IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2015

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case (Appeal) Nos.585 and 586 of 2015
& M.P.No.1 of 2015

Commissioner of Income Tax
No.121, Nungambakkam High Road,
Chennai - 600 034.

... Appellant in both T.C.(A)s/
Respondent in both TCAs

Vs.

M/s.Industrial Security & Intelligence
India Pvt. Ltd.,
139, Old No.59A, 1st Floor,
Rengarajapuram High Road,
Kodambakkam, Chennai - 600 024.

... Respondent in both T.C.(A)s/
Appellant in both TCAs

APPEALs under Section 260A of the Income Tax Act against the order dated 31.10.2014 made in I.T.A.Nos.2048 & 2049/Mds/2014 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment years 2003-04 and 2004-05 against the Order of the Commissioner of Income Tax(Appeals) II, Chennai dated 06.05.2014 in ITA Nos.1031 & 1032/2013-14 and as against the Order of the Assistant Commissioner of Income Tax Co circle II(3), Chennai - 34 dated 16.09.2009 for PAN No.AAACI47600.

For Appellant in both the TCAs : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax

C O M M O N J U D G M E N T
(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order passed by the Income Tax Appellate Tribunal for the assessment years 2003-04 and 2004-05.

2. The brief facts of the case are as follows:

The respondent/assessee filed its return of income for the assessment years in question. The said returns were processed and were not selected for scrutiny. Subsequently, the Assessing Officer noticed that there was escapement of income and hence reopened the assessments under Section 147 of the Income Tax Act by issuing notice under Section 148 of the Income Tax Act. While completing the re-assessment, the Assessing Officer disallowed the expenses claimed by way of Employee's contribution to PF and ESI holding that the assessee had not paid the employee's contribution of PF and ESI within the due dates specified under the respective Act. Aggrieved by the said order of assessment, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) challenging the reopening as well as the disallowance. The Commissioner of Income Tax (Appeals) sustained the order of the assessment, thereby dismissed the appeals. Aggrieved by the same, the assessee preferred further appeals before the Tribunal. The Tribunal relied upon the decision of the Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, decision of the Delhi High Court in the case of CIT V. Amil Ltd. reported in 321 ITR 508 and that of the Co-ordinate Bench of the Tribunal in the case of M/s.Venkateswara Electrical Industries P. Ltd. V. DCIT in ITA Nos.1344, 1345 and 1636/Mds/2014 dated 28.8.2014 held as follows:

> "5. Heard both sides. Perused orders of lower authorities and the decisions relied on before us. It is not in dispute that all these payments of provident fund Rs.16,20,571/- and ESI Rs.17,51,490/- were made beyond the grace period/due date allowed under Provident Fund & ESI Acts but before due date for filing of income-tax return. This issue has been decided in favour of the assessee by various High Courts following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusions Ltd. (319 ITR 306), wherein the Hon'ble Supreme Court held that omission of second proviso to section 43B and amendment of first proviso by Finance Act, 2003 are curative in nature and are effective retrospectively and thus with effect from 1.4.1988 i.e. the date of insertion of first proviso. The co-ordinate Bench of this Tribunal considering a similar issue in the case of M/s.Venkateswara Electrical Industries P. Ltd. Vs. DCIT (supra) following the decision of Hon'ble Delhi High Court in the case of CIT Vs. Amil Ltd. (321 ITR 508) held that even the employees contribution to provident fund is to be allowed as deduction if it is paid within due date for filing of return. While holding so, the Tribunal observed as under:-

"6. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below, as well as the judgments/decisions relied on by the ld. Counsel for the assessee. It is an un-disputed fact that there has been delay in remittance of employees contribution of ESI and Provident Fund in both the AYs i.e., 2008-09 & 2009-10. It is equally un-disputed that the assessee has deposited the amount towards employees contribution of ESI and Provident Fund before the due date of filing of return. The Hon'ble Delhi High Court in the case of Cit Vs. Amil Ltd., reported as 321 ITR 508 has held that if the assessee had deposited employees 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 dis-allowance could be made in view of the provisions of section 43B as amended by the Finance Act, 2003. The decision of the Hon'ble Delhi High Court has been followed by the co-ordinate bench of the Tribunal in the case of JCIT Vs. M/s.S.M.Apparels (P) Ltd. (supra). The Tribunal has been consistently following the view taken by the Hon'ble Delhi High Court. Accordingly, we hold that the assessee is entitled to claim expenditure on employee's contribution towards ESI and Provident Fund for both the AYs. Accordingly, both the appeals of the assessee are allowed."

6. Respectfully following the above, decision, we direct the Assessing Officer to delete disallowances made under section 43B of the Act for both these assessment years. The grounds of appeal raised by the assessee are allowed."

3. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

4. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

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.

6. In the present case, the assessee had remitted the employees contribution beyond the due date for payment, but within the due date for filing the return of income. Hence, following the above-said decisions, we find no reason to differ with the findings of the Tribunal. Accordingly, we find no question of law much less any substantial question of law arises for consideration in these appeals. Accordingly, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal Madras 'B' Bench

2. The Commissioner of Income Tax (Appeals) II,
   Chennai.

3. The Assistant Commissioner of Income Tax,
   Co. Circle II(3), Chennai.

Tax Case (Appeal) Nos.585 & 586 of 2015

VGI(CO)
CA(18/09/2015)