

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.2048/मुं/2021 (नि.व. 2017-18)
ITA NO.2048/MUM/2021(A.Y.2017-18)

Espresso Financial Services Private Limited,
(Formerly known as Sharekhan Comtrade
Private Limited) 10th Floor, Beta Building,
Ithink Techno Park,Off JVLR,
Kanjurmarg(East), Mumbai 400 042.
PAN: AAWCS-2915-D

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT, CPC,
Bangalore – 560 500

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Manoj Mundra

प्रतिवादी द्वारा/Respondent by : Shri Anil A. Gupta

सुनवाई की तिथि/ Date of hearing : 17/05/2022

घोषणा की तिथि/ Date of pronouncement : 17/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A) '] dated 20/09/2021, for the assessment year 2017-18..

2. The solitary issue in the present appeal is whether the contribution made by assessee towards Provident Fund(Employees contribution) and ESI (Employees

contribution) deposited after due date as specified under the relevant respective laws, but before the date of filing return of income would be eligible for deduction u/s. 36(1)(va) of the Income Tax Act, 1961 [in short 'the Act'].

3. Shri Shri Manoj Mundra appearing on behalf of the assessee submitted that the assessee had contributed towards Provident Fund (Employees contribution)/ ESI Fund(Employees contribution) Rs. 6,25,771/- for the period relevant to assessment year 2017-18. Admittedly, the aforesaid contributions were made beyond the due date as specified in the relevant Acts. However, the assessee had deposited the amount well before filing the return of income under the Act. The Central Processing Centre (CPC}, Bengaluru vide intimation u/s. 143(1) of the Act dated 23/03/2019 disallowed assessee's claim of deduction in respect of the aforesaid payments. The assessee carried the issue in appeal before the CIT(A). The CIT(A) following the decision of Hon'ble Gujarat High Court in the case of PCIT vs. Suzlon Energy Ltd., 115 taxmann.com 340(Guj) and the decision of Hon'ble Madras High Court in the case of Unifac Management Services (India) Pvt. Ltd. vs. DCIT, 100 taxmann.com 242 (Mad) dismissed the appeal of assessee and confirmed the disallowance made by CPC. The Id.Authorized Representative for the assessee submitted that the Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transport Ltd., 368 ITR 749 (Bom) has held that both employees and employer contribution are covered under amendment to section 43B of the Act, therefore, Provident Fund and ESI Fund remitted by the assessee is allowable as deduction and provisions of section 43B of the Act would not get attracted.

4. Per contra, Shri Anil A. Gupta representing the Department vehemently supported the impugned order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of authorities below examined. The assessee in appeal has assailed the findings of CIT(A) in disallowing assessee's claim in respect of remittance towards EPF and ESI (Employees contribution). The issue raised by the assessee in appeal is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transport Ltd.(supra). We find that the CIT(A) while adjudicating this issue has referred to the decisions of Hon'ble Non-Jurisdictional High Courts without considering the decision rendered by Hon'ble Bombay High Court, wherein, in the light of decision rendered in the case of CIT vs. Alom Extrusions Ltd.,319 ITR 306(SC) it has been held that actual payments towards ESI(Employees contribution) are covered under amendment to section 43B of the Act. The contribution towards Provident Fund is akin to the contribution made in respect of ESI, hence, the same principle would apply in respect of Provident Fund contributions. We find merit in appeal of the assessee, hence, the same is allowed.

6. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Tuesday the 17th day of May, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 17/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai