आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं. ITA No.443/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s. ARJ Fireworks 184, Palaniandavarpuram Colony, Sivakasi-626 123.	बनाम/ Vs.	**ITO** Ward-1 Virudhunagar.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAPFA-4749-M**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी कीओरसे/ **Appellant by**	:	Shri P.M.Kathir (Advocate)-Ld.AR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri R.Mukundan(JCIT)-Ld. DR

सुनवाई की तारीख/**Date of Hearing**	:	12-06-2024
घोषणा की तारीख /**Date of Pronouncement**	:	14-06-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 09-01-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 143(3A) & 143(3B) of the Act on 16-03-2021. The sole grievance of the assessee is disallowance u/s 36(1)(iv) for Rs.6.95 Lacs.

2. During assessment proceedings, it transpired that the assessee paid salary to staff for Rs.46.67 Lacs. Against the same, the assessee made claim for contribution to recognized provident fund for Rs.19.55 Lacs which translated into 41.90% of salary payments. The Ld. AO held that as per Rule 87 of IT Rules, the ordinary annual contribution by employer with respect to a particular employee to provident fund (whether recognized or not) would not exceed 27% of his salary. The 27% of salary worked out to be Rs.12.60 Lacs and accordingly, excess contribution of Rs.6.95 Lacs as claimed by the assessee was disallowed. The assessee stated that additional contribution was made for the benefit of workers since they were engaged in manufacturing of fireworks which was considered to be risky work and threat to life. However, Ld. AO did not concur with the same. The Ld. CIT(A) upheld the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

3. The Ld. AR has quoted the decision of Hon'ble High Court of Andhra Pradesh in the case of **Indocean Engineer (P.) Ltd. (92 Taxman 476).** In this decision, Hon'ble Court interpreting the provisions of Sec.36(1)(iv), held that from the specific language employed in Rule 75(1) of the Income-tax Rules, 1962, the prescribed limit of Rs.250 applies only to a recognized provident fund maintained by the company. Since the contributions made by the assessee were not in respect of any provident fund maintained by the company but the remittances are directly to the scheme under the Employees' Provident Funds Act, 1952 and the Scheme is maintained by the Provident Fund Commissioner and therefore, Tribunal was correct in not applying Rule 75.

4. The Mumbai Tribunal in **Span Intermediates Pvt. Ltd. (ITA No.1917/Mum/2021 dated 12.09.2022)** held as under: -

5. We have gone through the order of AO, misconceived order of Ld. CIT (A) and submissions of assessee. We have gone through the Paper Book filed by the assessee dated 14.06.2022. To decide the matter, we need to take cognizance of Part-XII, Recognized Provident Funds, Part-XIII, Approved Superannuation Funds and Part-XIV Gratuity Funds.

6. Rule-75 deals with limit for contribution in Recognized Provident Funds, Rule-87 deals with Ordinary Annual Contributions to Approved Superannuation Funds and Rule-103 deals with Ordinary Annual Contributions to Gratuity Funds.

7. Limits for contributions as per Part-XII, Recognized Provident Funds.

"75. (1) where an employee of a company owns shares in the company with a voting power exceeding ten per cent of the whole of such power, the sum of the contributions of the employee and employer to the recognized provident fund maintained by the company shall not exceed Rs. 250 in any month.

(2) For the purpose of clause (a) of sub-rule (4) of rule 5 of Part A of the Fourth Schedule the employer's aggregate contribution in any year, including the normal contribution, to the individual account of any one employee whose salary does not exceed five hundred rupees per mensem shall not exceed double the amount of the contribution of the employee in that year. 6 ITA No. 1917/Mum/2021-Span Intermediates Pvt. Ltd.

(3) The amount of the periodical bonuses and other contributions of a contingent nature which may be credited by an employer in any year under clause (b) of sub-rule (4) of rule 5 of Part A of the Fourth Schedule to the individual account of any one employee shall not exceed the amount of the contributions of the employee in that year:

Provided, however, that the above limit shall not apply to bonus contributions made by an employer under an award by an Industrial Tribunal or under an order of a Court or under an agreement with the employees' union(s) to the individual accounts of employees whose salary does not exceed Rs. 500 per month.

[1997] 93 TAXMAN 476 (AP) Commissioner of Income-tax v. Indocean Engineer (P.) Ltd. Section 36(1)(iv) of the Income-tax Act, 1961 - Provident fund - Contributions towards recognised provident fund - Assessment year 1982-83 - Whether contributions by assessee-company directly to Provident Fund Scheme under Employees' Provident Fund Act, 1952, maintained by Provident Fund Commissioner could be allowed and rule 75(1) was not applicable to restrict deduction in such a case - Held, yes

FACTS

For the assessment years 1982-83 to 1984-85, the assessee claimed deduction in respect of the company's contribution at the rate of Rs. 3,000 per each of the four directors. The ITO, following rule 75 of the Income-tax Rules, disallowed Rs. 12,000 on the ground that the total contribution both from the employee and the employer should not exceed Rs. 250 per month. On second appeal, the Tribunal held that rule 75 was not attracted as the contributions were not made to the provident fund maintained by the company, but the remittances were made directly to the Provident Fund Scheme under the Employees' Provident Funds Act, 1952, maintained by the PFC.

8. Part-XII, Part-XIII and Part-XIV of the I.T. Rules, 1962 deals with social security contributions made by employer for the benefit of its employees. Each part deals with different type of social security payments and have their own maximum limits prescribed for contribution by employer. Part-XII dealing with Employer Contribution to Provident Fund does not have any limit. Limit of 27% as prescribed in Rule 87 is applicable only in case of contribution to Superannuation Fund (minus contributions made to Provident Fund).

9. We found force in the contentions of the assessee and considering the legal position enumerated above, we are of the view that contributions of the assessee to the Provident Fund may be even exceeding 27% is allowable. Ground No.1 & 2 of the assessee are allowed.

Ordinary annual contributions as per Part-XIII, Approved Superannuation Funds.

87. The ordinary annual contribution by the employer to a fund in respect of any particular employee shall not exceed [twenty-seven] per cent of his salary for each year as reduced by the employer's contribution, if any, to any provident fund (whether recognised or not) in respect of the same employee for that year.

10. The limit prescribed in Rule 87, having reference of the word 'Provident Fund' is just for sake of fulfilment of conditions laid down with reference to maximum limit of contribution to be made under Superannuation Fund. It's nothing to do with Rule 75 applicable to contributions to be made under Provident Fund.

Ordinary annual contributions as per Part-XIV Gratuity Funds.

103. The ordinary annual contribution by the employer to a fund shall be made on a reasonable basis as may be approved by the [Chief Commissioner or Commissioner] having regard to the length of service of each employee concerned so, however, that such contribution shall not exceed 8 1/3 per cent of the salary of each employee during each year."

[1994] 207 ITR 288 (KER.) Commissioner of Income-tax v. Malayala Manorama Co. Ltd.

"Section 40A (7) of the Income-tax Act, 1961 read with rule 103 of the Income tax Rules, 1962 - Business disallowance-gratuity - Assessment year 1975-76 - Whether applicability of rule 103 will arise only when deduction has to be allowed in conformity with section 36(1) (v) but after introduction of section 40A (7) deduction has to be worked out solely under section 40A (7) - Held, yes

Even on the merits, the applicability of rule 103 would arise only when deduction had to be allowed in conformity with section 36(1)(v). After the introduction of section 40A (7), rule 103 would have no application. The claim for deduction has to be worked out solely under section 40A (7) which came into effect from 1-4-1973, by the retrospective effect given to Act 25 of 1975. The department had no case that the assessee had not satisfied the conditions envisaged by sub-clause (ii) of clause (b) of sub-section (7) of section 40A. The only question was what was the 'admissible amount' as defined in Explanation 1 and the Tribunal held that it would be an amount which did not exceed an amount calculated at the rate of 8 1/3 per cent of the salary of each employee. In this perspective, the Tribunal held that it would be incorrect to reduce the quantum of the 'admissible amount' as defined in Explanation 1 by resorting to rule 103. The said Explanation does not make any reference to the limitation imposed by rule 103. The Tribunal was justified in holding so. So, even on the merits, the plea of the assessee was well founded, as held by the Tribunal."

The Tribunal held that in case of recognized provident funds, Rule 75 would apply. Rule 87 would apply only in case of contribution to superannuation fund. The Hon'ble High Court of Calcutta in the case of **Exide Industries Ltd. (146 Taxmann.com 21)** held that where assessee-employer remitted certain amount which was in excess of 27% of salaries of employees, by way of lump sum contribution to approved pension fund and claimed deduction of same under section 36(1)(iv), as amount remitted was neither towards an initial contribution nor towards ordinary annual contribution, ceiling fixed under Rules 87 and 88 would not apply to such a contribution.

5. In the present case, the assessee has made contribution to provident fund and not to a superannuation fund. Therefore, Rule 87 would have no application. We direct Ld. AO to allow the impugned deduction to the assessee.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 14th June, 2024

Sd/-	**Sd/-**
(MANU KUMAR GIRI)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :14-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Madurai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF