

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 108/Hyd/2018
Assessment Year: 2014-15**

Dy. Commissioner of Income- vs. Adaequare Info Pvt. Ltd.,
tax, Circle – 1(1), Hyderabad. Hyderabad.

PAN – AAECA 6276B

(Appellant)

(Respondent)

Revenue by : Smt. Suman Malik
Assessee by : Shri Pawan Toshniwal

Date of hearing 26/03/2018
Date of pronouncement 28/03/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal of the revenue is directed against the order dated 13/09/2017 of Id. CIT(A) – 1, Hyderabad relating to AY 2014-15.

2. Briefly the facts of the case are, assessee a company, engaged in the business of information technology and enabled services, filed its return of income for the AY 2014-15 on 28/11/2014 declaring a total income of Rs. 1,05,46,170/- under normal provisions and Rs. 94,35,298/- under the provisions of section 115JB. The case was selected for scrutiny under CASS and notices were issued u/s 143(2) & u/s 142(1) of the Income-tax Act, 1961 (in short 'the Act'). The assessment was completed u/s 143(3) on 25/08/2016 determining total income at Rs. 1,27,89,385/- by making disallowance u/s 14A of

the Act at Rs. 13,32,135/- and disallowance u/s 36(1)(va) towards employees contribution for PF of Rs. 9,11,080/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) confirmed the disallowance u/s 14A and deleted the disallowance made towards employees contribution of PF, against which, the revenue is in appeal before us.

4. During the course of assessment proceedings, the AO noticed that the sums received from employees towards contribution to PF of Rs. 9,11,080/- had been paid by the assessee beyond due date. He observed that as per the provisions of section 36(1)(va) of the Act, the said amount which was paid beyond due date and debited to P&L A/c are not allowable deduction u/s 36(1)(va). Accordingly, following the CBDT's Circular No. 22/2015, dated 17/12/2015 disallowed the said amount of Rs. 9,11,080/-.

5. Before the CIT(A), the assessee submitted that where the employee contributions were not deposited by the assessee within the due date as prescribed under PF Act, but, the same were made before the due date of furnishing return u/s 139(1), allowance of deduction of employees contribution to PF u/s 43B was justified. For this proposition, he relied on the decision of the ITAT, Hyderabad in the case of M/s Tetra Soft (India) Pvt. Ltd., (ITA No. 218 & 219/Hyd/2015, dated 03/06/2015).

6. After considering the submissions of the assessee, the CIT(A) relying on the decision of M/s Tetra Soft (India) Pvt. Ltd. (supra), deleted the disallowance made by the AO observing that the PF payments were made before the filing of return of income i.e. on 28/11/2014.

7. Aggrieved, the revenue is in appeal before us.

8. Considered the rival submissions and perused the material on record. In the case of M/s Tetra Soft (India) Pvt. Ltd., (supra) the coordinate bench has held as under:

“7. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. Though it is a fact that assessee has remitted employees contribution to PF not within the due date as prescribed under explanation to section 36(1)(va), however, assessee has remitted the amount within the due date of filing of return of income u/s 139(1) of the Act. Therefore, in view of the provisions of section 43B and ratio of the decisions relied upon by Id. AR, the amount cannot be disallowed. Accordingly, we delete the addition made by AO.”

8.1 The Hon'ble Madras High Court in *CIT Vs. Shri Ganapathy Mills Company Limited [(2000) 243 ITR 879 (Mad.)]* has held that no disallowance can be made where the contribution is deposited late but within the grace period. In most of the cases the deposit has been made with in the grace period.

8.2 The Hon'ble Delhi High Court in *CIT VS. Aimil Ltd. & Ors. [(2010) 321 ITR 508 (Del)]* has held that if the employees' share of contribution is paid before the due date of filing the return u/s 139(1) of the Income-tax Act, 1961 (hereinafter called the Act), then no disallowance can be made.

8.3 The revenue raised ground No. (iii) as Id. CIT(A) ought to have followed the CBDT Circular No. 22/2015. We find that the Hon'ble Supreme Court has dismissed the appeal of the revenue in the case of *PCIT Vs. Rajasthan State Beverages Corporation Ltd. [2017] 84 Taxmann.com 185 (SC)*, which is dated 04/07/2017. This decision was pronounced subsequent to the CBDT Circular. Hence, this ground is dismissed.

8.4 In view of the above observations, we are of the view that the employees contributions are paid within the due date of filing of return u/s 139(1), no disallowance can be made. In the case under consideration, since the assessee has paid the employees

contribution before the due date of filing of return, the CIT(A) has deleted the disallowance made by the AO. Therefore, we find no infirmity in the order of the CIT(A) and the same is hereby confirmed and the grounds raised by the revenue on this issue are dismissed.

9. In the result, appeal of the revenue is dismissed.

Pronounced in the open Court on 28th March, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th March, 2018

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Copy to:-

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- 2) M/s Aadaquare Info Pvt. Ltd., North East Block, 1st Floor, Display Building, NAC Campus, Kondapur, Hyd.
- 3) CIT(A) – 1, Hyderabad
- 4) Pr. CIT – 1, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File