

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष, एवं
डॉ। दीपक पी. रिपोटे, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.2208/Chny/2019
निर्धारणवर्ष/Assessment Year: 2014-15

The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-1,
Room No.309, WB, 3rd Floor,
Chennai.

(अपीलार्थी/Appellant)

v. M/s.Nalli Trust,
No.9, Nageswaran Road,
Chennai.

[PAN:AAATN 0028 K]

(प्रत्यर्थी/Respondent)

Department by : Mr.Hema Bhupal, JCIT
Assessee by : Mr.S.Sridhar, Adv. &
Mr. G.Tarun, Adv.
सुनवाई की तारीख/Date of Hearing : 17.08.2022
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, dated 24.05.2019, pertains to assessment year 2014-15.

2. The Revenue has raised the following grounds of appeal:

1. The Ld.CIT(A) erred in holding that delayed payments of Provident Fund and Employees State Insurance dues being the employees contributions under the relevant statutes but remitted before the due date for filing of return of income under the Income tax Act are allowable as deduction under section 36(1)(va) of the Income tax Act?

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2. The Ld. CIT(A) erred allowing deduction under section 36(1)(va) on delayed payments of Provident Fund and Employees State Insurance dues being the employees contributions under the relevant statutes considering that application of Section 36(1)(va) read with Section 2(24)(x) alone is the proper course and any other interpretation would only defeat the object and scope of both the provisions viz., 43B and 36(1)(va).

3. The Ld. CIT(A) erred in allowing the deduction under section 36(1)(va) in view of the decision of the Hon'ble High Court of Madras in WP No.5264 of 2018 dated 23.10.2018, which has held the issue favourable to revenue and treated it as income under section 2(24)(x) of the Act?

3. We have heard both the parties, perused the materials available on record. The only issue involved in this appeal is allowability of deduction u/s.36(1)(va) of the Act, on delayed payments of PF & ESI being employees' contributions. Earlier, vide order dated 22.08.2019, ITA No.2208/Chny/2019 was dismissed by this Tribunal on the ground that low tax effect. However, the Revenue filed a Miscellaneous Application. The said Miscellaneous Application was decided vide order dated 13.05.2022 in MP No.326/Chny/2019. ITAT agreed with the Revenue's stand that the said appeal falls under exception clause of CBDT Circular No.3/2018. Therefore, order passed in ITA No.2208/Chny/2019 was recalled and fixed for regular hearing. Accordingly, this appeal came up for hearing today. In the assessment order, the AO has disallowed a sum of Rs.67,57,319/-, which was employees' contributions towards ESI & PF. The employees' contributions towards ESI & PF were deposited after 20th of the relevant month. Therefore, the AO held that the assessee has deposited employees' contributions towards ESI & PF beyond the time allotted in the respective acts. Therefore, the AO disallowed the said amount and added back.

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4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) allowed assessee's claim by following the decision of jurisdictional High Court in the case of CIT v. Industrial Security & Intelligence India Pvt. Ltd., in TCA No.585 & 586 of 2015 dated 24.07.2015.

5. We heard both the parties and perused the records. We find that the said issue is decided in favour of the assessee by various Hon'ble High Courts. Recently, the Hon'ble Delhi High Court in the case of Pr.CIT v. TV Today Network Ltd., in ITA No.227/2022 dated 27.07.2022 wherein, it has been held as under:

".....37. It is therefore evident that the enunciation of law by this court on the issue of 'due date' in case of delay by the assessee in depositing the employee contribution under section 36(1)(va) of the Act is to be reckoned as the date for filing the return under Section 139 (1) of the Act and not the due date of the relevant Labour statute. This law has been settled by this Court in CIT vs. P.M. Electronics Ltd (supra), AIMIL Ltd. (supra), CIT vs. SPL Industries Ltd and PR. Commissioner of Income Tax-7 vs. PROInteractive Service (India) Pvt. Ltd. (supra) and consistently followed thereafter.....".

5.1 The Hon'ble Rajasthan High Court in the case of Rajasthan State Beverages Corpn. Ltd vide order dated 4/8/216 has held as under :

"This court in the aforesaid case has also allowed the claim of the assessee, in so far as payment of PF & ESI etc. is concerned, on the finding of fact that the amounts in question were deposited on or before the due date of furnishing of the return of income and taking in consideration judgment of this Court in CIT v. State Bank of Bikaner & Jaipur [2014] 363 ITR 70/43 taxmann.com"

The SLP filed against the said decision has been dismissed by Hon'ble SC.

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5.2 The Hon'ble Delhi High Court (supra) further held that amendment brought to Sec.36(1)(va) of the Act, by Finance Act, 2021, is not retrospective. Therefore, respectfully following the proposition of law laid down by the Hon'ble High Courts, it is held that employees' contributions towards ESI & PF, if paid before the due date of filling return of income u/s.139(1) of the Act, is allowable deduction u/s.36(1)(va) of the Act. Accordingly, in the present case, it has been submitted by the Ld.AR that employees' contributions were paid before the due date of filing of return of income. The AO is directed to verify and allow the deduction if employees' contributions towards ESI & PF were paid before the due date mentioned u/s.139(1) of the Act for filling the Return of Income.

6. In the result, Ground Nos.1 & 2 of the Revenue are dismissed.

7. In Ground No.3, Revenue has relied on the decision of Hon'ble Madras High Courts in the case of M/s.Unifac Management Services (India) Pvt. Ltd. V. DCIT in WP No.5264 of 2018 dated 23.10.2018.

7.1. In this context, it is observed that in the said WP No.5264 of 2018 Hon'ble Madras High Court had decided the issue on merits in favour of revenue. However, the Hon'ble Madras High Court's Divisional Bench vide order dated 09.01.2019 in the case of M/s.Unifac Management Services (India) Pvt. Ltd. v. DCIT has held as under:

"9. Considering these facts, we grant permission to the appellant to withdraw the said writ petition namely WP No.5264 of 2018 as well as this appeal namely

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W.A.No.2854 of 2018. We also grant liberty to the appellatant to file the appeal before the CIT(A) having jurisdiction over the matter".

Thus the order of the single member Hon'ble Jurisdictional High Court on which revenue has relied is no more applicable ,due to the subsequent observation of the Divisional bench of the Hon'ble jurisdictional High Court (supra). Therefore, the Ground No.3 of the revenue is dismissed.

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

Order pronounced on the 24th day of August, 2022, in Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(डॉ।दीपकपी.रिपोटे)
(DR. DIPAK P. RIPOTE)
लेखासदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 24th August, 2022.
TLN

आदेशकीप्रतिलिपिअग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF