

आयकर अपीलिय अधिकरण "C" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUH RAHMAN, AM

आयकर अपील सं./ ITA No. 7334/Mum/2019

(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Circle 15(2)(2), Room No. 357, 3 rd Floor, Aayakar Bhavan, M.K. Road, Marine Lines, Mumbai-400020	बनाम/ Vs.	M/s Pearl Freight Services P. Ltd. B-106, Great Eastern Summit, Sector-15, CBD Belapur, Navi Mumbai-400 614
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AADCP1825G		

अपीलार्थी की ओर से/ Appellant by	:	Ms. Shreekala Pardeshi, DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	14.07.2021
घोषणा की तारीख / Date of pronouncement:	14.07.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of the Revenue is arising out of order of the Commissioner of Income Tax (Appeals)-24, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-24/ACIT-15(2)(2)/IT-360/2016-17 vide order dated 30.08.2019. The assessment was framed by the Asst. Commissioner of Income Tax, Mumbai (in short ACIT/ AO) for the A.Y. 2014-15 vide order dated 20.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance made by the Assessing Officer on account of employees contribution to Provident Fund as per explanation 36(1)(va) read with section 2(24)(x) of the Act. For this, the effective ground raised by Revenue is ground No.1, which reads as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making deletion of ₹1,73,45,596/- on disallowance of Employees Contribution to PF as per explanation to section 36(1)(va) read with section 2(24)(X) of the I.T. Act, 1961."

3. Brief facts are that the assessee company is engaged in the business of Cargo Handling and Supplying Manpower service to CFS' and various clients on JNPT. The Assessing Officer during the course of assessment proceedings noticed from audit report i.e. Form No. 3CD column 16(b) that during the year under consideration, the assessee has received a sum of ₹1,73,45,596/- from its employees on account of Provident Funds for which provisions of Section 2(24)(X) apply, but the assessee has not deposited the same to the employees account in the relevant fund before due date as specified in the Provident Fund Act. The Assessing Office therefore, disallowed the claim of deduction as the amount of ₹ 1,73,45,596/- was deposited beyond the due date specified in the relevant Act and hence, deduction under section 36(1)(va) of the Act has not allowable. Aggrieved, assessee preferred the appeal before CIT(A), the CIT(A) relying on the decision of Hon'ble Bombay High Court in

the case of CIT Vs. Hindustan Organic Chemical 366 ITR 1 (Bom.) has allowed the claim by observing in Para 5 to 7 as under: -

"5. We find no merit in the aforesated contention. Section 43B of the Income Tax Act 1961 was inserted in the Act with effect from 1st April 1984 by which the mercantile system of accounting with regard to tax, duty and contribution to welfare funds stood discontinued and under section 43B of the Act, it became mandatory for the Assesseees to account for the aforesated items not on a mercantile basis but on a cash basis. This situation continued between 1st April 1984 and 1st April 1988 when Parliament again amended section 43B and inserted the first proviso thereto which inter alia laid down that in the context of any sum payable by the Assessee by way of tax, duty, cess or fee, if paid by the Assessee even after the closing of the accounting year but before the date of filing of the return of income, the Assessee would be entitled to the deduction under section 43B on actual payment basis and such deduction would be admissible for that accounting year. This proviso however did not apply to contributions made by the Assesseees to the Labour Welfare Funds. In view thereof, by the Finance Act 1988, the second proviso came to be inserted which read as under :-

"Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed

unless such sum has actually been paid during the previous year on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36."

Thereafter, the said second proviso was further amended vide Finance Act 1989 with effect from 1st April 1989 which read as under :-

Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realised within fifteen days from the due date."

6. On a plain reading of the above provisos, it became ex-facie clear that the Assessees - employers were entitled to deductions only if the contributions to any fund for the welfare of the employees stood credited on or before the due date given in the relevant Act.

7. However, the second proviso once again created further difficulties for the Assessees - employers. Therefore, Industry once again made representations to the Ministry of Finance who, after taking cognizance of

the difficulties, inserted an amendment vide Finance Act, 2003 which came into force with effect from 1st April 2004. In other words, with effect from 1st April 2004, two changes were made in section 43B viz. deletion of the second proviso to section 43B and further amendment in the first proviso which reads as under:-

"Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub- section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return."

Therefore, the amendments introduced by the Finance Act, 2003 put on par the benefit of deductions of tax, duty, cess and fee on the one hand with contributions to various Employee's Welfare Funds on the other."

Aggrieved against the order of CIT(A), Revenue came in appeal before Tribunal.

4. Now before us, the learned Sr. DR controvert the findings of the CIT(A) but could not give any case laws against the order of Hon'ble Bombay High court in the case of Hindustan Organic Chemical (supra). Nothing contrary was brought to our notice by the



Department; hence, the issue being covered, we dismiss the appeal of Revenue, allowing the claim of assessee in regard to employee's contribution to Provident Fund. The appeal of Revenue is dismissed.

5. In the Result, the appeal of revenue is dismissed.

Order pronounced in the open court on 14.07.2021.

Sd/-

(एस रिफऔर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 14.07.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True - व .निजी सचिवS /. yraterceS etavirP

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai