THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.Nos. 217 AND 218 OF 2005

DATED 29TH NOVEMBER, 2017

I.T.T.A.No. 217 OF 2005

Between:

ELICO Limited,
B-90, APIE, Sanathnagar,
I.E. Extension,
Hyderabad – 500018 … Appellant

AND

Income Tax Officer,
Ward 1 (2), Aayakar Bhavan,
Basheerbagh, Hyderabad - 500001 … Respondent

Counsel for the appellant : Dr. N.R.Siva Swamy

Counsel for the respondent : Sri B.Narasimha Sarma

THE COURT MADE THE FOLLOWING

COMMON JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

These two appeals raise the question of legality or otherwise of the disallowance of E.P.F. and E.S.I. contributions made beyond the stipulated period. The appeals filed by the assessee before the Commissioner of Income Tax (Appeals)-II, Hyderabad, and the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad, having been dismissed, the assessee filed the present appeals.

2. Sri S.Dwarakanath, learned counsel for the appellant, has placed before us the judgment in ***Commissioner of Income Tax Vs. Alom Extrusions Limited***[1] and submitted that in the said judgment, the Supreme Court held that deletion of second proviso to Section 43-B of the Income Tax Act, 1961 (for short, 'the Act'), based on which disallowance was made being curative, has retrospective operation from 01-04-1988, the date on which the said provision was introduced. He has accordingly submitted that in view of the said judgment, the appeals deserve to be allowed. Sri B.Narasimha Sarma, learned senior standing counsel for Income Tax Department, has fairly conceded the submission of leaned counsel for the appellant.

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[1] (2010) 1 SCC 489

3. Inasmuch as the view taken by the appellate authorities that the appellant is not entitled to the benefit of deletion of the second proviso to Section 43-B of the Act by holding that the said deletion has only prospective effect has been reversed by the Supreme Court in ***Alom Extrusions Limited*** (*supra*), the appellant is entitled to succeed.

4. Accordingly, the impugned orders are set aside. Both the appeals are allowed. The assessing officer is directed to make a fresh assessment by allowing deductions of E.P.F. and E.S.I. payments made during the assessment years 1999-2000 and 2000-01.

5. As a sequel to disposal of both the appeals, I.T.T.A.M.P.No. 264 of 2005 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

T.AMARNATH GOUD, J.

Date: 29-11-2017.
JSK