

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.470/Bang/2019
Assessment year : 2014-15

Deputy Commissioner of Income Tax, Circle – 5(1)(2), 2 nd Floor, BMTC Building, Koramangala, 80 Feet Road, Bangalore – 560 095.	Vs.	M/s. Private Eye Pvt. Ltd., No.30/9, 80 Feet Road, Indiranagar, Bangalore – 560 038. PAN : AACCP 3314 K
APPELLANT		RESPONDENT

Revenue by	:	Shri. Vikas Suryavamshi, Addl. CIT
Assessee by	:	Shri. B. Sudheendra, Advocate

Date of hearing	:	10.07.2019
Date of Pronouncement	:	31.07.2019

ORDER

Per Jason P. Boaz, Accountant Member:

This appeal by Revenue is directed against the order of CIT(A)-5, Bangalore, dated 26.12.2018 for Assessment Year 2014-15.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in security service business, filed its return for Assessment Year 2014-15 on 29.11.2014 declaring income of Rs.1,09,40,960/-. The case was taken up for scrutiny for this Assessment Year and the assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) vide order dated 07.12.2016, wherein the assessee’s

income was determined at Rs.2,40,75,210/-; in view of disallowance of Rs.1,13,34,252/- on account of delayed payment of employees' contribution to PF / ESI by invoking the provisions of section 2(24)(x) r.w.s. 36(1)(v) of the Act. On appeal, the CIT(A)-5, Bangalore, vide the impugned order dated 26.12.2018 allowed the assessee's appeal.

3.0 Revenue, being aggrieved by the order of CIT(A)-5, Bangalore, dated 26.12.2018 for Assessment Year 2014-15, has preferred this appeal before the Tribunal wherein it has raised the following grounds:-

1. *The order of the learned CIT(A) is opposed to law and facts of the case.*
2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was right in holding that the Employee's contribution to PF and ESI beyond period stipulated in SEC.36(1)(va) r.w.s. 2(24)(x) and Sec 43B and paid on or before the due date for furnishing return u/s. 139(1) is a deductible expenditure, when the Circular No.22/2015 dated 17-12-2015 relied by CIT(A) does not apply to the claim of deduction relating to employees contribution ?*
3. *For these and other grounds that may be urged upon at the time of hearing, it is prayed that the order of Ld. CIT(A) in so far as it relates to the above grounds, may be reversed and that of the Assessing Officer may be restored.*
4. *The appellant requests leave to alter, amend or delete any of the grounds mentioned above and / or add any new grounds on or before the hearing.*

3.2 All these grounds raised by Revenue (supra) pertain to the issue of the assessee's claim for deduction in respect of employees' contribution to PF / ESI beyond the period specified in the respective Acts, but paid on or before the due date for filing of the return of income under section 139(1) of the Act.

3.3 The facts of the matter on this issue, as emanate from the material on record, are that in the course of assessment proceedings, the AO noticed that the employees' contributions to PF and ESI amounting to Rs.1,31,34,573/- were deposited belatedly; i.e., beyond the period stipulated under the respective Act. On being queried in this regard, the assessee contended that these amounts have been paid before the due date for filing the return of income under section 139(1) of the Act and therefore no disallowance is called for. The AO, however, rejected the assessee's contention and held that the assessee can be allowed deduction thereof, only if the employees' contribution to PF is paid before the date specified i.e., 20th of the following month. On appeal, the CIT(A) allowed the assessee's claim.

3.4 Aggrieved by the order of the CIT(A), Revenue has carried the matter in appeal before us. After having heard the rival contentions in the matter and considering the judicial precedents in the matter, we find that this issue has been decided by the Hon'ble Karnataka High Court in the case of CIT Vs. Sabari Enterprises (2008) 298 ITR 141 (Kar), which has been followed by the Hon'ble Karnataka High Court in the case of CIT Vs. Spectrum Consultants India Pvt. Ltd., in WA No.4077/2013 (T-IT) dated 09.12.2013. In the aforesaid decisions (supra), the Hon'ble Court has held that the employer shall get deduction for payment of employees' contributions to PF provided they are deposited before the due date for filing the return of income under section 139(1) of the Act. It has further held that Parliament has not made any distinction between employees' contribution and employer's contribution to PF and that the above conditions / time specified for payment thereof apply to both these contributions to PF. Respectfully following the aforesaid judgments of the Hon'ble Karnataka High Court in the case of Sabari Enterprises (supra) and Spectrum Consultants India Pvt. Ltd., (supra), we uphold the decision of the CIT(A) and dismiss ground Nos.2 and 3 of Revenue's appeal.

4. In the result, Revenue's appeal for Assessment Year 2014-15 is dismissed.

Order pronounced in the open court on this 31st day of July, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 31st July, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.