

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1082/JP/2018  
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Rajendra Kumar Sancheti, 263-264, Johari Bazaar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 1(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AGWPS 7304 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vijay Goyal (CA) &  
Shri Gulshan Agarwal (CA)

राजस्व की ओर से/ Revenue by: Shri P.P. Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 31.12.2018.  
घोषणा की तारीख/ Date of Pronouncement : 31/12/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 27<sup>th</sup> July, 2018 of Id. CIT (A)-1, Jaipur for the assessment year 2014-15. The assessee has raised the following grounds :-

1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the addition of Rs. [78,827+15,827+95,392+18,076]= Ea. 2,08,122/- made by AO by applying the provisions of section 36(1)(va) of Income Tax Act, 1961 in respect to the employees contribution of P.F and ESI which was deposited by the assessee after the due date but before filing income tax return in assessee's proprietary firms M/s. Four Season Restaurant and M/s. Four Season (India) Tours.

2. The assessee prays for leave to add, to amend, to delete, to modify the all or any grounds of appeal on or before the hearing of appeal."

2. The only issue arises in this case of the assessee is regarding disallowance/addition made by the AO on account of employees contribution to PF and ESI deposited by the assessee before the due date of filing of the return under section 139(1) but after the due date as per the respective Acts.

3. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. At the outset, we note that this issue is covered in favour of the assessee by various decisions of Hon'ble Jurisdictional High Court including decision in case of CIT vs. SBBJ, 363 ITR 70 (Raj.) as well as CIT vs. JVVNL, 99 DTR 131 (Raj.). Subsequently, the Hon'ble Jurisdictional High Court in case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd., 366 ITR 163 (Raj.) also decided this issue in favour of the assessee in para 6 to 10 as under :-

"6. It was contended by learned counsel for the Revenue that the CIT(A) and ITAT fell in error in deleting the addition made under Section 36(1)(va) read with Section 2(24)(x) of the Act without considering the facts and legal aspect involved therein. It was submitted with reference to Section 43B of the Act that the deletion of second proviso therein, after the amendment by the Finance Act, 2003; the contribution of the employer is governed by provisions of Section 43B, whereas, employees' contribution continues to be governed by provision of Section 36 (1)(va) read with Section 2(24)(x) of the Act and, therefore, the ITAT fell in error in upholding the order passed by the CIT(A).

7. The effect of deletion of second proviso to Section 43B of the Act was considered by Hon'ble Supreme Court in *CIT v. Alom Extrusions Ltd.* [2009] 319 ITR 306/185 Taxman 416 and it was observed at page 314 of the report as under:-

".....section 43B (main section), which stood inserted by the Finance Act, 1983, with effect from April 1, 1984, expressly commences with a non obstante clause, the underlying object being to disallow deductions claimed merely by making a book entry based on the mercantile system of accounting. At the same time, section 43B (main section)

made it mandatory for the Department to grant deduction in computing the income under section 28 in the year in which tax, duty, cess, etc., is actually paid. However, Parliament took cognizance of the fact that the accounting year of a company did not always tally with the due dates under the Provident Fund Act, Municipal Corporation Act (octroi) and other tax laws. Therefore, by way of the first proviso, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax, duty, cess or fee is paid before the date of filing of the return under the Income-tax Act (due date), the assessee(s) then would be entitled to deduction. However, this relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer(s) should not sit on the collected contributions and deprive the workmen of the rightful benefits under social welfare legislations by delaying payment of contributions to the welfare funds. However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of the Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess, and fee with contributions to welfare funds."

**8.** Further the Hon'ble Supreme Court in *CIT v. Vinay Cement Ltd.* [2009] 313 ITR (St.) 1 while dismissing the Special Leave Petition preferred by the Revenue against the judgment of the Guwahati High Court observed as under:-

"In the present case we are concerned with the law as it stood prior to the amendment of section 43B. In the circumstances the assessee was entitled to claim the benefit in section 43B for that period particularly in view of the fact that he has contributed to provident fund before filing of the return."

**9.** Following the observations of Hon'ble Supreme Court in *Vinay Cement (supra)*, the Delhi High Court in *CIT v. Aimil Ltd.* [2010] 321 ITR 508/188 Taxman 265 held at page 518 as under:-

"We may only add 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) 313 ITR (St.) 1."

**10.** In view of the settled legal position, the appeal preferred by the Revenue has no substance and the same is, therefore, dismissed. No costs."

We further note that the Id. CIT (A) though accepted the binding precedents of Hon'ble Jurisdictional High Court, however, due to some typographical mistake the decision of Hon'ble Jurisdictional High Court in case of Principal CIT vs. Rajasthan Renewal Energy Corporation in DBIT Appeal Nos. 10 to 12/2018 has misunderstood the said decision and consequently sustained the addition made by the AO. Hence in view of the binding precedents of Hon'ble Jurisdictional High Court as well as the fact that the assessee already deposited the amount of PF and ESI before the due date of filing of return under section 139(1) of the IT Act, the addition made by the AO is deleted.

4. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 31/12/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV )  
लेखा सदस्य/Accountant Member

Sd/-  
(विजय पाल रॉव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 31/12/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant- Shri Rajendra Kumar Sancheti, Jaipur.
2. The Respondent – The ITO Ward 1(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1082/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

