

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.106/PUN/2018**  
**निर्धारणवर्ष / Assessment Year : 2014-15**

The Joint Commissioner of Income Tax(OSD), Circle-2, Solapur.	Vs	Subhash Deshmukh and Company, 8536-A/11, Lokmangal House, Murarji Peth, Near Old Poona Naka, Solapur – 413001. PAN: AAFFS 4171 F
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Krishna V Gujrathi
Revenue by	Shri Arvind Desai
Date of hearing	08/08/2022
Date of pronouncement	01/11/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Revenue is directed against the order of Id.Commissioner of Income Tax(Appeals)-7, Pune, dated 22.09.2017for the A.Y. 2014-15 under section 250 of the Act. The Revenue has raised the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) is justified in deleting the addition made on account of delayed payment of employees contribution of PF relying on the decision of the Bombay High Court in the case of CIT vs Ghatage Patil Transports Ltd, wherein the Hon' High Court in turn relied on the decision of Hon' Supreme Court in the case of Alom Extrusion Ltd and in that case, before the Hon' Supreme Court, the controversy was with respect to employers contribution and not with respect to employees contribution and the cbdt*

*has also clarified the said issue in its circular No.22/2015 dated 17/12/2015.*

*2. Whether on the facts and in the circumstances of the case, the Ld CIT(A) is justified in treating the business advance received from partner as interest free own funds while deciding the issue of diversion of borrowed funds for non business purpose and the working submitted by the assessee is incorrect?*

*3. Whether on the facts and in the circumstances of the case, the Ld CIT(A) is justified in not considering that the assessee has advanced huge amounts to its sister concerns as well as and apparently no interest has been charged on such advances. Also the assessee has not considered the interest free advances give to other concerns while working out the net interest payable by the firm at Rs.47,24,845?*

*4. Whether on the facts and in the circumstances of the case the Ld. CIT(A) is justified in holding in the instant case that, there is no diversion of interest bearing funds?"*

2. Brief facts of the case are that the appellant assessee firm filed return of Income on 27/11/2014. During the scrutiny assessment the Assessing Officer(AO) noticed that the assessee had paid Rs.32,802/- towards Employees Contribution towards PF beyond the due date mentioned in the relevant statute but before the due date of filling the return. The AO disallowed the said amount. The AO also disallowed interest of Rs.1,92,49,388/-. The assessee filed appeal before the ld.CIT(A). The ld.CIT(A) allowed the assessee's ground regarding the employee's contribution towards PF following the decision of the Hon'ble Bombay High Court. The ld.CIT(A) also allowed.

Aggrieved by the same, the Revenue filed appeal before this Tribunal.

3. We have heard both the parties and perused the records. We will discuss the appeal ground wise.

**Issue of Employee's Contribution:**

4. The Ld.AR submitted that the issue of allowability of delayed payment of Employees Contribution towards Provident Fund beyond the due date mentioned in the respective statute but before the due date for filling the return of Income has been decided by Hon'ble Bombay High court in favour of assessee.

5. The Ld.DR relied on the order of the AO.

6. The issue of delayed payment of employee's contribution of Provident fund has been decided by Hon'ble SC in the case of **Checkmate Services (P.) Ltd.v.Commissioner of Income-tax-1 vide order dated** October 12, 2022 as under :

*Quote, " That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the*

*amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such www.taxmann.com 34 interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction. ” Unquote.*

7. Thus, the Hon'ble SC has held that the employee's contribution towards PF has to be deposited before the due date mentioned in the respective statute. In this case it is an admitted position that the amount was not deposited before the due date mentioned in the The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Hence, the impugned amount has been rightly disallowed by the AO. Accordingly, the ground number 1 of the revenue is allowed.

**Ground No's.2, 3 & 4 - Interest disallowance:**

8. In the assessment order the AO observed that there was debit balance in the capital account. The AO also observed that no interest was charged but the assessee has paid interest of Rs.3,04,85,927/- on bank loan. Therefore, the AO disallowed proportionate interest. The Ld.CIT(A) observed that there was advance of Rs.15,00,00,000/- given to the assessee firm by third partner and no interest has been paid on this advance. Therefore, the CIT(A) directed to delete the addition.

9. Before us the Ld.AR submitted that third partner had given advance and no interest paid to him. Also sister concerns had given advance without interest. Hence the disallowance was uncalled for.

10. Ld.DR submitted that the business advances given by sister concern or the third partners cannot be compared with the withdrawal made by partners from the capital account. The partners have withdrawn excess amount than there capital without paying any interest.

11. We have heard both the parties, perused the record. It is observed that neither the Assessing Officer nor the ld.CIT(A) has exactly brought on record the fund flow statement and nexus of loan bearing funds to withdrawal of the capital. Therefore, the issue is set aside to the file of the Assessing Officer for fresh adjudication after giving opportunity to the assessee. Accordingly, this ground is allowed for statistical purpose.

12. In the result, appeal of the Revenue is Partly Allowed.

Order pronounced in the open Court on 1<sup>st</sup> November, 2022.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 1<sup>st</sup> Nov, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The Pr.CIT-4, Pune.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.