

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.1525 & 1526/Chny/2019

(निर्धारणवर्ष / Assessment Years: 2014-15 & 2013-14)

M/s. Saalim Shoes Pvt. Ltd. 4/2, 2 nd floor, Atkinson Place, VenkatachalamSalai, Vepery, Chennai-600 007.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-6(1) Chennai-600 034.
PAN: AAJCS 9889B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	None
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R.Anita, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	21.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	05.01.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders passed by the learned Commissioner of Income Tax(Appeals)-16, Chennai, both dated 28.11.2018 & 30.11.2018 and pertain to assessment years 2014-15 & 2013-14 respectively. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for both assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2014-15 are reproduced as under:-

"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs.76,83,062/- being belated remittance of employees' contributions to Employee State Insurance u/s.2(24)(x).

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the employees' contributions to Employee State Insurance were remitted before the due date for filing the return of income of the appellant for the impugned assessment year.

5. For that without prejudice to the above, no disallowance u/s.36(1)(va) on account of the belated remittance of employees' contributions to Employee State Insurance is warranted in the facts and circumstances of the case.

6. For that the Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.1,32,916/- u/s.14A read with Rule 8D.

7. For that the provisions of section 14A r.w.s. Rule 8D are not invocable in the facts and circumstances of the case.

8. For that there is no satisfaction of the Assessing Officer that any expenditure was in fact incurred so as to attract the provisions of section 14A read with Rule 8D.

9. For that no exempt income was earned by the appellant in the impugned assessment year.

10. For that borrowed funds were not utilized for making investments.

11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had sufficient own funds which it had used for making the investments.

12. For that the disallowance u/s.14A read with Rule 8D was not warranted as no expenditure was incurred by the appellant for earning exempt income.

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in invoking Rule 8D(2)(ii) in computing the disallowance u/s.14A.

14. For that without prejudice to the above, all investments did not yield any return in the form of dividend during the impugned assessment year and hence applying Rule 8D(2)(ii) and Rule 8D(2)(iii) on entire investments is not warranted in the facts and circumstances of the case.”

3. We find that appeal filed by assessee for assessment year 2014-15 is barred by limitation for which necessary petition for condonation of delay explaining the reasons for the delay has been filed. As per petition filed by the assessee, we find that assessee company is undergoing severe financial crisis, assessee could not file appeal within the time allowed under the Act, and hence, prayed that delay may be condoned.

4. Having heard learned DR and considered petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by assessee for not filing

the appeal within the time allowed under the Act, comes under reasonable cause as provided under the Act, for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

5. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and export of leather shoes, uppers and full shoes filed its return of income for both assessment years u/s.139(1) of the Income Tax Act, 1961. The assessments for impugned assessment years have been completed u/s. 143(3) of the Income Tax Act, 1961, on 29.12.2016 and 31.12.2016 respectively, where the Assessing Officer has made additions towards disallowance of employees contribution to PF & ESI u/s.36(1(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961, for belated remittance of contribution. The Assessing Officer has also made addition towards disallowance of expenditure relatable to exempt income u/s.14A of the Act. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for reasons stated in his appellate order dated

28.11.2018 sustained additions made by the Assessing Officer towards disallowance of employees contribution to PF & ESI u/s.36(1(va) r.w.s. 2(24)(x) of the Act. The learned CIT(A) had also sustained additions towards expenditure relatable to exempt income u/s.14A read with Rule 8D of the Income Tax Rules, 1962. Aggrieved by order of the learned CIT(A), the assessee is in appeal before us.

6. None appeared for the assessee. We have heard learned DR and perused materials available on record. The first issue that came up for our consideration from ground no. 3 to 5 of assessee appeal is additions made towards disallowance of employees contribution to PF & ESI u/s. 36(1(va) r.w.s. 2(24)(x) of the Act. The learned DR, at the time of hearing submitted that this issue is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. M/s. Industrial Security & Intelligence India Pvt. Ltd., in TCA No.585 & 586 of 2015 dated 24.07.2015, where it was held that employees contribution to PF & ESI remitted beyond due date specified under respective Act, but within due date for filing of return of income u/s.139(1) of the

Act, is allowable deduction. However, she strongly supported orders of the authorities below in light of amendment to provisions of section u/s.36(1(va) by the Finance Act, 2021 w.e.f. 01.04.2021 by insertion of Explanation 1 on the ground that it is clarificatory in nature and thus, applicable retrospectively from the date such proviso was inserted to the statute and hence, the Assessing Officer as well as learned CIT(A) was right in sustaining additions made by the Assessing Officer .

7. Having heard learned DR and considered material on record, we find that amendment brought to the statute by insertion of Explanation 1 to section 36(1(va) by the Finance Act, 2021 w.e.f. 01.04.2021 is considered to be prospective in nature as per the decision of the co-ordinate Bench of ITAT., Chennai in ITA No. 402 & 403/Chny/2021 dated 08.12.2021, where it was held that insertion of Explanation 1 to said section cannot be considered as retrospective in nature and thus, belated payment of employees contribution to PF & ESI after due date specified under respective Act, but before due date for filing of return of income u/s.139(1) of the Act is allowable

deduction. The relevant findings of the Tribunal in ITA No.402 & 403/Chny/2021 dated 08.12.2021 are as under:-

"6.8 In the present case also, before insertion of Explanation 2 to Section 36(1)(va) of the Act, there is ambiguity regarding due date of payment of employees' contribution on account of provident fund and ESI, whether the due date is as per the respective acts or up to the due date of filing of return of income of the assessee. As noted by Hon'ble Supreme Court an amendment made to a taxing statute can be said to be intended to remove hardship only of the assessee and not of the Department. Imposing of a retrospective levy on the assessee would be caused undue hardship and for that reason Parliament specifically chose to make the proviso affective from a particular date. In the present case also, the amendment brought out by Finance Act, 2021 w.e.f. 01.04.2021 i.e. for and from assessment year 2021-22 of Explanation-2 to s. 36(1)(va) of the Act and not retrospectively.

6.9 Thus, from the above, it is clear that the amendment brought in the statute i.e., by Finance Act, 2021, the provisions of Section 36(1)(va) r.w.s. 43B of the Act amended by inserting Explanation 2 is prospective and not retrospective. Hence, the amended provisions of Section 43B r.w.s. 36(1)(va) of the Act are not applicable for the assessment year 2018-19 but will apply from assessment year 2021-22 and subsequent assessment years. Hence, this issue of assessee's appeal is allowed."

8. In this view of the matter and consistent with the view taken by the co-ordinate Bench, we direct the Assessing Officer to delete additions made towards disallowance of employees contribution to PF & ESI u/s.36(1)(va) r.w.s. 2(24)(x) of the Act for both assessment years.

9. The next issue that came up for our consideration from ground no.6 to 8 of the assessee appeal is disallowable of expenses relatable to exempt income u/s.14A r.w. Rule 8D of I.T. Rules, 1962.

10. At the time of hearing, the learned DR submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s. Redington India Ltd. Vs. Addl.CIT (2017) 77 Taxmann.com 257 (Mad), where it was categorically held that in absence of exempt income, no disallowance could be made towards expenses relatable to said exempt income.

11. We find that the Hon'ble Jurisdictional High Court of Madras in the case of M/s. Redington India Ltd. Vs. Addl.CIT (supra) had considered identical issue and held that in absence of exempt income, no disallowance can be made towards expenses relatable to said exempt income. In this case, facts borne out from records clearly show that there is no exempt income for both assessment years, and hence, the Assessing Officer cannot compute disallowance of expenses relatable to

said exempt income. Accordingly, we direct the Assessing Officer to delete additions towards disallowance u/s.14A read with Rule 8D of Income Tax Rules, 1962, for both assessment years.

12. In the result, appeals filed by the assessee for both assessment years are allowed.

Order pronounced in the open court on 5th January, 2022

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 5th January, 2022

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.