

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.485/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2009-10)**

The Asst. Commissioner of
Income Tax
Circle-5(1)
Visakhapatnam

Vs. M/s Brandix India Apparel
City Private Ltd.
Plot No.18, BIACPL, SEZ
Pudimadaka Road,
Atchutapuram Mandal
Visakhapatnam
[PAN : AACCB6569L]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.5/Viz/2019
Arising out of I.T.A.No.485/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2009-10)**

M/s Brandix India Apparel City
Private Ltd.
Plot No.18, BIACPL, SEZ
Pudimadaka Road
Atchutapuram Mandal
Visakhapatnam
[PAN : AACCB6569L]

Vs. The Asst. Commissioner of
Income Tax
Circle-5(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से/ Revenue by
निर्धारिती की ओर से/ Assessee by

: Smt. Suman Malik, CIT DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 23.01.2019

घोषणा की तारीख/Date of Pronouncement

: 25.01.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-9, Hyderabad and cross objection filed by the assessee in support of the order of the Ld.CIT(A) vide I.T.A.No.10413/ACIT,Circle-5(1)/2017-18 dated 22.06.2018 for the Assessment Year (A.Y.) 2009-10.

2. All the grounds of appeal are related to the addition made by the Assessing Officer (AO) for the delay in remitting the employees contribution to Provident Fund (PF) accounts. In the instant case, the assessee remitted the employees contribution to PF a/c beyond the due date specified u/s 36(1)(v) of the Income Tax Act, 1961 (hereinafter called as 'Act'), however, the same was remitted before filing the return of income. It is observed from the assessment order that PF contribution for July 2008 and March 2009 was paid on 23.08.2008 and 25.04.2009 respectively. Since the assessee remitted the employees contribution beyond the due date specified u/s 36(1)(v) of the Act, the AO made the

disallowance of Rs.14,06,305/- representing the employees contribution to EPF to the returned income u/s 36(1)(v)r.w.s 2(24) of the Act.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO following the order of this Tribunal in the case of Eastern Power Distribution Company of AP Ltd. For the sake of clarity and convenience we extract relevant part of the order of the Ld.CIT(A) in para No.4.1 and 4.2 which reads as under :

"4.1. This issue has been decided by the Hon'ble ITAT, Visakhapatnam Bench in ITA No. 609/Vizag/2014 for A.Y. 2011-12 in the case of Eastern Power Distribution Company of AP Ltd. The Hon'ble ITAT has decided the issue as under:

"We have heard the rival submissions and perused the material placed on record. The identical issue has come up before this tribunal for adjudication of the A. Y. 2011-12 and the FIAT allowed the appeal of the assessee following the decision of Hon'ble Karnataka High Court in the case of ESSAR TERAOKA PVT LTD vs. DCIT (366 ITR 408) and the decision of Hon'ble ITAT, Hyderabad in the case of Tetra Soft India Put Ltd Vs. ACIT (2015) (40 ITR TRIBUNAL 470) for ready reference, we reproduce here under the relevant para no. 10 of the tribunal cited supra.

Para 10: considering the facts and circumstances of this case and also following the judicial precedence as discussed above, we are of the view that there is no distinction between employees and employer contribution to PF, and if the total contribution is deposited on or before the due date of furnishing return of income u/s. 139(1) of the Act, then no disallowance can be made towards employees contribution to provident fund. The CIT(A) after considering the relevant details rightly deleted the additions made by the Assessing Officer. We do not see any reason to interfere with the order of the CIT(A). Hence, we incline to uphold the CIT(A) order and dismiss the appeal filed by the revenue. Respectfully following the decision of this tribunal on the assessee's own case in the earlier year we uphold the order of the learned

CIT and allow the appeal of the assessee"

4.2. Respectfully following the jurisdictional ITAT, the Assessing Officer is directed to delete the addition made on account of disallowance in respect of Employees Contribution of Provident Fund."

4. We have heard both the parties and perused the material placed on record. This Tribunal has taken a consistent view that the employees contribution to PF required to be allowed even if the same is paid before the due date of filing the return u/s 139(1) of the Act. The Tribunal has followed the decision of Hon'ble Karnataka High Court in the case of ESSAE TERAOKA PVT Ltd. Vs. DCIT [366 ITR 408] and the decision of ITAT, Hyderabad in the case of Tetra Soft India Pvt. Td. Vs. ACIT (2015) (40 ITR Tribunal 470) while delivering the above ruling. Therefore, respectfully following the view taken by this Tribunal we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

5. Assessee filed cross objections in support of the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, cross objection of the assessee became infructuous, hence, dismissed.

6. In the result, the appeal of the revenue and the cross objections of the assessee are dismissed.

Order pronounced in the open court on 25th January, 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER लेखासदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.01.2019

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s Brandix India Apparel City Private Ltd., Plot No.18, BIACPL, SEZ, Pudimadaka Road, Atchutapuram Mandal, Visakhapatnam
2. राजस्व/ The Revenue – The Asst. Commissioner of Income Tax , Circle-5(1) Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-9, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM