

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1082/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013.

VGN Infra India Private Limited,
No.15, Wallace Garden 2nd Street,
Nungambakkam,
Chennai 600 006.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 3(2)
Chennai 600 034.

[PAN AADCV 1283E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri.K.M. Mohandass, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 28-06-2016

घोषणा की तारीख /Date of Pronouncement : 21-07-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-11, Chennai for the assessment year 2012-13 in ITA No.432/2014-15-CIT(A)-11, dated 29.12.2015 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. There is a delay of 51 days in filing the appeal by the assessee. At the time of hearing the Id. Counsel has filed an affidavit explaining that the order of Commissioner of Income Tax (Appeals) was served on the assessee company on 2.01.2016 was received by Chief Financial Officer. Further, the Chief Financial Officer has undergone Bye pass Surgery for Gastro Ulcer and was on leave and resumed the office again on 07.04.2016 and immediately filed the appeal on 21.04.2016 with delay of 51 days. The delay in filing the appeal was not intentional but due to Hospitalization of Chief Financial Officer Shri. Ramesh Babu. The Id. DR has no serious objections for condonation of delay. After hearing the submissions, we are satisfied with sufficient and reasonable cause for filing the appeal belatedly and we therefore condone the delay and admit the appeal.

3. The assessee has raised only one substantive ground that the Id. Commissioner of Income Tax (Appeals) erred in Holding Employees Contribution are not covered under provisions u/s.43B of the Act and Deposits of PF and ESI employees contribution beyond due date specified under the respective Act but before the due date of filing the return u/s.139(1) of the Act are not allowable expenditure and distinguished the judicial decisions.

4. The Brief facts of the case are that the assessee is in Business of Construction of Residential Building and Infrastructure works and filed Return of income on 01.10.2012 with total income of ₹3,45,90,030/- and the return of income was processed u/s.143(1) of the Act. Subsequently under CASS the case was selected and Id. Assessing Officer issued questionnaire and the Id. Authorised Representative of assessee appeared from time to time and complied with the details. The Id. Assessing Officer on verification of Books of account, found the assessee company paid employees contribution of ESI and EPF beyond the due date specified under the Respective Act. The Id. Authorised Representative explained that though the assessee company could not make payments for various reasons within due date of the Statutory Acts but paid entire contribution before due date of Return of Income u/s.139(1) of the Act. But the Id. Assessing Officer overlooked the detailed explanation and relied on the Judicial decision and disallowed the claim. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

5. In the appellate proceedings, the Id. Authorised Representative of assessee appeared and Argued the grounds and explained that the Id. Assessing Officer has disallowed ESI and EPF payments paid after due date specified by the Act and the said payments are to be allowed u/s.36(1)(va) of the Act an were paid before due date u/s.139(1) of the

Act and relied on the Hon'ble Delhi High Court decision in the case of *CIT vs. AIMIL Ltd (2010) 299 Taxmann 265* where it was held that the employees contribution towards ESI and EPF would qualify for deduction even if paid after due date prescribed under Provident Fund /ESI Act but before due date of filing of return. The Id. Commissioner of Income Tax (Appeals) considered the findings of the Id. Assessing Officer, submissions, distinguished the judicial decisions relied by the assessee and the provisions of Sec. 36(1)(va) of the Act and relied on the decision of Gujarat High Court in the case of *Gujarat State Road Transport Corporation (2014) 41* and upheld the action of the Id Assessing Officer and partly allowed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

6. Before us, the Id. Authorised Representative of the assessee reiterated the submissions made before Assessing Officer, appellate proceedings and relied on judicial decisions. The Id. Authorised Representative explained being that the assessee has deposited employees contribution under ESI and PF within due date of filing of Return of income specified u/s.139(1) of the Act and payments are considered under provisions of Sec. 43B of the Act and relied on Jurisdictional High Court decision and prayed for allowing the appeal.

7. On the other hand, the Id. Departmental Representative relied on the orders of lower authorities and vehemently opposed to the grounds.

8. We heard the rival submissions, perused the material on record and judicial decisions cited. The sole ground envisaged by the Id. Authorised Representative that the assessee company has complied the conditions of payment of PF/ESI under the respective statues but there was a delay in payments and assessee is liable for payment of interest also. But under the provisions of Income Tax Act the assessee company has deposited employees contribution of ESI and EPF before time limit specified u/s.139(1) of the Act and covered by the provisions of Sec. 43B of the Act. We found on similar issue Jurisdictional High Court in the case of *CIT vs. M/s. Industrial Security & Intelligence India Pvt. Ltd* were it has held as under:-

5. *"We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, whereby, the Supreme Court held that omission of second proviso to Section 43B and amendment to first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively, i.e., with effect from 1.4.1988 i.e., the date of insertion of first proviso. The Delhi High Court in the case of CIT V. Amil Ltd. reported in 321 ITR 508 held that if the assessee had deposited employee's contribution towards Provident Fund*

and ESI after due date as prescribed under the relevant Act, but before the due date of filing of return under the Income Tax Act, no disallowance could be made in view of the provisions of Section 43B as amended by Finance Act, 2003.”

We respectfully following the judicial High Court decision direct the Assessing Officer to delete the addition and allow the ground of the assessee.

9. In the result, the appeal of the assessee in ITA No.1082/Mds/2016 is allowed.

Order pronounced on Thursday, the 21st day of July, 2016 at Chennai.

Sd/-

(**ए. मोहन अलंकामणी**)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st July, 2016.

KV

Sd/-

(**जी. पवन कुमार**)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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