

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 1533 & 1534/H/2017 Assessment Year: 2013-14 & 2014-15		
Vijai Electricals Ltd., Hyderabad. PAN - AAACV 7259B	Vs.	Dy. Commissioner of Income-tax, Circle - 17(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri S. Rama Rao
Revenue by:		Shri Sunil Kumar Pandey
Date of hearing:		06/04/2021
Date of pronouncement:		27/05/2021

ORDER

PER LAXMI PRASAD SAHU, A.M.:

Both these appeals filed by the assessee are directed against CIT(A) - 5, Hyderabad's common order, dated 28/06/2017 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act".

2. In ITA No. 1533/Hyd/2017, the assessee has raised two substantive grounds of appeal, one is pertaining to

addition towards PF and ESI and another is pertaining to the addition made u/s 14A of the Act.

2.1 In ITA No. 1534/Hyd/2017, the assessee has raised two substantive grounds of appeal, one is pertaining to the addition towards ESI and PF, which is similar to ground No. 2 in ITA No. 1533/Hyd/2017 and another one is pertaining to TDS of Rs. 78,26,28,873/-, which is not pressed by the Id. AR of the assessee at the time of hearing, therefore this ground is dismissed as not pressed.

3. As regards the addition towards PF & ESI, which is similar in both the appeals under consideration, the AO made the addition relating to employees contribution to PF & ESI on the ground that the same was deducted but was not remitted into relevant fund within the due dates prescribed under the relevant acts though the same was paid before the due date for filing return of income.

3.1 On appeal, the CIT(A) after discussing the issue with various case laws, confirmed the addition made by the AO.

4. Before us, the Id. AR of the assessee filed Notes on clauses, wherein Clause 8 o the Bills seeks to amend section

36 of the Income-tax Act, relating to other deductions read as under:

Sub-section (1) of the said section provides for allowing of deductions provided for in the clauses thereof for computing the income referred to in section 28 of the said Act. Clause (va) of the said sub-section provides for allowance of deduction for any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. *Explanation to the said clause provides that for the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise.*

It is proposed to insert *Explanation 2* to clause (va) of sub-section (1) of the said section so as to clarify that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under the said clause.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years."

4.1 Referring to the above clause, the Id. AR of the assessee submitted that the addition made by the AO towards PF & ESI may be deleted.

5. The Id. DR, on the other hand, relied upon the orders of revenue authorities.

6. We have considered the rival submissions and perused the material on record. Similar issue came up for consideration before the coordinate bench of this Tribunal in the case of Value Momentum Software Services Pvt. Ltd. in ITA No. 2197/Hyd/2017, order dated 19/05/2021, wherein the coordinate bench has held as under:

“5. Next comes the latter issue of Section 43B disallowance of Rs.8,11,648/- pertaining to employees provident fund. It is not in dispute that learned lower authorities held that the same had to be deposited before the due date prescribed in the corresponding statute than the due date for filing Section 139(1) return. The Revenue’s case in tune thereof relies on Section 36(va) read with explanation thereto that it is not Section 43B but the former provision which is applicable in such an instance. We find no merit in the Revenue’s foregoing stand. We take note of the explanatory memorandum to the Finance Act, 2021 proposing amendment in both Section 36(va) as well as Section 43B by inserting corresponding Explanations that although the impugned employees provident fund comes under the former provision only, the same is applicable from 01-04-2021 onwards. Meaning thereby that the legislature itself has condoned the impugned default before 01-04-2021. We thus delete the impugned employees provident fund disallowance of Rs.8,11,648/- for this precise reason alone. Necessary computation to follow as per law.”

6.1 Respectfully following the said decision, we direct the AO to delete the addition made towards PF & ESI in both the years under consideration. Accordingly, the ground raised on this issue in both the years is allowed.

7. As regards, the addition u/s 14A of Rs. 2,30,555/- in AY 2013-14, the AO made the addition on the ground that no deduction shall be allowed in respect of expenditure incurred in relation to income which does not form part of the total income rejecting the argument of the assessee that

it has not earned any dividend income from the investments in equity shares of subsidiaries and other companies and hence, no part of expenditure related to the exempt income is disallowable u/s 14A of the Act.

7.1 On appeal, the CIT(A) confirmed the addition made by the AO u/s 14A of the Act.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. It is settled position of law that the provisions of section 14A can be applied to quantify the expenses in relation to exempt income. Since the exempt income is Nil, section 14A will not apply. *The Hon'ble Delhi High Court in the case of Cheminvest Ltd., reported in (2015) 378 ITR 33 (Del.) has held that section 14A will not apply where no exempt income is received or receivable during the relevant assessment year.*

8.1 In the case under consideration, we find that the investments were made and no exempt income was earned from the investment so made, the provisions of Section 14A will not applicable to the case of assessee. Therefore, following the said decision of Hon'ble Delhi High Court in the case of *Cheminvest Ltd., (supra)*, we direct the AO to delete the addition made on this count.

9. In the result, both the appeals are allowed in above terms.

Pronounced in the open court on 27th May, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Sd/-

**(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 27th May, 2021.

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copy to :

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4	<i>Pr. CIT - 5, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>