

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.324/Del./2017
(ASSESSMENT YEAR : 2013-14)**

M/s. Eagle Trans Shipping & Logistics vs. ACIT, Circle 8(1),
(India) Private Ltd., New Delhi.
RZ – 154, First Floor, Tughlakabad Extn.,
New Delhi – 110 020.

(PAN : AABCE6344H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vijay Kumar Jindal, CA
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 18.07.2019

Date of Order : 25.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Eagle Trans Shipping & Logistics (India) Private Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 16.11.2016 passed by the Commissioner of Income - tax (Appeals)-3, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

“1. The learned assessing officer as well as CIT(A) has erred in making confirming the addition amounting to Rs.4,29,110/-

u/s 36(i)(va) being employees' contribution to PF & ESI on the basis that the amounts have not been deposited within the due dates as specified in the respective Acts.

The various courts have confirmed the position of the law that the assessee can get the benefit of deduction for the payments specified u/s 36(1)(va) i.e. employee's contribution towards PF & ESIC, even if it were paid after the end of the previous year but before the due date for furnishing of return under section 139(I) of the Act.

PRAYER:

Hence, it is prayed that the addition amounting to Rs.4,29,110/- u/s 36(1)(va) may please be deleted.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee is into the business of Freight Forwarder (shipping) which buys freight space in the shape of container of ships from shipping lines and sells the same to the Indian importer and exporter. During the assessment proceedings, Assessing Officer (AO) noticed that from Annexure 2 to Annexure 6 of the Form 3CD filed by the assessee that payment of Rs.4,29,110/- towards employees contribution to PF & ESI was deposited after due date prescribed in the Income-tax Act, 1961 (for short 'the Act'). Declining the contentions raised by the assessee, AO proceeded to make addition of Rs.4,29,110/- u/s 2(24)(x) read with section 36(1)(v) of the Act.
3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by partly allowing the

appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee has made payment towards employees contribution of PF& ESI after due date prescribed in the Act which is tabulated for ready perusal as under :-

PROVIDENT FUND

<i>Month</i>	<i>Employees Contribution to PF</i>	<i>Due date of deposit</i>	<i>Date of deposit</i>
<i>April, 2012</i>	<i>42372/-</i>	<i>20.05.2012</i>	<i>19.07.2012</i>
<i>May, 2012</i>	<i>44627/-</i>	<i>20.06.2012</i>	<i>19.07.2012</i>
<i>June, 2012</i>	<i>44909/-</i>	<i>20.07.2012</i>	<i>27.08.2012</i>
<i>July, 2012</i>	<i>45912/-</i>	<i>20.08.2012</i>	<i>01.09.2012</i>
<i>August, 2012</i>	<i>46981/-</i>	<i>20.09.2012</i>	<i>24.09.2012</i>
<i>November, 2012</i>	<i>43431/-</i>	<i>20.12.2012</i>	<i>11.01.2013</i>
<i>January, 2013</i>	<i>41132/-</i>	<i>20.02.2013</i>	<i>27.02.2013</i>
<i>February, 2013</i>	<i>39630/-</i>	<i>20.03.2013</i>	<i>26.03.2013</i>
<i>March, 2013</i>	<i>39360/-</i>	<i>20.04.2013</i>	<i>10.05.2013</i>
TOTAL RS.388356/-			

EMPLOYEES STATE INSURANCE

<i>Month</i>	<i>Employees Contribution to PF</i>	<i>Due date of deposit</i>	<i>Date of deposit</i>
<i>April, 2012</i>	<i>5781/-</i>	<i>21.05.2012</i>	<i>19.07.2012</i>
<i>May, 2012</i>	<i>4955/-</i>	<i>21.06.2012</i>	<i>19.07.2012</i>
<i>June, 2012</i>	<i>5315/-</i>	<i>21.07.2012</i>	<i>27.08.2012</i>
<i>July, 2012</i>	<i>5078/-</i>	<i>21.08.2012</i>	<i>31.08.2012</i>
<i>August, 2012</i>	<i>5043/-</i>	<i>21.09.2012</i>	<i>22.09.2012</i>
<i>November, 2012</i>	<i>5018/-</i>	<i>21.12.2012</i>	<i>11.01.2013</i>
<i>January, 2013</i>	<i>4841/-</i>	<i>21.02.2013</i>	<i>26.02.2013</i>
<i>March, 2013</i>	<i>4723/-</i>	<i>21.04.2013</i>	<i>08.05.2013</i>
TOTAL RS.40754/-			

6. Ld. AR for the assessee challenging the impugned order contended that since the assessee company has made the payment of employees contribution on account of PF & ESI before the date of filing the return by the assessee, the same is within due date for the purpose of section 36(1)(va) of the Act read with section 2(24)(x) and also relied upon the decision of *Hon'ble Delhi High Court in case of Pr. CIT-7 vs. Planman HR Pvt. Ltd. – 2017 (9) TMI 1688 – Delhi High Court* and the decision rendered by *Hon'ble Supreme Court in CIT vs. M/s. Alom Extrusions Ltd. – (2009) 319 ITR 306 (SC)*.

7. However, on the other hand, in order to repel the arguments addressed by the ld. AR for the assessee, ld. DR for the Revenue relied upon the decision rendered by *Hon'ble High Court of Gujarat in case of CIT-II vs. Gujarat State Road Transport Corporation in Tax Appeal No.637 of 2013 & ors. order dated 26.12.2013* and contended that the appeal is liable to be dismissed.

8. Before proceeding further, we would like to go through the relevant provisions contained u/s 36(1)(va) of the Act which are extracted for ready perusal as under :-

“36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

.....

(va) any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

Explanation.—For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise."

9. When we examine the issue in controversy in the light of the provisions contained u/s 36(1)(va) of the Act, it is apparently clear that the assessee would be entitled for deductions qua the sum received from any office employee to which provisions under subsection (x) of clause (24) of section 2 is applied only, if such sum is credited by the assessee to the employees account in the relevant fund or funds on or before the due date. Due date is further defined in the Explanation, which means, the date by which the assessee is required as an employer to credit employees contribution to the employees account in the relevant fund under any Act or rule or order or notification issued thereunder or any standing order or award or service or otherwise. Meaning thereby, in case, employer fails to deposit the entire amount towards employees contribution on account of PF & ESI with concerned department on or before the due date under PF & ESI, the assessee shall not be entitled for deduction to that extent.

10. Decision of the Hon'ble Supreme Court relied upon by the assessee cited as *CIT vs. Alom Extrusions Ltd.* (supra) is not applicable to the facts and circumstances of the case because Hon'ble Supreme Court has decided the issue in *Alom Extrusions Ltd.* case qua employers contribution as per section 43B(b) of the Act and not qua employees contribution u/s 36(1)(va) of the Act.

11. Hon'ble jurisdictional High Court in case of *CIT vs. Bharat Hotels Ltd. (2019) 410 ITR 417 (Delhi)* (supra) decided the identical issue qua delayed deposit of employees contribution on account of PF & ESI against the assessee by holding that assessee would be entitled to deduction in terms of section 36(1)(va) of the Act to the extent if the employees contribution on account of PF & ESI is deposited on or before the due date, and the employees contribution on account of PF & ESI deposited beyond the stipulated period would not make the assessee company entitled to claim deduction from its return. For ready perusal, operative part of the judgment of *CIT vs. Bharat Hotels Ltd.* (supra) is extracted as under :-

“7. The issue here concerns the interplay of Section 2(24)(x) of the Act read with Section 36(1)(va) of the Act alongside provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (especially Regulation 38 of the Employees' Provident Funds Scheme, 1952) and the provisions of the Employees' State Insurance Act, 1948. The AO had brought to tax amounts which were deducted by the employer/assessee from the salaries and wages payable to its employees, as part of their

contributions. It is not in dispute that the employer's right to claim deductions under the main part of Section 43-B of the Act is not an issue. The question the AO had to then decide was whether the amounts deducted from the salaries of the employees which had to be deposited within the stipulated time (in terms of notification/circular dated 19.03.1964 which was modified on 24.10.1973), as far as the EPF contribution went and the period of three weeks as far as the ESI contributions went. The AO made a tabular analysis with respect to the contributions deducted and actually deposited. The cumulative effect of notifications under the Employees' Provident Funds Act, 1952 and the Employees State Insurance Act, 1948 was that in respect of the EPF Scheme contributions the deductions were to be deposited within 15 days of the succeeding wage period with a grace period of 5 days; for ESI contributions the deposit with the concerned statutory authority had to be made within three weeks of the succeeding wage month/period. The CIT in this case confirmed the additions - made by the AO based on the entire amounts that were disallowed. The ITAT however granted complete relief.

8. *Having regard to the specific provisions of the Employees' Provident Funds Act and ESI Act as well as the concerned notifications which granted a grace period of 5 days (which appears to have been late withdrawn recently on 08.01.2016), we are of the opinion that the ITAT's decision in this case was not correct. The assessee undoubtedly was entitled to claim the benefit and properly treat such amounts as having been duly deposited, which were in fact deposited within the period prescribed (i.e. 15 + 5 days in the case of EPF and 21 days + any other grace, period in terms of the extent notification). As far as the amounts constituting deductions from employees' salaries towards their contributions, which were made beyond such stipulated period, obviously the assessee was not entitled to claim the deduction from its returns.*

9. *In view of this discussion, the Revenue's appeal is partly allowed. The AO is directed to examine the contributions made with reference to the dates when they were actually made and grant relief to such of them which qualified for such relief in terms of the prevailing provisions and notifications. We also clarify that the assessee would be entitled to deduction in terms of Section 36(1)(va) of the Act."*

12. In view of what has been discussed above and following the decision rendered by the Hon'ble jurisdictional High Court in case

of *CIT vs. Bharat Hotels Ltd.* (supra), we are of the considered view that the assessee company is not entitled for deduction of Rs.4,29,110/- u/s 36(1)(va) of the Act claimed on account of depositing the employees contribution towards ESI & PF as per provisions contained u/s 2(24)(x) read with section 36(1)(va) after due date which is evident from table extracted in preceding para no.5. So, the case laws relied upon by the Id. AR for the assessee is not applicable to the facts and circumstances of the case. Consequently, finding no illegality or perversity in the impugned order passed by the Id. CIT (A), appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 25th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**