

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : F : NEW DELHI  
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.5152/Del/2017  
Assessment Year : 2014-15

DCIT,  
Circle-20(1),  
New Delhi.

Vs Planman HR (P) Ltd.,  
48, Community Centre,  
Naraina Industrial Area,  
Phase-I,  
New Delhi.

PAN: AAFCP0981K

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate
Revenue by	:	Shri Farhat Khan, Sr. DR
Date of Hearing	:	06.07.2021
Date of Pronouncement	:	15.07.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 30<sup>th</sup> May, 2017 of the CIT(A)-7, New Delhi, relating assessment year 2014-15.

2. The first ground raised by the Revenue reads as under:-

õ1. On the facts and under the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs. 54,31,041/- made by the AO without appreciating the fact that the amount has been paid by assessee was on account of infraction the basis of explanation to section 37 of the Act which says that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.õ

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of human resources development. It filed its return of income on 30.11.2014 declaring loss of Rs.75,71,378/-. During the course of assessment proceedings, the AO observed that the assessee company has claimed expenses on account of interest on late payment of service tax of Rs.54,31,041/-. According to the AO, such interest on late payment of service tax cannot be allowed as a deduction. Rejecting the various explanations given by the assessee, the AO made addition of the same to the total income of the assessee.

4. In appeal, the ld.CIT(A) deleted the disallowance holding that the interest on late payment of service tax is compensatory in nature in view of the decision of the Delhi Bench of the Tribunal in the case of DCIT vs. Messe Dusseldorf India (P) Ltd. (2010) 129 TTJ 81 T (Del).

5. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. The ld. DR heavily relied on the order of the AO.

7. The Id. Counsel for the assessee, on the other hand, referring to the following decisions, submitted that interest paid on late deposit of service tax is a permissible deduction under the Income-tax Act:-

- i) Remfry & Sagar Consultants Pvt. Ltd., ITA No.5887/Del/2011, order dated 20<sup>th</sup> July, 2012.
- ii) ACIT, CC-17 & DCIT, CC-8, New Delhi vs. Deepali Design & Exhibits (P) Ltd., 2019 (4) TMI 1017-ITAT Delhi, order dated 14.03.2019.

8. He accordingly submitted that in view of the consistent decisions of the coordinate Benches of the Tribunal, this issue being a covered matter in favour of the assessee, the order of the CIT(A) be upheld and the ground raised by the Revenue should be dismissed.

9. We have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A). We have also considered the various decisions cited before us. We find, the AO, in the instant case, disallowed the amount of Rs.54,31,041/- being interest paid on late payment of service tax holding the same to be not an allowable expenditure. We find, the Id.CIT(A) deleted the disallowance holding that the interest on late payment of service tax is compensatory in nature. While doing so, he relied on the decision of the coordinate Bench of the Tribunal in the case of Messee Dusseldorf India (P) Ltd. (supra). We do not find any infirmity in the order of the CIT(A) on this issue. We

find, the coordinate Benches of the Tribunal are consistently holding that interest paid for late deposit of the service tax is a permissible deduction. We find the coordinate Bench of the Tribunal in the case of Deepali Design & Exhibits (P) Ltd. (supra) (to which one of us i.e., Id. Judicial Member is a party) while dismissing the appeal filed by the Revenue on identical issue has observed as under:-

ø7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

"9. I have considered the facts of the case and written submissions of the appellant. Whenever any statutory impost is paid by the appellant by way of damages or penalty or interest, notwithstanding the nomenclature of impost as given by statute, one has to find out as to whether it is compensatory or penal in nature. If such impost is found to be of composite nature, the said impost has to be bifurcated into two components and give deduction to that component which is compensatory in nature and reject the deduction to that component which is penal in nature. Interest charged for delayed payment to sale tax does not have the character of penalty for an offence and hence allowable as deduction as it is merely compensation for money with held. Therefore, in the instant case, the payment of interest on late deposit of service tax with the Government account was compensatory in nature and has the same character as that of service tax. Since the service tax is permissible deduction, the interest paid for late deposit of the same is also a permissible deduction and should be allowed in the same manner. Reliance in this respect is placed on the decision of the Hon'ble Supreme Court in the case of Mahalaxmi Sugar Mills Co. v. CIT (1980) 123 ITR 429. Considering these facts, the impugned addition made by the Assessing Officer was unjustified and cannot be sustained. Accordingly, the addition of Rs. 15,50,903/- made by the Assessing Officer on account of disallowance of interest paid on service tax is deleted."

The payment of interest on late deposit of service tax with the government account was compensatory in nature and as the same character i.e. of service tax. This aspect was rightly taken into account by the CIT(A) in its finding. Since, the service tax is permissible deduction the interest paid for late deposit of the same is also a permissible deduction and should be allowed in the same manner. Ground No. 1 of Revenue's appeal is dismissed.ö

10. Similar view has been taken in various other decisions relied on by Id. Counsel for the assessee. Therefore, in view of the consistent decisions of the coordinate Benches of the Tribunal, we do not find any infirmity in the order of the CIT(A) deleting the disallowance of Rs.54,31,041/-being interest on late payment of service tax holding the same to be compensatory in nature. Accordingly, the order of the CIT(A) is upheld and the grounds raised by the Revenue is dismissed.

11. Ground of appeal No.2 raised by the Revenue reads as under:-

ö2. On the facts and under the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs. 8,85,62,590/- made by the AO without appreciating the fact that the assessee company did not comply with the provisions of section 2(24)(x) and 36(1)(va) of the Income Tax Act, 1961 on account of payments to be made on or before the due date as prescribed under the law of such funds on account of employees contribution towards provident Fund or any other fund mentioned u/s 2(24)(x).ö

12. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, observed from the details contained in the tax audit report that the assessee company did not comply with the provisions of section 2(24)(x) and section 36(1)(va) on account of payments to be made on or before the due date as prescribed under the law of such funds on account of employeesø contribution towards Provident Fund or any other fund mentioned under section 2(24)(x). He, therefore, confronted the same to the assessee and asked the assessee to file the details. Rejecting the various explanations given by the assessee, the AO made addition of Rs.8,90,53,240/- to the total income of the assessee by invoking the provisions of section 36(1)(va) r.w.s 2(24)(x) of the IT Act.

12.1 In appeal, the Id.CIT(A) deleted the addition made by the AO by observing as under:-

5.3. I have carefully considered the order passed by the AO and the written submissions filed by the Ld. AR. He has relied on a number of judgements wherein the Hon'ble Courts, Tribunals have ruled that delayed payments of employee's contribution to Provident Fund/ESIC is allowable if it is deposited before the return is filed u/s 139(1). He has also stated that the Hon'ble ITAT Delhi for the A.Y. 2013-14 in ITA Nos.5028/Del/2016 vide order dated 3301.2017 has dismissed the appeal of Revenue against the order of the CIT(Appeals) allowing relief to the appellant on similar facts. The Hon'ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 has held that the assessee can get the benefit of deduction if the payment is made before the return is filed, as per the principle laid down by the Hon'ble Supreme Court in the case of CIT vs. M/s Vinay Cement Ltd. 213 ITR 268. I find that the appellant has paid the Employee's contribution to provident fund at Rs.6,98,27,223/- ESIC of Rs. 1,29,88,031/- and professional tax of Rs.57,47,336/- out of Rs.62,37,986/- aggregating to Rs.8,85,62,590/- out of Rs.8,90,53,240/- disallowed in the assessment order before the due date of furnishing the return u/s 139(1) of the I.T. Act, 1961. In view of the legal position on the issue and the order of the Hon'ble ITAT, Delhi in the appellant's own case, the company is eligible for deduction of Rs.8,85,62,590/- out of the disallowance made by the AO at Rs.8,90,53,240/- by invoking provisions of Section 36(1)(va) read with 2(24)(x) and 43B of the Act. The AO is, therefore, directed to delete the addition of Rs.8,85,62,590/-. This ground is partly ruled in favour of the appellant.

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

14. The Id. DR heavily relied on the order of the AO.

15. The Id. Counsel for the assessee, on the other hand, referring to the decision of the coordinate Bench of the Tribunal in the case of DCIT vs. Dee Development Engineers Ltd., ITA No.4959/Del/2016, order dated 08.04.2021, submitted that similar disallowance on account of delay in deposit of employees contribution to

Provident Fund and ESI fund was deleted. Referring to the decision of the Honøble Delhi High Court in assessee's own case i.e., PCIT vs. Planman HR (P) Ltd., ITA 599/2017, order dated 11.09.2017, he submitted that under identical facts and circumstances, the Tribunal has upheld the order of the CIT(A) in deleting the disallowance made by the AO on account of delayed payment of contribution to Provident Fund and on further appeal by the Revenue the Honøble High Court dismissed the appeal filed by the Revenue. He accordingly submitted that in view of the decision of the jurisdictional High Court in assessee's own case, the ground raised by the Revenue should be dismissed.

16. We have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.80,90,53,240/- on account of late payment of ESI and PF and professional tax on the ground that the assessee has violated the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the IT Act. We find, the ld.CIT(A) deleted the addition the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the CIT(A) on this issue. The Honøble Delhi High Court in assessee's own case for the immediately preceding assessment year, has dismissed the appeal filed by the Revenue on this very issue by observing as under:-

1. This appeal by the Revenue is directed against an order dated 23rd January 2017 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 5028/Del/2016 for the Assessment Year (AY) 2013-14.

2. The question urged is as under:

Whether on facts and in the circumstances of the case Ld. ITAT was correct in deleting the addition of Rs. 7,91,59,691/- made by the AO on account of late deposit of PF, ESI and professional tax ignoring the provisions of Section 36(1)(va) and Section 7(24)(x) of the Income-tax Act, 1961?

3. Factually, it has been found by the Commissioner of Income Tax (Appeals) [CIT(A)] as well as by the ITAT, concurrently, that the payment by the Assessee employer towards the employees' contribution of the Provident Fund was made before the date of filing of the return by the Assessee and thus, in terms of the decision of this court in **Commissioner of Income Tax v. AIMIL Ltd. [2010] 321 ITR 508 (Del)**, it was within the due date for the purpose of Section 36 (1) (va) of the Income Tax Act, 1961 (Act) read with Section 43 (B) thereof.

4. Learned counsel for the Revenue attempted to persuade this Court to reconsider the correctness of its decision in **Commissioner of Income Tax v. AIMIL Ltd.** (supra). The Court finds that the decision has consistently been followed in later decisions of this Court and even by the Allahabad High Court in **Sagun Foundry Private Limited v. Commissioner of Income Tax, Kanpur (2017) 291 CTR (All) 557** and the Karnataka High Court in **M/s Essae Teraoka Pvt. Ltd. v. Deputy Commissioner of Income Tax [2014] 366 ITR 408 (Kar)**.

5. Accordingly, the Court is not persuaded to frame the question of law as urged by the Revenue. The appeal is dismissed.

17. Since the Ld.CIT(A) while deleting the addition has followed the order of the Tribunal in assessee's own case for A.Y. 2013-14 and since the decision of the Tribunal has been upheld by the Hon'ble High Court, therefore, in absence of any contrary material brought to our notice against the decision of the jurisdictional High Court in assessee's own case, we do not find any infirmity in the order of the

CIT(A) deleting the disallowance made by the AO on this issue. Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

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

Pronounced in the open court on 15.07.2021.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 15<sup>th</sup> July, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi