

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.523/Bang/2015
(Assessment year: 2011-12)**

Deputy Commissioner of Income-tax,
Circle 1(1)(1),
Bangalore. ... Appellant

Vs.

M/s.Avasarala Technologies Ltd.,
47, 36th Main Road, BTM 1st Stage,
Dollar Scheme,
Bangalore-560068. ... Respondent
PAN: AABCA 2381 E

Appellant by: Dr. P.K.Srihari, Addl.CIT(DR).
Respondent by: None.

Date of hearing : 28/07/2015
Date of pronouncement: 30/07/2015

O R D E R

Per JASON P. BOAZ, AM:

In this appeal, the Revenue is aggrieved by the order of the order of the CIT(A)-I, Bangalore, dated 20/01/2015 in allowing the claim of the assessee u/s 36(1)(va) of the Income-tax Act, 1961 ['Act'] by following the decision of the jurisdictional High Court in the case of *Essae Teraoka Pvt. Ltd.*, without appreciating the fact that the assessee has not remitted the employees' contribution towards Provident Fund and ESI within the due date

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specified under the Act and as such, these sums are income in the hands of the assessee in terms of section 2(24)(x) read with section 36(1)(va) of the Act.

2. Brief facts of the case are that the assessee-company filed its return of income for the relevant assessment year. During the assessment proceedings u/s 143(3), the Assessing Officer (AO) observed that the assessee has remitted the employees' contribution to PF and ESI after the due date for such remittances. AO, therefore, disallowed the same and brought it to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who followed the decision of the jurisdictional High Court in the case of *Essae Teraoka Pvt. Ltd.*, in ITA No.480 of 2013 dated 14/02/2014 reported in 43 Taxman.com 33 (Kar.) wherein it was held that even in respect of employees' contribution to PF and ESI, deposited beyond the due date under respective Acts but paid before the due date of filing of return u/s 139(1), the same is eligible for deduction u/s 43B of the Act. Against the relief given by the CIT(A), Revenue is in appeal before us.

4. The learned Departmental Representative supported the order of the AO. None was present on behalf of the respondent-assessee. We find that the issue is now covered in favour of the assessee by the decision of the jurisdictional High Court in the case of *Essae Teraoka Pvt. Ltd.* (cited supra) as well as in the

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case of *Sabari Enterprises* (298 ITR 141)(Kar). We, therefore, do not see any reason to interfere with the order of the CIT(A).

5. In the result, the revenue's appeal is dismissed.

Pronounced in the open court on 30th July, 2015.

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER
eksrinivasulu

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore