

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "G" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**M.A.No.26/Del/2023  
[In ITA No.1739/Del/2022]  
[Assessment Year : 2020-21]**

ITO, Ward-10(1), New Delhi.	vs	Global Groupware Solutions Ltd., A-20/16, DLF Phase-1, Gurgaon, Haryana-122002. <b>PAN-AABCG3483B</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Shri Om Parkash, Sr.DR
<b>Respondent by</b>		Shri Satish Rawat, CA
<b>Date of Hearing</b>		31.05.2024
<b>Date of Pronouncement</b>		29.08.2024

**ORDER**

**PER KUL BHARAT, JM :**

By this Miscellaneous application, the Revenue is seeking adjournment on the grounds that the Hon'ble Supreme Court vide its judgement dated 12.10.2022 in Civil Appeal No.2833 of 2016 has decided the issue of deposit of employees PF & ESI contributions by the employer in favour of the Revenue therefore, the order dated 25.08.2022 requires to be recalled.

2. The Ld. Sr. DR for the Revenue reiterated the submissions as made in the application. For the sake of clarity, the relevant contents of the application are reproduced as under:-

1. *"The above appeal was disposed off by the Hon'ble Tribunal vide its order dated 29.07.2022. The above named respondent begs to present this application for rectification of the Hon'ble tribunal order in light of the Hon'ble Supreme Court Judgement dated 12.10.2022 (Civil Appeal No. 2833 of 2016) wherein the Hon'ble Supreme Court*

*has held that employees contribution shall be deposited before the statutory due date and therefore has confirmed all the disallowances made u/s 36(1)(va) of the Income Tax Act.*

2. *The brief background of the case is as under:-*

(a) *The assessee had filed its return of income for the A.Y 2020-21 declaring a total income of Rs. 28.08,290/- The return of the assessee was processed u/s 143(1) of the Income Tax Act determining a total income of Rs. 41.69,450/- after making an addition of Rs. 13,61,154/- on account of belated payment of employees contribution to PF & ESI.*

(b) *Being aggrieved with the order dated 18.11.2021 passed u/s 143(1) of the Act. the assessee filed an appeal before the Ld. CIT(A) which vide its order CIT (A), Delhi- ITBA/NFAC/S/250/2022-23/1043489040(1) dated 20.06.2022 has confirmed the addition made u/s 36(1)(va) of the Act.*

c) *Being aggrieved with the order of Ld. CIT(A) order dated 20.06.2022, the assessee filed an appeal before the Hon'ble ITAT which vide its order dated 25.08.2022 in ITA No. 1739/Del/2022 has allowed the appeal of the assessee and therefore, deleted the addition made u/s 36(1)(va) of the Act.*

3. *However, in light of the Hon'ble Supreme Court Judgement dated 12.10.2022 (Civil Appeal No. 2833 of 2016) wherein the Hon'ble Supreme Court has held that employees contribution shall be deposited before the statutory due date, the above order passed by the Hon'ble ITAT needs to be rectified. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced as under:-*

*"54. In the opinion of this Court, the reasoning in the impugned judgment that the non- obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on*

*or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. 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 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.*

55. *In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts,*

*holding to the contrary, do not lay down the correct law. For these reasons, this court does.*

4. *Hence, the undersigned is directed to file a miscellaneous application on the basis of the aforesaid judgement of the Hon'ble Supreme Court so that the order of the Hon'ble ITAT passed in the case of M/s Global Groupware Solutions Pvt. Ltd. for the AY 2020-21 be rectified and thereby, protect the interest of the Revenue."*

3. On the other hand, Ld. Counsel for the assessee opposed the submissions of the Revenue and contended that there is no mistake apparent from the records. At the time of passing of the order to be rectified, the Hon'ble Supreme Court has not decided the issue. Ld. Counsel for the assessee argued that the issue is settled by the decision of the Co-ordinate Bench of the Tribunal in the case of **DCIT vs Ani Integrated Services Ltd. in M.A. No.167/Mum/2023** vide order dated **29.05.2024** wherein the Tribunal has decided the issue by observing as under:-

22. *"Even otherwise also once in the latest decision in the case of CIT vs. Reliance Telecom Ltd. (supra) the Hon'ble Supreme Court have clearly held that the powers u/s. 254(2) of the Income Tax are akin to Order XLVII Rule 1 CPC, then it cannot be held that scope of power u/s.254(2) is beyond and much larger than scope of review as given in the Order XLVII Rule 1 of CPC. In fact, the scope of Section 254(2) is much limited and the scope of review is much wider. Accordingly, in view of the law laid down by the Hon'ble Constitutional Bench of the Hon'ble Supreme Court and several other judgments of Hon'ble Supreme Court cited supra, we hold that order of the Tribunal cannot be recalled based on the subsequent judgment of the Hon'ble Supreme Court when the order of the Tribunal had attained finality between the parties. Consequently, the Miscellaneous Application filed by the department is dismissed."*

4. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. The facts are identical in the present case as the Revenue in the present case also, seeking for recalling of the order dated 25.08.2022 in ITA No.1739/Del/2022. In the light of above binding precedents, the prayer of the Revenue cannot be allowed. Hence, Miscellaneous Application filed by the Revenue is hereby, dismissed.

5. In the result, the Miscellaneous Application of the Revenue is dismissed.

Order pronounced in the open Court on 29<sup>th</sup> August, 2024.

***Sd/-***

***Sd/-***

**(M.BALAGANESH)  
ACCOUNTANT MEMBER**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI