

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.13/CTK/2021**

(निर्धारण वर्ष / Assessment Year : 2018-2019)

D.D.Builders Ltd.,  
Plot No.36-F, BJB Nagar,  
Bhubaneswar  
**PAN No.AABCD 1433 E**

.....Assessee

Versus

ACIT, Central Circle-2, Bhubaneswar .....Revenue

Shri Kamal Kumar Agrawalla, CA for the assessee  
Shri M.K.Gautam, CIT-DR for the Revenue

**Date of Hearing : 25/08/2022**  
**Date of Pronouncement : 25/08/2022**

**आदेश / O R D E R**

**Per Bench:**

This is an appeal filed by the assessee against the order of the Id. CIT(A)-2, Bhubaneswar, passed in I.T.Appeal No.0465/19-20, dated 18.01.2021 for the assessment year 2018-2019.

2. It was submitted by the Id. AR of the assessee that the only issue in this appeal was against the action of the Id. CIT(A) in confirming the disallowance of PF & ESI paid by the assessee beyond the due date as prescribed under the respective Acts but before the due date of filing of the return. Id. AR placed before us a decision of the coordinate bench of the Tribunal in the case of Odyssey Motors Pvt. Ltd., in ITA

No.140/CTK/2021, order dated 17.08.2022, wherein the coordinate bench of the Tribunal has held that if the assessee pays PF & ESI before the due date of filing the return even though the same was beyond the due date as prescribed under the respective Acts, the same is allowable. To support his arguments, Id. AR of the assessee also relied on the following case laws :-

- i) *M/s Essae Teraoka Pvt. Ltd. Vs. DCIT [2014 (3) TMI 386-Kar HC];*
- ii) *CIT Vs. State Bank of Bikaner & Jaipur & Jaipur Vidyut Vitaran Nigam Ltd. [2014(5) TMI 222-Raj HC) dated Jan, 6, 2014; and*
- iii) *CIT Vs. M/s Kichha Sugar Company Ltd. [2013 (6) TMI 98-Uttarakhand HC.*
- iv) *Jagmohan Singh Vs DCIT (ITAT Chandigarh), Appeal Number: ITA Nos. 185 & 193/Chd/2021, Date of Judgement/Order: 15/12/2021*
- v) *Stirred Creative Advertising Pvt. Ltd. Vs DCIT (ITAT Bangalore), Appeal Number : ITA No. 594 & 595/Bang/2021, Date of Judgement/Order : 12/12/2021*
- vi) *Adyar Ananda Bhavan Sweets India P Ltd Vs ACIT (ITAT Chennai), Appeal Number : ITA [2015 – 5/23 402 & 403/CHNY/2021, Date of Judgement/Order : 08/12/2021*
- vii) *Pachouli Wellness Clinic LLP Vs ITO (ITAT Delhi), Appeal Number : ITA No: 999/Del/2021, Date of Judgement/Order : 25/11/2021*
- viii) *Star Facilities Management Limited VS ITO (ITAT Delhi), Appeal Number : ITA No. 1755/Del/2020, Date of Judgement/Order : 01/11/2021*
- ix) *Lumino Industries Ltd. Vs. ACIT, ITA Nos.231&365/Kol/2021, order dated 17/11/2021;*
- x) *Mavinahalli Shivananjappa Vijay Kumar Vs. DCIT, ITA Nos.596&597/Bang/2021, order dated 13/12/2021;*
- xi) *Shri Prakash Pai Kochikar Vs. ADIT, ITA No.479/Bang/2021, order dated 09/12/2021;*
- xii) *Eskay heat Transfers Pvt. Ltd. Vs. ADIT, ITA No.534/Bang/2021, order dated 07/12/2021;*
- xiii) *Anand Sweets and Savouries Vs. DCIT, ITA No.530/Bang/2021, order dated 06/12/2021;*
- xiv) *Transzone Logistics (India) Pvt. Ltd. Vs. DCIT, ITA No.1740/Del/2020, order dated 29/10/2021;*
- xv) *Jai Enterprises Vs. DCIT, ITA No.248/JP/2021, order dated 25/11/2021;*
- xvi) *Nayrathan Jewellers Pvt. Ltd. Vs. ADIT, ITA No.470/Bang/2021, order dated 23/11/2021;*

- xvii) *Abhimanyu Sharma Vs. ITO*, ITA No.175/JP/2021, order dated 23/11/2021;
- xviii) *Nikhil Mohine Vs. DCIT*, ITA No.37&38/Jab/2021, order dated 18/11/2021;
- xix) *DCIT Vs. Kesoram Industries Ltd.*, ITA No.1777/Kol/2019, order dated 28/10/2021;
- xx) *Suba Singh Vs. ITO*, ITA No.85/ASR/2021, order dated 10/11/2021;
- xxi) *Citi Centre Developers Vs. CPC*, ITA No.126/Chd/2021, order dated 28/11/2021;
- xxii) *Pee Tee Turners Vs. ADCPC*, ITA No.105/JP/2021, order dated 28/11/2021;
- xxiii) *Amandeep Singh Khurana Vs. ITO*, ITA No.1822/Del/2020, order dated 27/10/2021;
- xxiv) *Aroon Facilitation Management Services Pvt. Vs. DCIT*, ITA No.1824/Del/2020, order dated 13/10/2021;
- xxv) *Worldwide Facility Management Services Pvt. Ltd.Vs. DCIT*, ITA No.1823/Del/2020, order dated 13/10/2021;
- xxvi) *Rukmini Polytubes Pvt. Ltd. Vs. DCIT*, ITA No.1855/Del/2020, order dated 13/10/2021;
- xxvii) *Adama Solution P. Ltd. Vs. ADIT*, ITA No.1800/Del/2020, order dated 13/10/2021;
- xxviii) *Vansh Jain Vs. DCIT*, ITA No.1853/Del/2020, order dated 13/10/2021;
- xxix) *Express Roadway P. Ltd. Vs. ACIT*, ITA No.5570/Del/2017, order dated 11/10/2021;
- xxx) *Ridhi Sidhi Mills (India) Pvt. Ltd. Vs. DCIT*, ITA Nos.71&72/Jodh/2021, order dated 28/09/2021;
- xxxix) *Chodavaram Vs. ADIT*, ITA No.25&28/VIZ/2021, order dated 23/09/2021;
- xxxix) *S.V.Engineering Constructions India (P) Ltd. Vs. DCIT*, ITA No.130/VIZ/2021, order dated 23/09/2021.

3. In reply, the Id. CIT-DR submitted that PF & ESI has been paid beyond the due date as prescribed under the respective Acts, even if paid within the due date of filing of the return constituted income u/s.36(1)(va) r.w.s.2(24)(x) of the Act. To support his arguments, Id. CIT-DR relied on the following case laws :-

- i) *Unifac Management Services (India)(P.) Ltd. Vs. DCIT*, [2018] 100 taxmann.com 244 (Madras);
- ii) *CIT Vs. Gujarat State Road Transport Corporation* [2014] 41 taxmann.com 100 (Gujarat);
- iii) *CIT Vs. Merchem Limited*, (2015) 378 ITR 443 (Kerala);

- iv) *Pr.CIT Vs. M/s Suzlon Energy Ltd., (2020) 423 ITR 608 (Guj);*
- v) *CIT Vs. Bharat Hotels Ltd., (2019) 410 ITR 0417 (Delhi),*
- vi) *Popular Vehicles & Services (P.) Ltd., [2018] 96 taxmann.com 13 (Kerala);*
- vii) *South India Corporation Ltd., [2015] 58 taxmann.com 208 (Kerala);*
- viii) *Vedvan Consultants Pvt. Ltd., ITA No.1312/Del/2020, order dated 26.08.2021.*

4. We have considered rival submissions. There are plethora of decisions on this issue for both the sides. However, in view of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., reported in [1973] 88 ITR 192 (SC), when we are faced with decisions which are both for and against the assessee, then in the interest of justice, decisions in favour of the assessee should be followed. This coordinate bench of the Tribunal in the case of Odyssey Motors Pvt. Ltd. in ITA No.140/CTK/2021, vide order dated 17.08.2022, has held the issue in favour of the assessee. As the coordinate bench of the Tribunal has been continuously holding this issue in favour of the assessee by following various High Court decisions, respectfully following the principles laid down in the decision of the Hon'ble Supreme Court in the case of Vegetable Products and the decision of the Tribunal in the case of Odyssey Motors Pvt. Ltd. (supra), we decide the issue in favour of the assessee. Consequently, the order of the CIT(A) is set aside and the AO is directed to allow the assessee's claim of deduction of employees contribution to PF & ESI paid beyond the due date under the respective Act but before the filing of the return.

5. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 25/08/2022.

**Sd/-**

(अरुण खोड़पिया)  
**(ARUN KHODPIA)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

(जार्ज माथन)  
**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

**कटक** Cuttack; दिनांक Dated 25/08/2022

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
D.D.Builders Ltd.,  
Plot No.36-F, BJB Nagar,  
Bhubaneswar
2. प्रत्यर्थी / The Respondent-  
ACIT, Central Circle-2, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,  
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack