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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1448 OF 2013

INCOME TAX APPEAL NO.1449 OF 2013

INCOME TAX APPEAL NO.1450 OF 2013

The Commissioner of Income Tax-4, Mumbai ..Appellant.

V/s.

M/s. S.Kumars Nationwide Ltd. ..Respondent.

Mr.Suresh Kumar for the appellant.
None for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 15TH APRIL, 2015

P.C. :-

1. The common question in these three appeals in respect of assessment years 2005-06 to 2007-08 pertains to deduction under section 36(1)(va) of the Income Tax Act, 1961 ('the Act') in respect of the provident fund contribution made by the assessee beyond the period specified in para 38 of the Employees Provident Fund Scheme, 1952. The question of law reads as under:-

" Whether on the facts and in the circumstances of the caser and in law, the ITAT was correct in holding that the employees contribution towards the provident fund paid by the assessee beyond the period specified in para-38 of the Employees Provident Fund Scheme, 1952, is entitled to deduction u/s.36(1)(va) of Income Tax, Act, 1961 ? "

2. The facts of the matter reveal that the revenue is aggrieved by the order of the Tribunal upholding the decision of the Commissioner of Income Tax (Appeals) while dismissing the appeals of the revenue. The assessee filed Nil income return on 30th October, 2005 and showing loss of ₹193,73,53,682/- under section 115JB of the Act. The assessee was primarily engaged in the business of processing and trading activities in textile goods and was liable to make a payment towards the employees provident fund. However, this contribution was made belatedly. The payment was made beyond due date but within the grace period of five days. The assessee claimed deduction under section 36(1)(va) of the Act. In the course of the assessment proceedings, the Assessing Officer made addition to the total income of the employees contribution to the provident fund on account of delay in payment of the contribution and completed the assessment under section 143 of the Act.

3. The assessee being aggrieved by the order filed an

appeal before the Commissioner of Income Tax (Appeals) who allowed the appeal vide order dated 6th October, 2009. The revenue being aggrieved by the order of the Commissioner of Income Tax (Appeals) filed appeal before the Tribunal which dismissed the appeal on 18th January, 2013 upholding the order of the Commissioner of Income Tax (Appeals). Perusal of the order of the Tribunal reveals that the amount payable towards the contribution of the provident fund was paid beyond the due date but within the allowable grace period of five days and, therefore, in respect of these three assessment years, the Assessing Officer has incorrectly made disallowance. We have heard Mr. Suresh Kumar for the appellant. According to him, the order of the Assessing Officer was correct and ought to have been sustained. We are unable to agree. Before the Tribunal, we find that the department's representative fairly conceded that the case at hand was covered against the revenue by the decision of *Marubeni India (P) Ltd. V/s. CIT (101 ITD 437 Delhi) and Kanoi Paper & Industries Ltd. V/s. JCIT (75 TTJ 448)* and especially in view of this position, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals) by observing that the payment of contribution although made beyond the statutory period of 15 days from the end of the month in which wages are paid was made within the grace period of five days.

The facts do not admit of any wanton negligence in complying with statutory requirements. The payment was in fact made within the grace period allowed to the assessee. The payment having been made within the grace period of five days, we are of the view that there is no reason to interfere. In the facts of the present case, the appeals do not raise any substantial question of law. All the appeals are, therefore, dismissed. No order as to costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**