

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B" KOLKATA**

Before Shri Sanjay Garg, Judicial Member and
Manish Borad, Accountant Member

आयकर अपील सं.य/
ITA No. 50/Kol/2020
Assessment Year:2012-13

ACIT, Circle-1(1), Aaykar Bhawan, P-7 Chowringhee Square, 7 th Floor, Room No. 17, Kolkata-700 069	बनाम V/s.	M/s. Garden Reach Shipbuilders & Engineers Ltd. 43/46 Garden Reach Road, Metiabruz, Kolkata-700 024.
PAN: AAACG9371K		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Smt. Ranu Biswas, Addl. CIT, Ld. DR
प्रत्यर्थी की ओर से/By Respondent	Shri Sanjay Bhattacharya, Ld.AR
सुनवाई की तारीख/Date of Hearing	06-09-2021
घोषणा की तारीख/Date of Pronouncement	07-09-2021

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal filed by the revenue pertaining to the A.Y. 2012-13 is directed against the order of Id. Commissioner of Income-tax (Appeals)-6, Kolkata dated 23-10-2019 vide appeal no. CIT(A), Kolkata-6/10605/2016-17 which is arising out of the order u/s 143(3)

of the Income Tax Act dated 25.3.2015 passed by DCIT, Circle-1(1), Kolkata.

2. The revenue has raised following grounds of appeals for Assessment Year 2012-13;

1. That on the facts and circumstances of the case and on law, Ld. CIT(A) has erred in granting relief to the assessee on account of employees' contribution towards provident Fund amounting to Rs. 3,30,13,514/- and ESI amounting to Rs.12,99,775/- without following the provisions of Sec. 2(24)(x) read with Sec. 36(1)(va).

2. The appellant craves the leave to make any addition, alternation, modification etc of the grounds either before the appellate proceedings, or in the course of appellate proceedings.

3. At the outset, the Ld. Counsel for the assessee submitted before us that the issue raised in the instant appeal regarding disallowance of employees' contribution towards Provident Fund and ESI without following the provisions of section 2(24)(x) read with section 36(1)(va) of the Act is squarely covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court, Kolkata in the case of Vijay Shree Ltd, ITA No. 245 of 2011(G.A No.2607 of 2011) dt. 12.8.2015.

4. Per contra the Ld. Departmental Representative could not controvert the submissions made by the Ld. Counsel for the assessee by placing any other binding precedence in Revenue's favour. He merely placing reliance supported the findings of the Ld.AO.

5. We have heard the rival contentions and perused the records placed before us. We found that the assessee company is engaged in manufacturing of ship and warship. Return of income filed on 28-09-2009 for the A.Y 2012-13 declaring total income of Rs.165,35,41,220/- . The case was selected for scrutiny through CASS followed by serving of notices u/s. 143(2) and 143(1) of the Act dt. 08-08-2013 and dt. 02.05.2014. The Ld. AO examined the details of employees' contribution to provident fund and ESI. On going through the Tax Audit Report (TAR) filed u/s. 44AB of the Act, he found that there was a delay in deposit of PF (Rs.3,30,13,514/-) and ESI (Rs.12,99,775/-) in view of provisions of section 36(1)(va) of the Act. The Ld. AO placed reliance on the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation [2014] 41 Taxman.com 100[Gujarat] disallowed Rs. 3,43,13,292/- and assessed the total income at Rs. 168,78,54,510/-. Further, we observe that when the assessee carried this matter before the Ld.CIT(A), the same was decided in his favour and the Ld. CIT(A) deleted the disallowance placing reliance on the judgment of the Hon'ble Jurisdictional High Court in the case of *Vijay Shree Ltd (supra)* observing as under:-

"5. Grounds No. 2 & 3 are in respect of addition of Rs. 3,30,13,514/- for the Employees' Contribution towards PF and Rs.12,99,775/- for the Employees' Contribution towards ESI. The said amounts have been disallowed by the AO by invoking the provisions of sec. 2(24)(x) read with sec. 36(1)(vii). The appellant has submitted before me that such contributions having been deposited much before the prescribed date filing the return u/s 139((1) and hence following the judgment of Hon'ble High Court, Kolkata in the case of Vijay Shree Ltd. ITA

*No. 245 of 2011 (G.A. No. 2607 of 2011) dt. 12.8.2015. The judgment of Vijay Shree Ltd. (supra) has also been followed in assessee's own case for A.Y.-2011-12 at ITA No. 53 of 2019 (G.A. No. 469 of 2019) dt. 26.8.2019 by the jurisdictional High Court. Hence, such grounds of the appellant are allowed according in view of the judgment of Jurisdictional High Court and hence such grounds of the appellant are treated as **allowed**.*

6. On perusal of the above findings of the Ld. CIT(A) and Revenue being unable to dispute the fact that the alleged sum contributed towards provident fund and ESI was deposited with the regulating authority before the due date of filing return u/s 139(1) of the Act and the issue being squarely covered by the judgement and the Hon'ble Jurisdictional High Court in the case of *Vijay Shree Ltd. (supra)*, we find no infirmity in the findings of the Ld. CIT(A) deleting the said disallowance. Accordingly, ground no. 1 raised by the revenue stands dismissed.

7. Ground no. 2 raised by the revenue is general in nature which needs no adjudication.

8. In the result the appeal of the revenue is dismissed.

The order pronounced in the open Court on 07. 09.2021.

Sd/-
(SANJAYGARG)
JUDICIAL MEMBER

दनांक /Dated :07th September, 2021

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Department: ACIT, Cir-1(1), Aaykar Bhawan, Room No. 17,P-7 Chowringhee Square, 7th Fl., Kolkata-700 069.
2. प्रत्यर्थी/Respondent/Assessee: Garden Reach Shipbuilders & Engineers Ltd. 43/46 Garden Reach Road, Metiabruz, Kolkata-700 024.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Senior Private Secretary/D.D.O
ITAT, Kolkata