

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री रमित कोचर, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Ramit Kochar, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 151/Chny/2019  
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Saravana Stores(Tex),  
42-45,Ranganathan Street,  
T.Nagar, Chennai 600 017.  
**[PAN: AAWFS6761Q]**

Vs. The Assistant Commissioner of  
Income Tax,  
Central Circle 1(2),  
Chennai.

**(अपीलार्थी /Appellant)**

**(प्रत्यर्थी /Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Ms. T. Sandhyaarti, CA

प्रत्यर्थी की ओर से /Respondent by

: Shri Guru Bashyam, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 28.11.2019

घोषणा की तारीख /Date of Pronouncement

: 13.12.2019

**आदेश / ORDER**

**PER DUVVURU RL REDDY, Judicial Member:**

This appeal filed by the Assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-18, Chennai dated 22.11.2018 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the disallowance made in respect of remittance of employees contribution towards EPF/ESI.

2. Brief facts of the case are that the assessee, a partnership firm has filed its return of income for the assessment year 2013-14 on 30.09.2013 admitting a total income of ₹.38,57,82,240/-. On verification of the details filed by the

assessee, the return of income filed by the assessee was accepted vide order under section 143(3) of the Income Tax Act, 1961 ["Act" in short]. Subsequently, the Assessing Officer noticed that the assessee has made payments pertaining to employee's contribution to Provident Fund and Employees State Insurance beyond the due dates. It was further noticed that there is a delay in the payment of Provident Fund and ESI for the assessment year under consideration. By passing rectification order under section 154 of the Act, the Assessing Officer disallowed EPF of ₹.75,15,908/- and ESI amount of ₹. 12,90,363/- under section 36(1)(va) r.w.s. 2(24)(x) of the Act, and brought to tax.

3. On appeal, after considering the submissions of the assessee and by following the decision of the Hon'ble Jurisdictional High Court in the case of M/s. Unifac Management Services (India) Pvt. Ltd. vs. DCIT (WP No.5264 of 2018 and WMP No.6461 of 2018) dated 23.10.2018 (Mad), the Id. CIT(A) confirmed the disallowance made under section 36(1)(va) r.w.s. 2(24)(x) of the Act.

4. On being aggrieved, the assessee is in appeal before Tribunal. By relying on the Division Bench decision of Hon'ble High Court of Madras in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. in TCA Nos. 585 and 586 of 2015 vide order dated 24.07.2015, the Id. Counsel for the assessee has submitted that the decision followed by the Id. CIT(A) is Single Judge Bench against the writ application, should not have been applied since the

same was dismissed subsequently by the Division Bench of the Hon'ble High Court and prayed for deleting the disallowance by following the Division Bench decision. On the other hand, the Id. DR dutifully supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has disallowed an amount of ₹. 75,15,908/-, and Rs.88,06,271/- being belated remittance of the employee's contribution to PF and ESI respectively as the income of the assessee in view of the provisions of section 2(24)(x) of the Act read with section 36(1)(va) of the Act. Before the Id. CIT(A), the assessee has submitted that since the entire amount has been remitted before the due date for filing of return of income, the same should be allowed as deduction under section 43B of the Act. Before us, the Id. DR has submitted that the provisions of section 43B of the Act will be applicable only in respect employer's contribution to the funds for the welfare of employees and not in respect of the employer's contribution to the funds. Before the Id. CIT(A), the assessee has submitted that the issue is covered in favour of the assessee by the Hon'ble Jurisdictional High Court in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. (supra), whereas, by following the Single Judge Bench against the writ petition in the case of Unifac Management Services India Pvt. Ltd. v. DCIT in W.P. No. 5264 of 2018 & WMP No. 6461 of 2018 dated 23.10.2018, the Id. CIT(A) confirmed the disallowance. However, we find that vide order dated 09.01.2019, both the appeal filed in Writ Appeal No. 2854

of 2018 against the W.P No. 5264 of 2018, as well as order dated 23.10.2018 in W.P No. 5264 of 2018, which was followed by the Id. CIT(A), were dismissed as withdrawn by the Division Bench of the Hon'ble Madras High Court. Therefore, the findings of the Id. CIT(A) cannot be held as valid.

5.1 We have perused the above decision in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. (supra), wherein, the Hon'ble High Court has observed and held as under:

*“2. The brief facts of the case are as follows:*

*The respondent/assessee filed its return of income for the assessment years in question. The said returns were processed and were not selected for scrutiny. Subsequently, the Assessing Officer noticed that there was escapement of income and hence reopened the assessments under Section 147 of the Income Tax Act by issuing notice under Section 148 of the Income Tax Act. While completing the re-assessment, the Assessing Officer disallowed the expenses claimed by way of Employee's contribution to PF and ESI holding that the assessee had not paid the employee's contribution of PF and ESI within the due dates specified under the respective Act. Aggrieved by the said order of assessment, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) challenging the reopening as well as the disallowance. The Commissioner of Income Tax (Appeals) sustained the order of the assessment, thereby dismissed the appeals. Aggrieved by the same, the assessee preferred further appeals before the Tribunal. The Tribunal relied upon the decision of the Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, decision of the Delhi High Court in the case of CIT V. Amil Ltd. reported in 321 ITR 508 and that of the Co-ordinate Bench of the Tribunal in the case of M/s.Venkateswara Electrical Industries P. Ltd. V. DCIT in ITA Nos.1344, 1345 and 1636/Mds/2014 dated 28.8.2014 held as follows:*

*“5. Heard both sides. Perused orders of lower authorities and the decisions relied on before us. It is not in dispute that all these payments of provident fund Rs.16,20,571/- and ESI Rs.17,51,490/- were made beyond the grace period/due date allowed under Provident Fund & ESI Acts but before due date for filing of income-tax return. This issue has been decided in favour of the assessee by various High Courts following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusions Ltd. (319 ITR 306), wherein the Hon'ble Supreme Court held that omission of second proviso to section 43B and amendment of first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively and thus with effect from 1.4.1988 i.e.*

*the date of insertion of first proviso. The co-ordinate Bench of this Tribunal considering a similar issue in the case of M/s.Venkateswara Electrical Industries P. Ltd. Vs. DCIT (supra) following the decision of Hon'ble Delhi High Court in the case of CIT Vs. Amil Ltd. (321 ITR 508) held that even the employees contribution to provident fund is to be allowed as deduction if it is paid within due date for filing of return. While holding so, the Tribunal observed as under:-*

*“6. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below, as well as the judgments/decisions relied on by the Id. Counsel for the assessee. It is an un-disputed fact that there has been delay in remittance of employees contribution of ESI and Provident Fund in both the AYs i.e., 2008-09 & 2009-10. It is equally un-disputed that the assessee has deposited the amount towards employees contribution of ESI and Provident Fund before the due date of filing of return. The Hon'ble Delhi High Court in the case of Cit Vs. Amil Ltd., reported as 321 ITR 508 has held that if the assessee had deposited employees 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 the Finance Act, 2003. The decision of the Hon'ble Delhi High Court has been followed by the co-ordinate bench of the Tribunal in the case of JCIT Vs. M/s. S.M.Apparels (P) Ltd. (supra). The Tribunal has been consistently following the view taken by the Hon'ble Delhi High Court. Accordingly, we hold that the assessee is entitled to claim expenditure on employee's contribution towards ESI and Provident Fund for both the AYs. Accordingly, both the appeals of the assessee are allowed.”*

*6. Respectfully following the above, decision, we direct the Assessing Officer to delete disallowances made under section 43B of the Act for both these assessment years. The grounds of appeal raised by the assessee are allowed."*

*3. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.*

*4. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.*

*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.*

*Aimil 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.”*

6. The Id. DR could not controvert the above findings of the Hon'ble Jurisdictional High Court. Therefore, respectfully following the above decision of the Hon'ble High Court, we direct the Assessing Officer to delete the disallowance made on this account and accordingly, the ground raised by the assessee is allowed.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced on the 13<sup>th</sup> December, 2019 in Chennai.

Sd/-  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(DUVVURU RL REDDY)**  
**JUDICIAL MEMBER**

Chennai, Dated, 13.12.2019

Vm/-

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.