

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5610/Del./2015
(ASSESSMENT YEAR : 2012-13)**

DCIT, Circle 19 (2), vs. M/s. PEB Steel Lloyd (India) Ltd.,
New Delhi. 2, Punjstar Premises,
Kalkaji Indl. Area, Kalkaji,
New Delhi – 110 019.

(PAN : AAECF0564F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K.V.S.R. Krishna, CA
REVENUE BY : Shri Naina Soin Kapil, Senior DR

Date of Hearing : 29.11.2018

Date of Order : 30.11.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, DCIT, Circle 19 (2), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 27.07.2015 passed by Ld. CIT (Appeals)-7, New Delhi qua the Assessment Year 2012-13 on the following grounds inter alia that:-

“On the facts and in the circumstances of the case, the ld. CIT (A) has erred in deleting the addition made by Assessing Officer of Rs.47,78,762/- of PF contribution

and Rs.6,76,061/- of ESIC totaling to Rs.54,54,823/- is not allowable as deduction u/s 36(1)(va) and is assessee's income as per provisions of section 2(24)(x) of the Income-tax Act, 1961 by ignoring the Explanation given to section 36(1)(va) of the Income-tax Act, 1961."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer made addition of Rs.54,54,823/- (Rs.47,78,762/- of PF contribution and Rs.6,76,061/- of ESIC) by making disallowance on account of late deposit of PF and ESI contribution u/s 36(1)(va) read with section 2(24)(x) of the Income-tax Act, 1961 (for short 'the Act').

3. The assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee company has not deposited employees contribution towards provident fund and ESI within due date but before filing of the income-tax return along with interest

and penalty for delayed payments, which is tabulated as under for ready perusal :-

March	Employees contribution to provident fund		Due date of deposit	Actual date of deposit
	Amount due & deposited	Amount due and deposited		
April 11	372280	31543	15 Mar 11	24 Mar 11
June 11	389568	22786	15 June 11	16 June 11
May 11	421356	30712	15 Jul 11	25 Jun 11
Jul 11	400326	34263	15 Aug 11	24 Oct 11
Aug 11	405709	36007	15 Sept 11	24 Oct 11
Sept 11	393551	39340	15 Oct 11	24 Oct 11
Oct 11	404074	33340	15 Nov 11	18 Nov 11
Nov 11	396285	35581	15 Dec 11	4 Jan 11
Dec 11	397642	34260	15 Jan 12	17 Jan 12
Jan 12	416350	32569	15 Feb 12	15 Feb 12
Feb 12	424317	33860	15 March 12	14 May 12
Mar 12	408905	33057	15 April 12	14 May 12
	4830363	397318		

March	Employees contribution to Employees State Insurance		Actual date of deposit
	Amount deposited	Due date of deposit	
April 11	68810	21 Mar 11	24 May 11
June 11	62017	21 June 11	24 Jun 11
May 11	71804	21 Jul 11	24 Jun 11
Jul 11	66613	21 Aug 11	24 Nov 11
Aug 11	69245	21 Sept 11	24 Nov 11
Sept 11	69115	21 Oct 11	24 Nov 11
Oct 11	67662	21 Nov 11	24 Nov 11
Nov 11	67000	21 Dec 11	4 Jan 12
Dec 11	66571	21 Jan 12	19 Jan 12
Jan 12	67976	21 Feb 12	18 Feb 12
Feb 12	67143	21 March 12	18 May 12
Mar 12	66652	21 April 12	21 May 12
	810608		

6. It is settled principle of law that amount deposited by the assessee on account of contribution towards PF & ESI would qualify for deduction even though paid after the due dates

prescribed under the Provident Fund and ESI Act but before filing of the income-tax return. In the instant case, assessee has admittedly deposited the amount of provident fund and ESI before filing the return qua year under assessment as tabulated in the preceding para.

7. Reliance in this regard may be placed on decision rendered by *Hon'ble Supreme Court in CIT vs. Vinay Cement Ltd. – (2009) 313 ITR (ST.) 1 (SC)* wherein it is held that no disallowance could be made if the payments are made before the due date of filing of the return.

8. Identical issue has also been decided by the *Hon'ble Delhi High Court in case cited as CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Delhi)* wherein the Hon'ble High Court after discussing the provisions contained u/s 36 (1)(va) read with provisions contained u/s 2(24)(x), 43B proviso (i) & (ii) held that “*If the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income-tax Act is concerned, the assessee can get the*

benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in Vinay Cement [2009] 313ITR (St.) 1.”

9. In view of what has been discussed above and following the law laid down by Hon'ble Supreme Court in *CIT vs. Vinay Cement Ltd.* (supra) and Hon'ble Delhi High Court in *CIT vs. AIMIL Ltd.* (supra) and in view of the fact that the entire payments on account of employees' contribution of PF & ESI has been deposited by the assessee well before the due date of filing the return, we are of the considered view that the Id. CIT (A) has rightly deleted the addition made by the AO on account of disallowance of Rs.54,54,823/- towards PF and ESI contribution. So, finding no illegality or perversity in the finding returned by the Id. CIT (A), the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 30th day of November, 2018.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 30th day of November, 2018
TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.