

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.268 & 269/Mds/2017

निर्धारण वर्ष / Assessment Years : 2013-14 & 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(2),
Chennai - 600 034.

v. M/s RP Telebuy Skyshop Pvt. Ltd.,
2nd floor, Tower A, 2nd Main Road,
Ambattur Industrial Estate,
Chennai - 600 058.

(अपीलार्थी/Appellant)

PAN : AADCR 4633 C

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. B. Ramakrishnan, CA

सुनवाई की तारीख/Date of Hearing : 05.04.2017

घोषणा की तारीख/Date of Pronouncement : 28.04.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals) -3, Chennai, dated 28.10.2016 and pertain to assessment years 2012-13 and 2013-14. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the only issue arises for consideration is disallowance of employees' contribution for both the assessment years. The Assessing Officer disallowed a sum of ₹28,79,604/- for assessment year 2012-13 and a sum of ₹ 43,29,942/- for assessment year 2013-14, being the employees' contribution which were not deposited in Government account within the time limit provided under the Provident Fund Act. According to the Ld. D.R., under Section 36(1)(va) of the Income-tax Act, 1961 (in short 'the Act'), the employees' contribution made to Provident Fund and ESI is allowable if the same is credited to the Government account within the due date provided under the respective Act. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the employees' contribution even though was not deposited within the due date provided under the respective Act, it was admittedly deposited within the due date provided for filing of return of income under Section 139(1) of the Act. Therefore, according to the Ld.

representative, the CIT(Appeals) rightly following the order of this Tribunal in Express Publication (Madurai) Ltd., has allowed the claim of the assessee. Referring to another order of this Tribunal in ACIT v. Easun Products of India (P) Ltd. in I.T.A. No.182/Mds/2016 dated 19.05.2016, the Ld. representative submitted that this Tribunal by placing reliance on the judgment of Madras High Court in Industrial Security & Intelligence India Pvt. Ltd. in Tax Case (Appeal) Nos.585 and 586 of 2015, allowed the employees' contribution which was deposited within the due date provided for filing of return of income under Section 139(1) of the Act. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the employees' contribution was deposited within the due date provided for filing return of income under Section 139(1) of the Act. The contention of the Revenue appears to be that the employees' contribution has to be deposited within the due date provided under Provident Fund Act. The Madras High Court in Industrial Security & Intelligence India Pvt. Ltd. (supra) examined

this issue and after referring to the judgment of Apex Court in CIT v. Alom Extrusions Ltd. (319 ITR 306) and Delhi High Court in CIT v. Amil Ltd. (321 ITR 508), found that deposit of employees' contribution after the due date prescribed under relevant Act but before the date of filing of return of income under the Income-tax Act, cannot be disallowed. In view of the judgment of Madras High Court in Industrial Security & Intelligence India Pvt. Ltd. (supra), this Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee. Therefore, the same is confirmed.

5. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 28th April, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.