

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

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

आयकर अपील सं./ITA. No. 1064/JP/2018
निर्धारण वर्ष / Assessment Years : 2014-15

Gosil Exports Pvt. Ltd. E-70, EPIP, Gems and Jewellery Zone, Sitapura Industrial Area, Jaipur.	बनाम Vs.	The ACIT, Circle-1 Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 8920 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shambhu Lal Gupta (Adv.)
राजस्व की ओर से / Revenue by : Smt. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 23/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 25/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 16.08.2018 for the Assessment Year 2014-15 wherein the assessee has taken the following grounds of appeal:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT Appeal erred law in sustaining the addition in respect of the employee's contribution to Provident Fund of Rs. 21,90,249/- u/s 36(1)(va), despite the fact that the same was paid before the due date of submission of return U/s 139(1)."

2. The solitary ground of appeal relates to disallowance of employees contribution to PF and ESI amounting to Rs 21,90,249. Undisputedly, the contribution has been paid within the due date of filing of return of income but after the due date of payment as per respective Acts.

3. This issue is covered in favour of the assessee by the various decisions of the Hon'ble jurisdictional High Court including the decision in case of CIT vs. State Bank of Bikaner & Jaipur 99 DTR 131 as well as decision in case of CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307 and in case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 366 ITR 163.

4. We further note that the Id. CIT(A) though has not disputed the various decisions of Hon'ble High Court however, disallowance made by the AO are sustained as he misunderstood the decision of Hon'ble Jurisdictional High Court in case of PCIT vs. M/s Rajasthan Renewable Energy Corporation Limited in DB ITA No. 10,11 & 12/2018 dated 13.03.2018. In the said case, the Hon'ble High Court has considered this issue in para 4 to 6 as under:-

"4. So far as question No. 1 is concerned, the same is now covered by the decisions of this Court in Principal Commissioner of Income-Tax V/s Rajasthan state seed Corporation Ltd. [2016] 386 ITR 267 (Raj) wherein it has been held as under:-

"In so far as the expenditure incurred on State Renewal Fund is concerned, the said expenditure also goes to show that the

renewal fund was set up by the State Government and was created with the object of providing a safety net for the workers likely to be effected by restricting in the State Public Enterprise and that a finding of fact has been recorded that the contribution made to the State Renewal fund is solely for the purposes of the welfare and benefit of the employees. In our view, it is for the assessee to decide whether any expenditure should be incurred in the course of business and expenditure of this nature being for business expediency is certainly allowable deduction under section 37(1) of the Act. In our view any normal expenditure for the welfare and benefit of the employees is allowable expenditure under section 37(1), the Tribunal has come to a finding of fact that it was a legal obligation of the respondent-assessee towards contribution of the said amount to the State Renewal Fund and there being a legal obligation as well in our view the Tribunal has come to a correct conclusion."

In view of the above, question No. 1 is answered in favour of the assessee and against the department.

6. *With regard to issue No. 2 and 3 the controversy is pending before the Supreme Court in C.I.T., Jaipur Vs/ Ms State Bank of Bikaner and Jaipur in SLP© No. 16249/2014, therefore, subject to decision of SLP, for the present, these issues are decided on in favour of the department and against the assessee. It will be open for the department to recover the amount if the decision is in their favour."*

5. Thus, it is clear that the Hon'ble jurisdictional High Court has followed the earlier decisions in case of PCIT vs. Rajasthan State Seed Corporation Limited 386 ITR 267 as well as decision in case of CIT vs. State Bank of Bikaner & Jaipur (supra). All these decisions which were followed by the Hon'ble jurisdictional High Court are in favour of the assessee however, in the conclusion in para 6 there is a typographical mistake wherein it is stated "these issues decided in favour of the Department and against the assessee". The whole decision of the Hon'ble High Court has to be considered in the context of the decision followed and the subsequent line which says "it will be opened for the Department to recover the amount" if the decision in their favour which means that in case of further appeal before Hon'ble Supreme Court if decision is delivered in favour of the department, it can recover the amount. Therefore, even the decision which is relied upon the Id. CIT(A), it is in favour of the assessee though due to typographical mistake it was misunderstood by the Id. CIT(A) as in favour of the Revenue. Accordingly, in view of a series of decisions of the Hon'ble Jurisdictional High Court in favour of the assessee and further, in view of the fact that the Hon'ble Supreme Court in case of PCIT vs. Rajasthan State Beverages Corporation Ltd. 250 taxmann 16 has dismissed the SLP filed by the Department, this issue is decided in favour of the assessee and against the Revenue. Hence, disallowances/additions made by the AO on account of employees contribution to PF & ESI are hereby deleted.

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

Order pronounced in the open Court on 25/04/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/04/2019.

***Santosh**

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

1. अपीलार्थी / The Appellant- Gosil Exports Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1064/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar