

**आयकर अपीलीय अधिकरण, “ए” न्यायपीठ, चेन्नई**  
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं एस जयरामन, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.118/Chny/2019  
निर्धारण वर्ष/**Assessment Year:2013-14**

The Dy. Commissioner of Income Tax,  
Corporate Circle-2(1),  
Chennai.

M/s. Florind Uppers Pvt. Ltd.,  
Vs. No.29, College Road, Nugambakkam,  
Chennai – 600 006.

[PAN: AAACF 9811D]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri ARV Sreenivasan, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/ Date of hearing : 08.07.2019

घोषणा की तारीख /Date of Pronouncement : 21.08.2019

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-6, Chennai dated 31.10.2018 relevant to the assessment year 2013-14. The grounds raised by the Revenue are reproduced as under:

*“1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.*

*2.1 The CIT(A) erred in directing the AD to verify and allow the belated payments on Employees’ ESI & PF by holding that if the same were paid before the due date of filing of return of income u/s.139(1) of the Act even when the same were not paid by the assessee within the due date of relevant Acts.*

*2.2 The CIT(A) ought to have appreciated that the employee's contribution of ESI & PF are governed by the section 36(1)(va) of the Act and not under section 43B of the Act.*

*2.3 The CIT(A) ought to have considered the Board's Circular No.22/2015, dt.17.12.2015 has accepted the decision of the Supreme Court in the case of Alom Extrusions only in respect of disallowance u/s 43B of the Act and has stated that this Circular does not apply to the claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act.*

*3 For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored."*

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2013-14 on 26.09.2013 declaring a loss of Rs. 7,53,72,974/-. The assessee is engaged in the business of manufacture of leather shoe uppers and earned revenue from the operations of Rs. 43,56,35,750/-. The assessee had delayed the payment/deposit of the Employees Contribution to ESI and PF amounting to Rs. 94,20,941/- during the year. However, the assessee had deposited the said amount before filing of the due date of the filing of return u/s. 139(1) of the Income Tax Act, 1961 (in short 'the Act'). The AO has stated that when the amounts are collected from the employees, it par takes the character of income u/s. 2(24)(x) of the Act and the same is allowed as expenditure when the same is paid in accordance with s. 36(1)(va) of the Act. The said provision allows for deduction of employees contribution of statutory funds only when it is paid before the due dates prescribed under relevant statutes and in the circumstances, the question of allowing less payments as deduction u/s.

36(1)(va) of the Act does not arise. The Id. AO relied on the decision in the case of *LKP Securities Ltd. in ITA No.638/Mum/2012 dated 17.05.2013 and the decision of Hon'ble High Court of Gujarat in the case of GSRTC Ltd. [2014] 41 taxmann.com 100 (Guj)* and the said amount of Rs. 94,20,941/- was treated as income of the assessee as per the provisions of s. 2(24)(x) of the Act r/w r. 36(1)(va) of the Act and added back to the total income of the assessee.

3. Aggrieved, the assessee preferred an appeal before Id. CIT(A). After considering the submissions of the assessee and relying on the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Industrial Security and Intelligence India Pvt. Ltd. in Tax Case (Appeal) Nos.585 & 586 and MP No.1 of 2015 dated 24.07.2015* and allowed the appeal of the assessee. On being aggrieved, the Revenue filed this appeal before us.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the AO noticed from Form-3CD that the contributions towards PF and ESI of Rs. 94,20,941/- have been remitted belatedly since, the assessee has not remitted the contribution of PF and ESI before due date (as per relevant act), the AO held that the assessee does not qualify for claiming deduction u/s. 36(1)(va) of the Act to avail the benefit u/s. 43B of the Act. However, it is not that the assessee has not paid

the ESI and PF amount before due date of the filing of the return of income. The Id. CIT(A) by relying on the decision of Hon'ble Jurisdictional High Court in the case of *Industrial Security and Intelligence India Pvt. Ltd.* (supra) directed the AO to delete the addition of Rs. 94,20,941/-. The Tribunal has also followed the above decision in several cases and decided the issue in favour of the assessee. The relevant portion of the order of the Hon'ble Jurisdictional High Court is reproduced as under:

*"5. We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, whereby, the Supreme Court held that omission of second proviso to Section 43B and amendment to first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively, i.e., with effect from 1.4.1988 i.e., the date of insertion of first proviso. The Delhi High Court in the case of CIT V. Amil Ltd. reported in 321 ITR 508 held that if the assessee had deposited employee's contribution towards Provident Fund and ESI after due date as prescribed under the relevant Act, but before the due date of filing of return under the Income Tax Act, no disallowance could be made in view of the provisions of Section 43B as amended by Finance Act, 2003.*

*6. In the present case, the assessee had remitted the employees contribution beyond the due date for payment, but within the due date for filing the return of income. Hence, following the above-said decisions, we find no reason to differ with the findings of the Tribunal. Accordingly, we find no question of law much less any substantial question of law arises for consideration in these appeals. Accordingly, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed."*

5. After considering the ratio laid down by the decision of Hon'ble Jurisdictional High Court in the case of *Industrial Security and Intelligence India Pvt. Ltd.* (supra), we do not find any infirmity in the orders passed by

the Id. CIT(A). Hence, the appeal filed by the Revenue is liable to be dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced on the 21<sup>st</sup> August, 2019 at Chennai.*

Sd/-  
(S JAYARAMAN)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 21.08.2019  
EDN, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT,  
5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.