

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.457/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2012-13)**

Dy.Commissioner of Income Tax
Circle 1(1)
Visakhapatnam

Vs. M/s Bharat Heavy Plate &
Vessels Ltd.
D.No.10-3,
Administrative Building
Natayyapalem
Visakhapatnam
[PAN :AAACB7076N]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Smt.Suman Malik, DR
: None

सुनवाई की तारीख / Date of Hearing

: 05.09.2019

घोषणा की तारीख/Date of Pronouncement

: 30.09.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in

ITA.No.1154/2014-15, Vsp/2018-19 dated 27.11.2018 for the Assessment Year (A.Y.) 2012-13.

2. In this case, the assessment was completed u/s 143(3) by an order dated 06.02.2015 and in the assessment, the Assessing Officer (AO) made the addition of Rs.69,40,196/- u/s 36(1)(va) r.w.s.2(24)(x) of the Income Tax Act, 1961 (in short 'Act'). The assessee has collected the contributions towards Provident Fund from the employees, but not remitted to the Provident Fund account before the due date of payment as specified under the Provident Fund Act. However, the said contributions were remitted to the concerned account before the due date of filing the return of income. Hence, the AO made the addition u/s 2(24)(x) r.w.s.36(1)(va) of the Act.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee following the decision of Hon'ble Karnataka High Court in the case of Essae Teroka (P) Ltd., Vs.DCIT (2014) 366 ITR 408. The Ld.CIT(A) also relied on the following decisions :

- (i) CIT Vs. Kichha Sugar Company Ltd. (2013) 356 ITR 0351 (Uttarakhand)

- (ii) CIT Vs. Alom Extrusions Ltd. (319 ITR 306)-227 CTR (SC) 417 (2009)
- (iii) SC in CIT Vs. Vinay Cement Ltd. (2009) 313 ITR (ST.)1
- (iv) CIT Vs. Vijay Shree Ltd. 43 Taxman 396 (Calcutta hc)
- (v) CIT Vs. Nexus Computers Pvt. Ltd. 313 ITR 144

4. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal.

5. We have heard both the parties and perused the material placed on record. This Tribunal has taken a view that deduction of employees contribution required to be allowed if the same is remitted to the employees provident fund account before the due date for filing the return of income in the case of M/s Eastern Power Distribution Company of A.P. Ltd in I.T.A. No.374/Viz/2017 dated 20.09.2017 and also in the case of M/s Miracle Software Systems (India) Pvt. Ltd. vide I.T.A. No.150/Viz/2019 dated 07.08.2019, following the decision of Hon'ble Karnataka High Court in the case of Essae Teroka (P) Ltd. (supra), For the sake of clarity and convenience, we extract relevant part of the order of the ITAT in the case of M/s Miracle Software Systems (India) Pvt. Ltd. (supra) which reads as under :

“9. We have heard both the parties and find that the assessee has remitted the Employees contribution to P.F beyond the due date specified under P.F Act, but before the due date for filing the return of income. This tribunal has consistently taken the view that the deduction is to be allowed even in case of employees contribution, if the same is paid before the due date of filing the return of income. The Tribunal has followed the decision of Hon’ble Karnataka High Court in the case of ESSAE Teraoka Pvt Ltd. Vs. DCIT [366 ITR 408] and the decision of ITAT, Hyderabad in the case of Tetra Soft India Pvt. Td. Vs. ACIT (2015) (40 ITR Tribunal 470) while delivering the above ruling. Further this Tribunal on identical facts decided the issue in favour of the assessee in it’s order in I.T.A No.485/Viz/2018 dated 25.01.2019. Since the Ld.CIT(A) allowed the appeal of the assessee following the order of this Tribunal, we find no reason to interfere with the order of the CIT(A), accordingly the revenue’s appeal in ground No.5 to 8 are dismissed.”

5.1. Respectfully following the view taken by this Tribunal, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 30th September 2019.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 30.09.2019 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s Bharat Heavy Plate & Vessels Ltd., D.No.10-3, Administrative Building, Natayyapalem, Visakhapatnam
2. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Circle 1(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam