

Additional Commissioner of Vs. Hilton Roulunds Ltd.

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-12-2005

Reported in : (2005)97TTJ(Delhi)490

Judge : P Parikh, A Jain

Appellant : Additional Commissioner of

Respondent : Hilton Roulunds Ltd.

Judgement :

1. This is Department's appeal for asst. yr. 1997-98, raising the following grounds :
"1. On the facts and circumstances of the case, the CIT(A) erred in holding that deduction under Section 43B amounting to Rs. 6.07 lakhs be allowed even if the amount has been paid beyond the period provided under the Provident Fund Act but paid within the grace period of 5 days.

2. On the facts and circumstances of the case, the learned CIT(A) erred in directing that interest under Section 234B charged in view of the decision of apex Court in the case of CIT and Ors. v. Ranchi Club Ltd., ignoring the retrospective amendment proposed by the Finance Act, 2001." 2. Apropos the first ground, the issue is as to whether provident fund contribution amounting to Rs. 6,07,388, paid under Section 43B of the IT Act within the grace period of 5 days beyond the prescribed date, is allowable or not. The AO disallowed the payment. The learned CIT(A) deleted the disallowance, directing the AO to allow deduction if the payment is made within the grace period of 5 days.

3. Before us, the learned counsel for the assessee has placed reliance on the decision of the Delhi Bench of the Tribunal in the assessee's own case for asst. yr. 1996-97, in ITA No. 3195/Del/2000, vide order dt. 22nd Dec., 2004 [reported as Jt. CIT v. Hilton Roulunds Ltd. (2005) 97 TTJ (Del) 479--Ed.], a copy whereof has been placed in the assessee's paper book-II, at pp. 1 to 12 thereof.

"12. Ground No. 2 relates to the payment of delay payment of provident fund. During the course of hearing, it was admitted by both the parties that the assessee has made payment of PF/EPF and ESI within the grace period which was disallowed by the AO. The CIT(A) following the decision of different Benches of the Tribunal and the decision of the Madras High Court in case of CIT v. Shri Ganapathy Mills Co. Ltd. allowed the payment. Now the Revenue is before us. On perusal, we find that CIT(A) has rightly allowed payment which was made in grace period. We, therefore, uphold the order of CIT(A)." 5. Reliance with regard to ground No. 1 has also been placed on the Delhi Tribunal decision in the case of Modern Steel Industries v. Asstt.

CIT (2000) 67 TTJ (Del) 354, the decision of the Hon'ble Madras High Court in the case of CIT v. Shri Ganapathy Mills Co. Ltd. , the decision of the Hon'ble Madras High Court in the case of CIT v. Madurai District Co-operative Spinning Mills Ltd. (2003) 131 Taxman 513 (Mad) and the decision of the Ahmedabad Bench of the Tribunal in the case of Asstt. CIT v. Rotex Mfg. & Engg. (Guj) (P) Ltd. (2004) 90 TTJ (Ahd) 171 : (2004) 137 Taxman 37 (Ahd)(Mag). In all these decisions, it has been held that payments made within the grace period of 5 days allowed by the Provident Fund Department deserve to be treated as payment made within the due date. In fact, in the assessee's own case, the Tribunal, in its aforementioned order for asst. yr.

1996-97, has followed the Hon'ble Madras High Court decision in the case of Shri Ganapathy Mills (supra).

6. In these facts, respectfully following the aforesaid case law cited by the assessee, ground No. 1 is rejected.

7. So far as regards ground No. 2, vide Circular No. 14/2001, dt. 22nd Nov., 2001, by virtue of Finance Act, 2001, (assessee's paper book-II, pp. 13 and 14), in the Explanatory Notes on provision relating to direct taxes, it has been stated that with a view to avoid litigation, the Act has amended Section 234A and 234B to clarify that the assessee shall be liable to pay interest under the said sections with reference to tax on the assessed income and not on returned income; that it has further been clarified that for the purposes of Section 140A, interest payable under Section 234A and 234B shall be computed with reference to tax on returned income. The assessee has also fairly submitted in its "chart of grounds of appeal" contained at pp. 1 and 2 of its paper book-I that in view of the retrospective amendment brought about by Finance Act, 2001 with retrospective effect from 1st April, 1989, interest under Section 234B is to be levied on the assessed tax.

8. In this view of the matter, allowing ground No. 2 raised by the Department, we hold that the learned CIT(A) erred in issuing direction to the AO to recompute the interest under Section 234B on the revised total income. Keeping in view the Supreme Court decision in the case of CIT and Ors. v. Ranchi Club Ltd., we hold that in view of the aforesaid retrospective amendment brought about by the Finance Act, 2001, interest under Section 234B is to be levied on the assessed tax.

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