

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री 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. 18/Chny/2018
निर्धारण वर्ष/Assessment Year: 2014-15

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2),
Chennai 600 034.

M/s. Cema Electric Lighting Products
Vs. India Ltd., 10, Anna Avenue,
Bhaktavatsalam Nagar, Adyar,
Chennai 600 020
[PAN: AACCC9663Q]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. R. Anita, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri B. Ramakrishnan, FCA
सुनवाई की तारीख/ Date of hearing : 20.05.2020
घोषणा की तारीख /Date of Pronouncement : 22.05.2020

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)-1, Chennai dated 27.10.2017 relevant to the assessment year 2014-15. The effective grounds raised by the Revenue are that the Id. CIT(A) has erred in deleting the addition made in respect of employees contribution towards Provident Fund as well as deleting the disallowance of ₹.5.07 crores made in respect of the disproportionate expenditure towards salary & wages.

2. The first issue raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the addition made in respect of employees contribution towards Provident Fund of ₹.98,76,280/-. The disallowance was made on the ground that the said contributions have been paid belatedly and therefore, no deduction under section 36(1)(va) of the Act can be claimed by the assessee. On appeal, the Id. CIT(A) allowed the ground raised by the assessee by following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. in TCA Nos. 585 and 586 of 2015 dated 24.07.2015.

3. Aggrieved, the Revenue is in appeal before Tribunal. By relying on the decision in the case of PCIT v. Orchid Pharma Ltd. in T.C.A. Nos. 430 & 421 of 2019 & CMP No. 13978 of 2019 dated 08.07.2019, the Id. DR pleaded for remitting the matter back to the file of the Assessing Officer.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the disallowance of ₹.98,76,280/- under section 43B of the Act towards delayed remittance of Provident Fund contribution, the Assessing Officer found that the assessee had remitted belatedly beyond the due dates under the relevant statutes and therefore, the same was disallowed and brought to tax. Before the Id. CIT(A), the assessee has submitted that since the entire amounts have been remitted before the due date of filing of return of income

under section 139(1) of the Act, the same should be allowed as deduction under section 43B of the Act. By following the decision of the Hon'ble Madras High Court in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. (supra), the Id. CIT(A) directed the Assessing Officer to allow the deduction on account of payments made within the due date of filing of return of income under section 139(1) of the Act.

4.1 On perusal of the case law relied on by the Id. DR in the case of PCIT v. Orchid Pharma Ltd. (supra), we find that the decision of the Hon'ble High Court was rendered in peculiar circumstances without adjudicating the issue on merits, remitted the matter back to the file of the Id. CIT(A) for fresh consideration, by relying on the decision in the case of Popular Vehicles & Services Private Limited v. CIT 406 ITR 150 (Ker), wherein, the facts are not clear as to whether the assessee remitted the payments within the due date of filing of return of income under section 139(1) of the Act or not, otherwise also, the above decision of the Hon'ble Kerala High Court is not binding on the Tribunal in view of the decision in the case of Visvas Promoters P. Ltd. v. ITAT & Anr. 323 ITR 114, wherein, the Hon'ble Jurisdictional High Court has held that the decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction, and in other states or outside the territorial jurisdiction of that High Court, it may, at best, have only persuasive effect. Moreover, after the

decision of the Hon'ble Kerala High Court in the case of Popular Vehicles and Service Pvt. Ltd. v. CIT (supra) delivered on 02.07.2018, on an identical issue in similar facts and circumstances, in the case of Peerless General Finance and Investment Co. v. CIT, the Hon'ble Calcutta High Court decided the issue in favour of the assessee on 08.08.2018.

4.2 However, by following the decision of the Hon'ble Supreme Court in the case of CIT v. Alom Extrusions Ltd. 319 ITR 306 as well as decision of the Hon'ble Delhi High Court in the case of CIT v. Amil Ltd. 321 ITR 508, in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. (supra), the Division bench of the Hon'ble Madras High Court has given a concrete decision that once the assessee had remitted the employees contribution beyond the due date for payment, but within the due date for filing the return of income, no disallowance could be made in view of the provisions of section 43B of the Act as amended by the Finance Act, 2003. Moreover, the Id. DR could not controvert the above decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd. (supra) having modified or reverted by the High Court, which was, in our considered opinion, the Id. CIT(A) has rightly followed. Thus, we find no reason to interfere with the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the Revenue stands dismissed.

5. The next ground relates to disallowance of ₹.5,07,78,654/- relating to salary and wages incurred during the relevant assessment year. The Assessing Officer found that the salary and wages during the year amounting to ₹.15,48,50,625/- showed a huge increase from the earlier year amount of ₹.94,80,948/-. The Assessing Officer further observed that a sum of ₹.5.07 crores which had been paid during the assessment year 2013-14, but treated as an advance to employees and shown as recoverable in the balance sheet has been charged to the P & L Account during the relevant assessment year. According to the Assessing Officer, the sum of ₹.15.48 crores being the total debited to the P & L Account during the year on account of salary and wages includes the sum of ₹.5.07 crores which is neither accrued nor paid during the year and accordingly, disallowed the same and brought to tax. On appeal, the Id. CIT(A) deleted the disallowance after examining the submissions of the assessee.

6. We have heard both sides, perused the materials available on record and gone the orders of authorities below including paper book filed by the assessee. It was the submission of the Id. Counsel for the assessee that the sum of ₹.5.07 crores represent the salary and wages paid during the assessment year 2013-14 during which period all production had been halted and the factory had been closed. It was further submission that the sum of ₹.5.07 crores was therefore kept as advances and only the balance

sum of ₹.9.48 crores [not ₹.94 lakhs as stated by the Assessing Officer] was debited to the P&L Account in the assessment year 2013-14. It was further submission that the sum of ₹.5.07 crores which was reflected as an advance in the balance sheet as on 31.03.2013 continued to be reflected as an advance as on 31.03.2014 also. It was also referred to the Schedule of short term loans and advances at Note 16 where the staff loans as on 31.03.2013 was ₹.5.35 crores and the same continues to be reflected as staff loan as on 31.03.2014 at ₹.5.83 crores. It was further submission that the claim of ₹.15.48 crores as salary during the year does not include the said advance of ₹.5.07 crores which was continued to be shown as advance even at the end of the relevant assessment year. Upon the above submissions made during the appellate proceedings before the Id. CIT(A), after examining the above submission, the Id. CIT(A) has observed that as per the balance sheet, Note 16 shows staff loans as on 31.03.2014 at ₹.5.83 crores. Therefore, the amount shown as advance during the assessment year 2013-14 continues to remain as advance even as on 31.03.2014. Accordingly, the Id. CIT(A) deleted the disallowance made by the Assessing Officer. On perusal of the paper book, the Bench has raised a query to the Id. DR to clarify the actual amount of salary & wages debited to the profit and loss account in the assessment year 2013-14 and the Id. DR has clarified that the amount is ₹.9,48,09,481/- and not ₹.94,80,948/- as stated in the assessment order resulting the substantial increase of 70% in salary & wages claim of

the assessee. We have also perused the above details given in the Balance Sheet furnished in the form of paper book, which was submitted before the authorities below, and thus, we find no infirmity in the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue stands dismissed.

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

Order pronounced on the 22nd May, 2020 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 22.05.2020

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.