

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.76/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2012-13

Hotel Babylon International Private Limited,  
VIP Road, Raipur-492001, (C.G.)

PAN : AABCH27098M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle – 1(2), Raipur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Jain

Revenue by : Shri D.K. Jain

सुनवाई की तारीख / Date of Hearing : 17.01.2019

घोषणा की तारीख / Date of Pronouncement : 18.01.2019

**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by assessee emanate out of the order of Commissioner of Income-Tax (A)-I, Raipur dated 09-12-2015 for A.Y. 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in Hotel Business. Assessee electronically filed return of income for A.Y. 2012-13 on 30-09-2012 declaring total income of Rs.81,64,297/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) vide order dated 14-08-2014 and the total income was determined at Rs.89,02,829/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dated 09-12-2015 (in Appeal No. 548/14-15) granted partial relief to the assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us and raised following grounds :

- “1. *That on the facts and on the circumstances of the case, Ld. A.O. erred in disallowing an amount of RS.6,38,532/- under section 2(24)(x) r.w.s. 36(1)(va) inspite of making subsequent payment. The disallowance made by Ld. A.O. is which is not correct, against law of natural justice and uncalled for and may kindly be deleted.*

2. *The appellant reserves the rights to add, amend, alter and delete the ground (s) of appeal at the time of hearing the appeal.”*

3. During the course of assessment proceedings the Assessing Officer noted that the Employee's contribution towards PF and ESIC was deposited after the due date under the relevant Act (the details of such deposits have been listed at pages 2 and 3 of the order). The Assessing Officer was of the view that since, the aggregate deposit of Rs.6,38,532/- was after the due date prescribed, the Employee's contribution was deemed to be income u/s. 2(24)(x) r.w.s. 36(1)(va) of the Act. He accordingly made the addition of Rs.6,38,532/-. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer by observing as under :

*“2.3 From the above facts, as also explained below, the law is on Revenue's side. The amount in question is employees contribution and not employers contribution. In contract to the submissions made by the appellant, employees contribution is not governed by Sec. 43B, therefore, the amendment in Sec. 43B by Finance Act, 2003 will not change the treatment of the amount paid by the appellant belatedly as far as employees contribution is concerned. When appellant received share of employee it has become part of appellant's income by virtue of Sec. 2(24 )(x). As and when the appellant pays this contributions to Provident fund account of the employee, the deduction will be allowable u/s. 36(l)(va). However, this payment should be made within the due date prescribed under the Provident fund Act. In the present case since the payment has not been made within the due date no deduction will be made allowable to the appellant. Therefore, disallowance made by the AO is as per the Act and the same is sustained.”*

Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us.

4. Before us at the outset Ld. A.R. submitted that though there was delay in deposit of PF and ESIC fund but however all the amounts have been deposited before the due date of filing of return. He therefore submitted that in such a situation no addition is called for in the present case. In support of his contention he relied on the decision of Raipur Bench of Tribunal in the case of DCIT Vs. Godavari Power & Ispat Ltd. in ITA No. 365/RPR/2014 for A.Y. 2011-12 vide order dated 01-10-2018 and also the decision in the case of CIT Vs. Ghatge Patil Transport Ltd. reported in 368 ITR 749 (Bom.). He therefore submitted that addition be deleted.

5. The Ld. D.R. on the other hand supported the order of Assessing Officer and CIT(A) and further placed reliance on CBDT Circular No. 22/2015 dated 17<sup>th</sup> December, 2015.

6. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the Employee's contribution of PF and ESIC was belatedly deposited with the appropriate authorities but however all the amounts have been deposited before the due date of filing of return u/s. 139(1) of the Act. We find that the identical issue arose in the case of

DCIT Vs. Godavari Power & Ispat Ltd. (supra) wherein the Co-ordinate Bench of Tribunal has decided the issue in favour of assessee by observing as under :

*“ 60. After hearing both the sides, we find the Assessing Officer disallowed an amount of Rs.2,10,551/- being delayed payment of employees’ contribution to PF and ESI under the provisions of section 2(24)(x) r.w.s. 36(1)(va) of the I.T. Act. We find the ld. CIT(A) deleted the disallowance made by the Assessing Officer on the ground that such payments were before the due date of filing of the return of income u/s 139(1) and, therefore, cannot be disallowed u/s 43B and u/s 36(1)(va) of the I.T. Act. We find identical issue had come up before the Raipur Bench of the Tribunal in the case of DCIT vs. Hira Ferro Alloys Ltd. vide ITA Nos.358 to 360/RPR/2014 order dated 18.01.2018 wherein the Tribunal has dismissed the ground raised by the Revenue on the ground that employees’ contribution to PF and ESI although deposited after the due date prescribed under the relevant date, however, were deposited before the due date of filing of the return u/s 139(1) of the I.T. Act. The various Benches of the Tribunal are also taking the consistent view that employees’ contribution to PF and ESI cannot be disallowed u/s 2(24)(x) r.w.s. 36(1)(va) if such deposits are made before the due date of filing of the return. Since in the instant case the assessee has deposited the employees’ contribution to PF and ESI before the due date of filing of the return u/s 139(1) of the I.T. Act, 1961, therefore, following the consistent view of the various Benches of the Tribunal on this issue, we hold that the ld. CIT(A) is justified in deleting such disallowance made by the Assessing Officer. The ground raised by the Revenue is accordingly dismissed.”*

7. Before us Revenue has not pointed any contrary binding decision nor has demonstrated that the aforesaid decision of the Co-ordinate Bench of Tribunal has been set aside or overruled by higher judicial authority. In view of these facts, we are of view that no disallowance is called for in the present case. Thus, the grounds of appeal of assessee is allowed

**8. In the result, the appeal of assessee is allowed.**

Order pronounced on 18<sup>th</sup> day of January, 2019.

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 18<sup>th</sup> January, 2019.  
RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur

//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	17.01.2019	Sr.PS/PS
2	Draft placed before author	18.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		