

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. 679/JP/2018

निर्धारण वर्ष / Assessment Year :2014-15

M/s Almighty Resources Pvt. Ltd., A-75, Bhagat Singh Colony, Bhiwadi, Alwar (Raj)-301009.	बनाम Vs.	Income Tax Officer, Bhiwadi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKCA 6390 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Balani (CA)
राजस्व की ओर से / Revenue by : Smt. Roshanta Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 21/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 23/08/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28/02/2018 of Id. CIT(A), Alwar for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- "1. The on the facts and circumstances of case and in Law CIT (A) has erred in maintaining the addition to the extent of Rs. 293231.00 on account of delay deposit of Employees Contribution of ESI and EPF.*
- 2. The delay amount of Rs. 123378/- in case of delay of ESI Payment and Rs. 169854/- in case of delay in EPF Payment towards contribution of Employee's has been disallowed; the amount so disallowed has been deposited before the due date of return.*
- 3. The delayed payment in respect of employees' contribution to PF & ESI needs to be given liberal approach in view of the ratio laid down*

by the Hon'ble Delhi High Court in the case of CIT v. P.M. Electronics Ltd.. 220 CTR 635 (Delhi) while relying upon the decision of Hon'ble Apex Court in the case of CIT Vs. Vinay Cement Ltd., 213 CTR (SC) 268, concurred with the view taken by the Hon'ble Madras High Court in Nexus Computer (P) Ltd., 219 CTR (Mad) 54 that employer/ employees' contribution towards provident fund payments made after the due date prescribed under the Employees' Provident Fund Act and Rules made there under but before the due date for furnishing the return of income under sub sec. 1 of sec. 139 of the Act, are allowable under s. 36(l)(va) read with sec. 2(24)(x) and sec. 43B of the Act. Moreover, Hon'ble Apex Court in the case of CIT vs Atom Extrusions Ltd. 319 ITR 306 (SC) held that the omission of the first proviso to section 43B of the Act by the Finance Act 2003, operated, retrospectively, with effect from, April 1, 1988 and not prospectively from April 1, 2004.

4. *The Appellant craves leave to add, amend, modify, or withdraw any of the ground of appeal at the time of hearing."*

2. We have heard the Id. A.R. of the assessee as well as the Id. DR and considered the relevant material on record. During the course of assessment proceedings, the Assessing Officer noted that as per audit report, the assessee has paid P.F. contribution and ESI to the employees after due date of prescribed limit under the respective Act. The Assessing Officer has given the details of the payments made by the assessee in respect of the PF and ESI contribution at page 2 and 3 of the assessment order as under:

ESI

S. No.	Month	Employee's contribution	Due date	Actual date of payment
1.	April, 2013	5054	21/05/2013	21/06/2013
2.	April, 2013	3759	21/05/2013	17/06/2013

3.	May, 2013	5343	21/06/2013	18/07/2013
4.	May, 2013	5310	21/06/2013	18/07/2013
5.	May, 2013	6745	21/06/2013	21/08/2013
6.	June, 2013	4126	21/07/2013	12/08/2013
7.	June, 2013	7002	21/07/2013	17/09/2013
8.	July, 2013	4126	21/08/2013	16/09/2013
9.	July, 2013	6702	21/08/2013	23/10/2013
10.	July, 2013	4142	21/08/2013	17/10/2013
11.	August, 2013	6074	21/09/2013	19/11/2013
12.	August, 2013	4186	21/09/2013	19/11/2013
13.	September, 2013	5991	21/10/2013	20/12/2013
14.	September, 2013	4074	21/10/2013	20/12/2013
15.	October, 2013	5891	21/11/2013	28/01/2014
16.	November, 2013	4125	21/12/2013	21/01/2014
17.	November, 2013	5964	21/12/2013	20/02/2014
18.	December, 2013	4170	21/01/2014	20/02/2014
19.	December, 2013	5924	21/01/2014	18/03/2014
20.	December, 2013	3872	21/01/2014	18/03/2014
21.	January, 2014	6130	21/02/2014	18/04/2014
22.	January, 2014	3651	21/02/2014	18/04/2014
23.	February, 2014	7156	21/03/2014	20/05/2014
24.	February, 2014	3861	21/03/2014	20/05/2014
	Total	123378/-		

Provident Fund

S. No.	Month	Employee's contribution	Due date	Actual date of payment
1.	April, 2013	42803/-	20/05/2013	21/05/2013
2.	July, 2013	46030/-	20/08/2013	21/08/2013
3.	November, 2013	40815/-	20/12/2013	26/12/2013
4.	December, 2013	40206/-	21/01/2014	29/01/2014
	Total	169854/-		

Thus, it is clear that the payments were made by the assessee before due date of filing the return of income U/s 139(1) of the Income Tax Act, 1961 (in short the Act), however, due to the reason that the payments were made not made within the period stipulated as per EPF scheme and ESI Act. Therefore, the Assessing Officer disallowed the said amount of Rs. 1,69,854/- and Rs. 1,23,378/- respectively. The Assessing Officer further

noted that, though, the issue has been decided in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. JVVNL, 99 DTR 131. However, since the revenue has not accepted that decision and filed an SLP before the Hon'ble Supreme Court, therefore, the Assessing Officer made disallowance in this respect.

3. There is no dispute that if the revenue has not accepted the decision of Hon'ble Jurisdictional High Court and challenged the same before the Hon'ble Supreme Court then to keep the issue alive, the Assessing Officer has to make the disallowance/addition on the issue. However, the appellate authority is bound by the decision of the Hon'ble Jurisdictional High Court. In the case in hand, the Id. CIT(A) has not disputed the fact that all the payments were made before due date of filing of the return of income U/s 139(1) of the Act and dismissed the appeal of the assessee in para 3.3 as under:

“3.3 In absence of any evidences in support of the claim, I have relied upon the facts mentioned in the assessment order. No proof of deposits of ESI before the due date of filing of return was filed during appellate proceedings. After considering the same, I see no reason to interfere with the assessment order passed by the A.O. Accordingly the appellant's grounds of appeal are dismissed.”

It is apparent that the Id. CIT(A) has given the reason for upholding the disallowances that no proof of deposit was produced by the assessee

whereas the Assessing Officer itself has not disputed the factual position of making the payments by the assessee as reproduced in the assessment order and quoted in the foregoing paragraph of this order. Hence, even if there was no appearance by the assessee before the Id. CIT(A) and the appeal was decided on merits then the Id. CIT(A) was not expected to ignore the admitted facts as recorded in the assessment order. Accordingly, in view of the various decisions of Hon'ble Jurisdictional High Court in the case of CIT Vs. State Bank of Bikaner & Jaipur, 363 ITR 70 (Raj) as well as CIT Vs. JVVNL (supra), we set aside the orders of the authorities below qua this issue and allow the claim of the assessee. At the cost of repetition, we may again point out that the appellate authority ought not to be influenced by the stakes involved in the case but has to maintain the judicial discipline.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23/08/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23rd August, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Almighty Resources Pvt. Ltd., Bhiwadi, Alwar.

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

2. प्रत्यर्थी/ The Respondent- The ITO, Bhiwadi.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 679/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar