

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 364/Kol/2024
Assessment Year: 2018-19

Ginza Industries Ltd. (PAN: AABCG 0675 P)	Vs.	DCIT, Circle-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	24.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Jay Bhansali, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT, Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- Addl./JCIT(A)-2, Lucknow (hereinafter referred to as the "Ld. CIT(A)") dated 28.12.2023 for the AY 2018-19.

2. Issue raised in ground no. 1 is against the confirmation of addition of Rs. 90,24,952/- by the Ld. CIT(A) as made by the AO, CPC, Bangalore on account of PF & ESI in the order passed u/s 143(1) of the Act.

3. Facts in brief are that the assessee filed return of income on 17.10.2018 which was processed u/s 143(1) of the Act vide order dated 12.11.2019. In the said order, the two additions were made ,one on account of PF & ESI of Rs. 91,24,951/- and second one of Rs. 37,963/- on account of penalty or fine paid by the assessee during the year. The order was challenged before the Ld. CIT(A) who dismissed the appeal of the assessee, however, in a rectification order JCIT(A)-2, Lucknow vide order dated 01.04.2024 allowed EPF to the tune of Rs. 27,24,986/- which was paid due on 15.09.2017 i.e. paid on the same day.

4. The ld. A.R submitted before us that by referring to page no. 144, the details of payments shown in the tax audit report. The Ld. A.R referred to item no. 82 of Rs. 2,86,167/- which became due on 15.08.2017 and was paid on 16.08.2017. The Ld. A.R submitted that the amount could not be deposited on 15.08.2017 as it was a public holiday and therefore it was paid on the next working day on 16.08.2017. The ld. A.R therefore prayed that this amount may kindly be allowed to the assessee in view of the decision of Co-ordinate Bench of Delhi in the case of M/s G.D. Foods and Manufacturing (India) Pvt. Ltd. vs. Assistant Director of Income Tax Central Circle-26 , New Delhi in ITA No. 221/Del/2023 for AY 2019-20 dated 10.07.2023 wherein it has been held that where the last date when the payment is due to the Govt. Exchequer is a public holiday then the payment on the next working day is treated as paid within the due date.

5. The Ld. D.R relied on the order of authorities below.

6. After hearing the rival contentions and perusing the material on record, we find that the provident fund of Rs. 2,86,167/- which was due paid on 15.08.2017 but could not be deposited due to being public holiday on that day and deposited on the next date i.e. 16.08.2017. In our opinion, there is no delay in deposit of PF as the last due date of deposit was a public holiday and therefore it is presumed to be paid within the due date. The case of the assessee finds support from the decision of Co-ordinate Bench in the case of M/s G.D. Foods and Manufacturing (India) Pvt. Ltd. vs. Assistant Director of

Income Tax Central Circle-26 , New Delhi (supra). Accordingly, we modify the order of Ld. CIT(A) on this issue and direct the AO to allow the deduction of Rs. 2,86,167/-. The ground no. 1 is partly allowed.

7. Issue raised in ground no. 2 is against the confirmation of penalty of Rs. 37,963/- by the Ld. CIT(A) as made by the AO on account of expenditure by way of penalty or fine for violation of any law for the time being force during the year. After perusing the tax audit report in para 21(a), we note that the tax auditor wrongly reported under the column penalty Rs. 37,963/- which was stated to be wrongly reported by the tax auditor. Thereafter a certificate dated 24.11.2011 was issued by the tax auditor certifying that it was a typographical mistake and there is no such penalty paid during the year a copy of which is placed at Pg. no. 183 of PB. The assessee has made submission before the Ld. CIT(A) which was overlooked by the Ld. CIT(A). In view of the above facts and circumstances, we set aside the order of Ld. CIT(A) and direct the AO to delete this disallowance.

8. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ginza Industries Ltd., A 501 and 502 Lotus Corporate Park, Off Western Express Highway, Jay Coach Lane, Goregaon East, Maharashtra-400063
2. Respondent – DCIT, Circle-5(1), Kolkata
3. Ld. CIT(A)- Addl./JCIT(A)-2, Lucknow
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata