

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

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं  
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2899/Chny/2017  
निर्धारण वर्ष/Assessment Year : 2014-15

Kaavian Systems Pvt Ltd.,  
Khivraj Complex 3, First Floor,  
480 Anna Salai,  
Nandanam,  
Chennai – 600 035.

The Income Tax Officer,  
Vs. Corporate Ward -4(1),  
Chennai.

**[PAN: AACCK 0149B]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Assessee by  
Revenue by

: Shri. PV Dilip Kumar, CA  
: Shri. Homi Rajvansh, CIT

सुनवाईकीतारीख/Date of Hearing

: 20.12.2018

घोषणाकीतारीख/Date of Pronouncement

: 26.12.2018

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 430/16-17 dated 21.09.2017 for assessment year 2014-15.

2. While making the assessment for assessment year 2014-15, in the assessee's case, M/s. Kaavian Systems Pvt Ltd., the Assessing Officer found from the Form 3CD attached with the return that the employees contribution to PF were paid beyond the due date specified under the relevant Act, although, all such payments were made before the due date for filing the return u/s. 139(1). He disallowed them holding that only employers contribution towards PF is eligible if it was paid before the due date of filing the return of income u/s. 139(1), but not in the case of employees contribution. Hence, he assessed them u/s. 36(va) r.w. 2(24)(x). Aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) dismissed the appeal. Aggrieved against the order of the CIT(A), the assessee filed this appeal.

3. We heard the rival contentions and gone through the relevant material. The fact remains that the assessee has paid the employees contribution to PF & ESI within the due date permitted under Income Tax Act before filing the return, although, it was not paid within the due dates permitted under the respective Act. The relevant portion of the jurisdictional High Court decision in the case of CIT vs Industrial Security & Intelligence Pvt Ltd., in TCA No. 585 & 586 of 2015 dated 24.07.2015 is extracted as under:

"5. We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT Vs Alum Extrusions Ltd. reported in 319 HR

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 1.4. 1988 i.e. the date of insert fort of first proviso. The Delhi High Court in the case of CIT V Amil Ltd. reported in 321 ITR 508 held that if the assessee had deposited employee's contribution towards Provident Fund and ESI after due dates 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 view of the provisions of section 43.B 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 decision, 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. Accordingly, both the Tax case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of2015 is also dismissed."

Accordingly, we allow the assessee's appeal.

4. In the result, the assessee's appeal is allowed.

Order pronounced on Wednesday, the 26<sup>th</sup> day of December, 2018 at Chennai.

**Sd/-**

(एन.आर.एस .गणेशन)

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एसजयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> December, 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF