

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 90 of 2009

M/s Orissa Sponge Iron & Steel Ltd. Appellant
Mr.B.Panda, Advocate

-versus-

The Asst.Commissioner of Income Tax, Respondents
Sambalpur & another

Mr. S.S.Mohapatra, Senior Standing Counsel,
for the Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTNAIK

Order No.

ORDER
07.02.2022

6. 1. This appeal arises from an order dated 28th June, 2009 passed by the Income Tax Appellate Tribunal, Cuttack (ITAT) in ITA No. 123/CTK/2008 for the Assessment Year (AY) 2002-03. Counsel for the Appellant Assessee states that he is pressing only one question concerning the disallowance of the employees' contribution amount under the Employees Provident Fund and Miscellaneous Pension Act, 1952 ('EPF Act').

2. Admit. The following question of law is framed for consideration:

“Whether in the facts and under the circumstances of the case the Tribunal was legally justified to confirm the disallowances of Employees Contribution made at Rs.70,70,127/- and correctly held that the deduction of the

amount is not allowable even if the contribution is made before and within the due date of filing of return U/s. 139(1) of the Income Tax Act?”

3. In the present case, it is not in dispute that before filing the return of AY in question the Appellant Assessee had made the above contribution of Rs.370,70,127/- being the employees’ contribution of Provident Fund (PF). However, the Assessing Officer (AO) in the assessment order dated 29th December, 2006 disallowed it and added it back since it had not been paid within due date as prescribed under the EPF Act.

4. The Delhi High Court in ***CLT v. Aimil Ltd. (2010) 321 ITR 508*** (Del) answered an identical question in favour of the Assessee and against the Department. The High Court followed the decision of the Supreme Court in ***Vinay Cement Ltd. (2009) 313 ITR (St.) 1 (SC)***. It was accordingly, held as under:

“19. We may only add that if the employees’ contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in ***Vinay Cement (2009) 313 ITR (ST.)1.***”

5. Accordingly the question framed is answered in favour of the assessee and against the Department. The impugned order of the ITAT and the corresponding orders of the CIT(A) and AO stand modified to the above extent.

6. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattnaik)
Judge

Kabita/Tudu

