(1)(va) made by the AO to the tune of Rs.61,21,549/- on employee's contribution towards PF/ ESI on account of belated remittance.

2.2 The Id CIT(A) failed to note that as per the decision of the jurisdictional High Court in the case of CIT Vs Madras Radiators and Pressing Limited (2003) 129 Taxmann 709, the employees' contribution received by the employer would be income in his hands and that would be allowed as permissible deduction under clause (va) of Sec.36(1) in computing the business income u/s 28, provided the assessee credits the same to the relevant fund as per the due dates specified.

2.3 The Id CIT(A) ought to have noted that as per the decision of the Hon'ble Gujarat High Court in the case of CIT II Vs Gujarat State Road Transport Corporation, as per the definition of 'income' as per Sec.2(24)(x), any sum received by the assessee from his employees as contribution to any PF or Superannuation Fund etc., as per the Relevant Acts, is to be treated as income and the employer-assessee is eligible to claim deduction of such amount as per Explanation to Sec.36(1)(v) only when the same is credited into the relevant fund within the due dates specified under those Acts.

2.4 The Id CIT(A) failed to note that in the case of M/s Gujarat State Road Transport Corporation, the Hon 'ble Gujarat High Court has clearly discussed that the Hon'ble Apex Court in the case of Alom Extrusions Limited, never had the occasion to consider the deduction u 1 s 36(1)(va) with respect to employees' contribution and the only controversy before the Supreme Court was with respect to the amendment (deletion) of second proviso to Sec.43B operative w.e.f 1.4.2004 or whether it operates retrospectively w.e.f 1.4.1988?

2.5 The Id CIT(A) failed to note that the Board itself has differentiated between employer's contribution and employees' contribution to funds, vide Board's Circular No. 22/2015 dated 17-12-2015, wherein it has been clarified that the Hon'ble Apex Court's decision in the case of CIT Vs Alom Extrusion Limited, has been accepted with regard to employer's contribution only and does not apply to the claim of deduction under employees' contribution.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored”.

3. Ld. Counsel for the Revenue submitted that Revenue had not accepted the judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Industrial Security & Intelligence India Pvt Ltd. (TCS No.585 & 586 of 2015, dated 24.07.2015)*. According to him, contribution by the employees, towards welfare funds, remitted after due date prescribed in the respective enactments had to be disallowed u/s.36(i) (va) of the Act. Reliance was also placed on CBDT Circular No.22/2015, dated 17.12.2015.

4. Per contra, Id. Authorised Representative strongly supported the order of the Id. Commissioner of Income Tax (Appeals).

5. We have considered the rival contentions and perused the orders of the authorities below. What has been held by Hon'ble Jurisdictional High Court in the case of *Industrial Security & Intelligence India Pvt Ltd. (supra)* is reproduced hereunder:-

'5. We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT vs. Alom Extrusions Ltd, reported in 319 ITR 306, whereby the Supreme Court held that omission of second proviso to Section 43B and amendment to first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively. i.e. with effect from 01.01.1988 i.e the date of insertion of first proviso. The Delhi High Court in the case of CIT vs. Amil Ltd, reported in 321 ITR 508 held that if the assessee had deposited employee's contribution towards Provident Fund and ESI after due date as prescribed under the relevant Act, but before the due date of filing of return under the Income Tax Act, no disallowance could be made in viepw of the provisions of Section 43B as amended by Finance Act, 2003.

6. In the present case, the assessee had remitted the employees contribution beyond the due date for payment, but within the due date for filing the return of income. Hence, following the above said decisions, we find no reason to differ with the findings of the Tribunal. Accordingly, we find no question of law much less any substantial question of law arises for consideration in these appeals.

Hon'ble Jurisdictional High Court had also considered CBDT Circular No.22/2015, dated 17.12.2015 while giving the above judgment. In the circumstances, we do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court at the time of hearing on 9th July, 2018 at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 9th July, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |