

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष
**BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.2848/Chny/2017
निर्धारण वर्ष /Assessment Year: 2013-14

The Dy. Commissioner of-
Income Tax,
Corporate Circle-1(1),
Chennai-34.

Vs. M/s.Auto Tech Industries –
India Pvt. Ltd.,
SP 114, Ambattur Industrial
Estate, Ambattur,
Chennai-600 058.

(अपीलार्थी/**Appellant**)

[PAN: AABCA 9902 B]
(प्रत्यर्थी/**Respondent**)

Department by

: Mr. R.Clement Ramesh –
Kumar, ACIT

Assessee by

: Mr.S.Thirugnanamurthy, FCA

सुनवाई की तारीख/Date of Hearing

: 29.08.2018

घोषणा की तारीख /Date of Pronouncement

: 19.09.2018

आदेश / ORDER

PER DUVVURU R.L.REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax(A)-1, Chennai, in ITA No.13/CIT(A)-1/2016-17 dated 22.09.2017 for the AY 2013-14.

2. The only effective ground raised by the Revenue is that the Ld.CIT(A) erred in deleting the addition made on account of employee's

contribution on ESI & PF when the same were not paid by the assessee as an employer within the due date of PF Act.

3. Brief facts of the case are that the assessee is engaged in the business of manufacturing automobile components. The assessment u/s.143(3) has been completed after making disallowance u/s.36(1)(va) to the extent of Rs.73,58,854/-. During the course of assessment proceedings, the AO has noticed that the contribution to PF & ESI collected from the employee's had been remitted belatedly. The AO treated the delayed payments representing employee's contribution of PF & ESI to the extent of Rs.66,41,102/- and Rs.7,17,752/- respectively, as the income of the assessee and brought to tax u/s.2(24)(x) r.w.s.36(1)(va) of the Act.

4. The assessee carried the matter in appeal before the Ld.CIT(A) and challenged the above disallowance. After considering the submissions of the assessee and by relying upon various case laws, the Ld.CIT(A) deleted the additions and allowed the appeal filed by the Revenue.

5. Aggrieved, the Revenue is in appeal before the Tribunal and challenged the issue with regard to belated remittances of employee's contribution to PF & ESI. The Ld.DR has submitted that the employee's contribution of ESI & PF are governed by Sec.36(1)(va) u/s.43B of the Act. Therefore, the order passed by the Ld.CIT(A) to be reversed. On the other hand, the Counsel for the assessee submitted that the Ld.CIT(A)

had followed the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Industrial Security & Intelligence India Pvt. Ltd. in TCA No.585 & 586 of 2016 & MP No.1 of 2015 dated 24.07.2015. He further submitted that the Ld.CIT(A) held that the assessee is eligible to claim u/s.36(1)(va) of the Act to avail the benefit u/s.43B of the Act. The Ld.CIT(A) relied upon by the decision of the Hon'ble Jurisdictional High Court and allowed the appeal. Therefore, the order passed by the Ld.CIT(A) to be sustained.

6. We have heard both the sides and gone through the materials placed on record.

7. In the present case on the hand, the assessee failed to remit the PF & ESI amounting to Rs.73,58,854/- within the due date under PF Act but the assessee had remitted the same within the due date of filing of the return of income. There is no dispute about the above said contention. We have also perused the ratio laid down in the case of CIT vs. Industrial Security & Intelligence India Pvt. Ltd. in TCA No.585 & 586 of 2016 & MP No.1 of 2015 dated 24.07.2015, wherein, it was held that there could be no deemed addition u/s.36(1)(va) r.w.s.2(24)(x) of the Act if the impound amount paid before the due date of the filing of the return. This Tribunal has also followed the above decision of the Hon'ble Jurisdictional High Court in deciding the similar issue in various cases. In view of the above

we sustained the orders passed by the Ld.CIT(A) deleting the addition and thus the ground raised by the Revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 19th day of September, 2018, in Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P.GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: September 19, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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