

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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.1436/Chny/2018
निर्धारण वर्ष /Assessment Year: 2014-15

The Dy. Commissioner-
of Income Tax,
Corporate Circle-1(2),
Chennai-34.

Vs. M/s.Bafna Pharmaceuticals-
Ltd.,
No.Bafna Towers,
299, Thambu Chetty,
Broadway, Chennai-600 001.

(अपीलार्थी/**Appellant**)

[PAN: AAACB 3109 Q]
(प्रत्यर्थी/**Respondent**)

Department by

: Mr.Maruthu Pandian,
Addl. CIT

Assessee by

: Mr.A.K.Jain, CA

सुनवाई की तारीख/Date of Hearing

: 11.09.2018

घोषणा की तारीख /Date of Pronouncement

: 24.09.2018

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(Appeals)-1, Chennai, in ITA No.482/CIT(A)-1/2016-17 dated 31.01.2018 for the AY 2014-15.

2. The assessee company is engaged in manufacturing of drugs and medicines and filed its return of income on 16.10.2014 admitting NIL

income and mentioning current loss of Rs.81,52,691/-. The case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued on 18.09.2015. After considering the details filed by the Authorized Representative of the assessee, the assessment u/s.143(3) was completed and determined the income at Rs.25,32,894/-. During the course of the assessment proceedings, the AO has noticed that the contribution to PF & ESI collected from the employee's has been remitted belatedly. Accordingly, the AO treated the delayed payments representing employees contribution towards PF & ESI of Rs.51,53,578/- as the income of the assessee and brought to tax u/s.2(24)(x) r.w.s.36(1)(va) of the Act.

3. The assessee carried the matter in appeal before the Ld.CIT(A) and challenged the above said disallowance.

4. After considering the submissions of the assessee and by relying upon the decision of the Hon'ble Madras 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, Ld.CIT(A) deleted the addition and allowed the appeal filed by the assessee.

5. Aggrieved, the Revenue is in appeal before the Tribunal and challenged the issue with regard to belated remittances of employee's contribution towards PF & ESI. The Ld.DR has submitted that the

employees contribution of ESI & PF are governed by Sec.36(1)(va) of the Act and not u/s.43B of the Act. Ld.Counsel for the assessee relied on the decision of the Hon'ble Apex Court in the case of Alom Extrusions reported in 319 ITR 306 (SC) and also relied upon the decision of 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 and he further submitted that this issue is squarely covered by the Hon'ble Jurisdictional High Court and the Honble Apex Court. Therefore, the orders passed by the Ld.CIT(A) be confirmed.

6. We have heard both the sides and gone through the materials placed on record. During the course of the assessment proceedings, the AO noticed that from Form-3CD that the contributions towards PF & ESI of Rs.51,53,578/- have been remitted belatedly. However, the AO as well as the Ld.CIT(A) has not mentioned anywhere in their order that the assessee has remitted this amount before filing of the return of income. The assessee has not filed before us to establish that the said amount of Rs.51,53,578/- has been remitted before filing of the return of income. Therefore, we remit the issue to the file of the AO to call for and to verify the amounts remitted by the assessee. If the assessee remitted the amount prior to filing of the return of income, the assessee is eligible to claim it as deduction u/s.43B of the Act. The assessee is directed to produce the details of remittance of Rs.51,53,578/-. Thus, the ground raised by the Revenue is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 24th 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 24, 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