

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.236/Viz/2023

(निर्धारण वर्ष / Assessment Year :2020-21)

Deputy Commissioner of Income Tax, Circle-3(1), Visakhapatnam. (अपीलार्थी/ Appellant)	Vs.	VVR Engineering, Visakhapatnam. PAN: AABFV 9797 L (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Sri I. Kama Sastry, AR
प्रत्यर्थी की ओर से / Revenue by	:	Sri Mdhukar Aves, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	28/11/2023
घोषणा की तारीख/Date of Pronouncement	:	29/11/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] dated 26/07/2023 passed U/s. 250 of the Income Tax Act, 1961 [the Act] for the AY 2020-21.

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

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The order of the Ld. CIT(A) in deleting the addition of Rs, 4,61,671/- which is not allowable U/s. 36(1)(va) of the IT Act.*
- 3. The Ld. CIT(A) erred in not observing the Board's Circular No. 22/2015 dated 17/12/2015 wherein the claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act.*
- 4. The Ld. CIT(A) erred in not considering the amendment had been brought in Finance Act, 2021 that the delayed payment cannot be allowed U/s. 43B of the Act.*
- 5. The Ld. CIT(A) erred in not taking into consideration the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT in Civil Appeal No. 2833 of 2016, wherein it was held that it is an essential condition, for claiming of deduction of employees contribution towards EPF & ESI that such amounts are to be deposited on or before the due dates as per the respective Acts.*
- 6. Though the tax effect involved in this case is below the monetary limits prescribed by the CBDT, the case is covered under exception 10(a) of CBDT Circular No.17/2019, ie., where the constitutional validity of the provision of an Act or Rule is under challenge, thereby giving right to the Department to file further appeal.*
- 7. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that addition made by the AO be restored."*

3. At the outset, the Ld. Departmental Representative submitted before us that this appeal may be withdrawn as the tax effect involved in the case is below Rs.50 Lacs. The Ld. AR did not object to the submission of the Ld. DR.

4. The CBDT vide Circular No.17/2019 dated 08.08.2019 has revised the monetary limit for filing the appeals before the Tribunal to Rs.50 Lacs. Further, CBDT vide letter dated 20.08.2019 has also clarified that Circular No.17/2019 would be applicable to all pending appeals. In such circumstances, the present appeal filed by the Revenue is not maintainable considering the low tax effect involved therein. It is ordered accordingly and the appeal of the Revenue is dismissed with a liberty to the Department to file a Miscellaneous Application before the Tribunal for recalling the order, if the requisite material is brought in to show that the appeal is protected by the exceptions prescribed in para-10 of the Circular dated 11.07.2018.

5. In the result, appeal of the Revenue is dismissed.

Pronounced in the open Court on 29<sup>th</sup> November, 2023.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

**न्यायिकसदस्य/JUDICIAL MEMBER**

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated :29.11.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – VVR Engineering, 36-53-4/1, NH-5 Road, Reddy Kancharapalem, Visakhapatnam – 530008, Andhra Pradesh.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Circle-3(1), 35, 50-92-35, Sankara Matam Road, Opposite Reliance Fresh, Beside Reliance Fresh, Near By Main Road, Madhuranagar, Dwaraka Nagar, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam