

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No.3626/MUM/2019
Assessment Year: 2015-16

Dy. Commissioner of Income Tax, Circle – 15(3)(1), Room No.451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Wanbury Limited, B Wing, 10 th Floor, BSEL Tech Park, Sector 30, Opp Vashi Railway Station, Vashi, Navi Mumbai – 400 705 PAN: AABCP5939P
(Appellant)		(Respondent)

Assessee by : Shri Fenil Bhatt, A.R.
Revenue by : Shri Manoj Kumar Singh, DR

Date of Hearing : 20/02/2024
Date of pronouncement : 20/02/2024

ORDER

PER : OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 07.02.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-24, Mumbai [In short the Ld. CIT(A)] for assessment year 2015-16, raising following grounds:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.1,29,63,154/-, without considering the circular No. 22/2015 dated 17.12.2015 of the Board regarding employer's contribution to funds for the welfare of employees in terms of section 43B (b)



of the Act and it has been specifically highlighted that the circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act.

2. The appellant prays that the order of CIT(A), Mumbai on the above directions be set aside and that of the assessing officer be restored.

3. The appellant craves leave to amend or alter any of the grounds or add a new ground of appeal, which may be necessary, at any time before or at the time of hearing of appeal."

2. This appeal was earlier adjudicated by the Income Tax Appellate Tribunal (in short the 'Tribunal') on 22.09.2021, wherein the appeal of the Revenue was dismissed as withdrawn holding that the assessee applied for settlement of tax dispute under the 'Vivad Se Vishwas Scheme' (VSVS), 2020. However, on miscellaneous application filed by the Revenue that the assessee had not opted under VSVS for the assessment year under consideration and therefore in view of apparent mistake, the Tribunal vide order in miscellaneous application No.214/Mum/2022 dated 05.01.2024, recalled the order dated 22.09.2021 for deciding afresh and hence this appeal is before us for adjudication.

3. At the outset, the Ld. Counsel for the assessee submitted that in the appeal filed by the Revenue the only issue of disallowance of ESI/PF under section 36(1)(va) of the Income-tax Act, 1961 (in short the 'Act') amounting to Rs.1,29,63,154/- has been challenged and the tax effect



involved on the issue is less than the limit of Rs.50,00,000/- prescribed by the Central Board of Direct Taxes for filing appeal before the Tribunal vide circular dated 28.08.2019 ,therefore the appeal of Revenue should be dismissed as withdrawn.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Evidently the only issue in dispute challenged in the appeal is in respect of the addition of Rs.1,29,63,154/- and the Ld. D.R. also admitted that the tax effect involved in said addition is less than Rs.50,00,000/- i.e. the limit prescribed for filing the appeal by the Revenue before the Tribunal , therefore the appeal filed by the Revenue is liable to be dismissed as withdrawn. We order accordingly. In case the tax effect involved is found to be more than the limit prescribed then the Revenue is at liberty to file an application seeking recall of the appeal which shall be decided by the Tribunal in accordance with law.

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

Order pronounced in the open Court on 20/02/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, Dated: 20/02/2024



* Kishore, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai