

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 617/JP/2019
निर्धारण वर्ष / Assessment Year : 2014-15

M/s Forte Foliage Pvt. Ltd., 217, Laxmi Complex, M.I. Road, Jaipur.	बनाम Vs.	The ACIT, Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCF 0277 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Shri K.C. Gupta (JCIT)

सुनवाई की तारीख / Date of Hearing : 30/06/2020
उदघोषणा की तारीख / Date of Pronouncement: 30/06/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26.02.2019 of Id. CIT(A), Jaipur for the assessment order 2014-15. The assessee has raised the following ground:-

"1. on the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in confirming disallowance of Rs. 1,34,632/- on account of late deposit of ESI arbitrarily. Thus the disallowance so made deserves to be deleted."

2. The hearing of this appeal was concluded through video conference in view of the prevailing situation of COVID-19 pandemic. The only issue arises in this appeal of the assessee is the disallowance of Rs. 1,34,632/- on account of late deposit of ESI contribution. The Id. AR of the assessee has submitted that there is only minor delay in the payment of ESI contribution however, the payment was made before the end of the financial year itself and therefore, the payment was made much before the due date of filing of return of income U/s 139(1) of the Act. The Id. AR of the assessee has pointed out that this issue is covered by the various decisions of the Hon'ble Jurisdiction High Court as well as decision of Hon'ble Supreme Court in case of Rajasthan Renewable Energy Corporation Limited wherein the SLP filed by the Revenue against the said decision of Hon'ble jurisdiction High Court was dismissed by the Hon'ble Supreme Court reported in 250 taxman 16.

3. On the other hand, the Id. DR has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. The Department has not disputed the fact that the payment on account of ESI contribution was made by the assessee before the end of the financial year relevant to the assessment year

under consideration and therefore, the payment was made much before the due date of filing of return of income U/s 139(1) of the Act. At the outset, we note that this issue is covered by a series of decisions of the Hon'ble jurisdiction High Court as well as this Tribunal. This Tribunal in case of M/s K.S. Automobiles Ltd. vs. DCIT in ITA No. 1184/JP/2018 and 1185/JP/2018 dated 08.03.2019 has considered an identical issue in para 3 as under:-

"3. We have heard the ld. AR as well as ld. DR and considered the relevant material on record. At the outset, we note that this issue is covered in favour of the assessee by the various decisions of the Hon'ble jurisdictional High Court including the decision in case of CIT vs. State Bank of Bikaner & Jaipur 99 DTR 131 as well as decision in case of CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307 and in case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 366 ITR 163. We further note that the ld. CIT(A) though has not disputed the various decisions of Hon'ble High Court however, disallowance made by the AO are sustained as he misunderstood the decision of Hon'ble Jurisdictional High Court in case of PCIT vs. M/s Rajasthan Renewable Energy Corporation Limited in DB ITA No. 10,11 & 12/2018 dated 13.03.2018. In the case of PCIT vs. M/s Rajasthan Renewable Energy Corporation Limited (supra) the Hon'ble High Court has considered this issue in para 4 to 6 as under:-

"4. So far as question No. 1 is concerned, the same is now covered by the decisions of this Court in Principal Commissioner of Income-Tax V/s Rajasthan state seed Corporation Ltd. [2016] 386 ITR 267 (Raj) wherein it has been held as under:-

"In so far as the expenditure incurred on State Renewal Fund is concerned, the said expenditure also goes to show that the renewal fund was set up by the State Government and was

created with the object of providing a safety net for the workers likely to be effected by restricting in the State Public Enterprise and that a finding of fact has been recorded that the contribution made to the State Renewal fund is solely for the purposes of the welfare and benefit of the employees. In our view, it is for the assessee to decide whether any expenditure should be incurred in the course of business and expenditure of this nature being for business expediency is certainly allowable deduction under section 37(1) of the Act. In our view any normal expenditure for the welfare and benefit of the employees is allowable expenditure under section 37(1), the Tribunal has come to a finding of fact that it was a legal obligation of the respondent-assessee towards contribution of the said amount to the State Renewal Fund and there being a legal obligation as well in our view the Tribunal has come to a correct conclusion."

In view of the above, question No. 1 is answered in favour of the assessee and against the department.

6. With regard to issue No. 2 and 3 the controversy is pending before the Supreme Court in C.I.T., Jaipur Vs/ Ms State Bank of Bikaner and Jaipur in SLP© No. 16249/2014, therefore, subject to decision of SLP, for the present, these issues are decided on in favour of the department and against the assessee. It will be open for the department to recover the amount if the decision is in their favour."

Thus, it is clear that the Hon'ble jurisdictional High Court has followed the earlier decisions in case of PCIT vs. Rajasthan State Seed Corporation Limited 386 ITR 267 as well as decision in case of CIT vs. State Bank of Bikaner & Jaipur (supra). All these decisions which were allowed by the Hon'ble jurisdictional High Court are in favour of the assessee however, in the conclusion in para 6 there is a typographical mistake wherein it is stated "these issues decided in favour of the Department and against the assessee". The whole decision of the Hon'ble High Court has to

be considered in the contest of the decision followed and the subsequent line which says "it will be opened for the Department to recover the amount" if the decision in their favour which means that in case of further appeal before Hon'ble Supreme Court if decision is delivered in favour of the department it can recover the amount. Therefore, even the decision which is relied upon the Id. CIT(A) the same is in favour of the assessee though due to typographical mistake it was misunderstood by the Id. CIT(A) as in favour of the Revenue. Accordingly, in view of a series of decisions of the Hon'ble Jurisdictional High Court in favour of the assessee and further Hon'ble Supreme Court in case of PCIT vs. Rajasthan State Beverages Corporation Ltd. 250 taxmann 16 has dismissed the SLP filed by the Department this issue is decided in favour of the assessee and against the Revenue. Hence, disallowances/additions made by the AO on account of employees contribution to PF & ESI are deleted.

There is no dispute the appeal of the assessee filed the levy of penalty U/s 271(1)(c) of the Act was dismissed by the Id. CIT(A) when nobody has attended the proceeding despite 12 opportunities were given by the Id. CIT(A). We further, note that out of these 12 opportunities the date of hearing upto 12.12.04.2018 were prior to the disposal of the quantum appeal of the assessee by this Tribunal, therefore, it was appropriate to wait for outcome of the quantum proceeding though it is not necessary. The Id. CIT(A) has not decided the issue by speaking but dismissed the appeal of the assessee summarily for want of any attendance on behalf of the assessee. It is pertinent to note that before the impugned order was passed by the Id. CIT(A) the appeal of the assessee in the quantum proceeding was decided by this Tribunal and therefore, the observations and findings of the Tribunal in the quantum proceeding ought to have been considered while deciding the appeal against the penalty order. This Tribunal in the quantum relief has granted part relief to the assessee and therefore, the said order becomes relevant for deciding the penalty appeal. These facts and circumstances of the

case when the Id. CIT(A) has not considered by this Tribunal in the quantum appeal while passing the impugned order the matter is required to be reconsidered after giving opportunity of hearing to the assessee as well as considering the order of this Tribunal in the quantum proceedings. Accordingly, we set aside the impugned order and remand the matter to the record of the Id. CIT(A) for deciding the same fresh after giving an opportunity of hearing to the assessee."

Accordingly in view of the decision of this Tribunal as well as decision of Hon'ble High Court and Hon'ble Supreme Court whereby the SLP filed by the Department was dismissed we decide this issue in favour of the assessee and against the Revenue. The disallowance/addition made by the AO is deleted.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30/06/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/06/2020.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Forte Foliage Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 617/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar