



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 03.12.2008

ITA 367/2008

**CONSULTING ENGINEERING SERVICES (INDIA) (P) LTD
..... APPELLANT**

versus

COMMISSIONER OF INCOME TAX, DELHI. RESPONDENT

Advocates who appeared in this case:

For the Applicant : Mr. V.P.Gupta

For the Respondent : Ms. P.L.Bansal

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

RAJIV SHAKDHER, J

1. Admit.

1.1 The following question of law has arisen for our consideration:-

Whether the Tribunal misdirected itself in disallowing the deduction claimed by the assessee in respect of staff



the date for filing a return under Section 139(1) of the Income Tax Act, 1961?

Since the counsel for the parties have agreed to dispense with filing of paper books and proceeded to argue the matter based on the existing records, we heard the matter finally.

2. The assessee has preferred the present appeal against the judgment dated 24.8.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No.76/Del/2006, in respect of, the assessment year 1998-99.

2.1. The Tribunal by the impugned judgment has passed a common order, not only pertaining to the assessment year 1998-99 but also in respect of the assessment years 1999-2000 and 2001-2002 in view of the fact that the issues involved were common.

2.2 The only issue which has arisen in the appeal before us, as is discernable from the orders of the authorities below, is that, whether the appellant/assessee is entitled to claim deduction, in respect of, staff provident fund dues which have been paid after the due date prescribed under the relevant statute, but before the date of filing of return of income.

3. However, in order to dispose of the appeal the following facts require to be noted:-



Rs18,80,777/- on the ground that these dues were payable on 31.03.1998

and as per the provisions of the relevant statute the last date for payment of dues pertaining to the month of March, 1998 was 15.04.1998, whereas the appellant/assessee had admittedly made payments on 01.05.1998, 18.05.1998 and 05.06.1998. Thus, the view of the Assessing Officer was that since the payments have been made after 15.04.1998 they could not be allowed as per the provisions of Section 36(1)(va) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

3.2. Being aggrieved, the assessee carried the matter in appeal to the Commissioner of Income Tax (Appeal) [hereinafter referred in short as CIT(A)]. The CIT(A) by an order dated 31.10.2005 reversed the order of the Assessing Officer on this issue. Consequently, the deduction claimed by the assessee was allowed.

3.3. The Department being aggrieved by the order of CIT(A) carried the matter in appeal to the Tribunal. The Tribunal by the impugned judgment reversed the order of CIT(A) by relying upon the judgment of the Madras High Court in the case of CIT v. Synergy Financial Exchange Ltd (2007)288 ITR 366. In the said judgment the Madras High Court has taken the view that since Section 43B of the Act was amended from 01.04.2004 it would not apply with retrospective effect. Applying the ratio of the Madras High Court judgment, the Tribunal in the impugned



related to a period prior to 01.04.2004, the view taken by the CIT(A)

not be sustained. Aggrieved by the impugned judgment the assessee has preferred the present appeal.

4. We may note at the outset, in the proceedings before the authorities below, no distinction has been drawn between employer and employee dues. As indicated hereinabove the issue which has been agitated by the parties right uptill the Tribunal is only that which pertains to the eligibility of deduction, in respect of, staff provident fund dues paid after the date prescribed under the relevant statute, but before the date of filing of return under the Act, i.e., Income Tax Act, 1961. In our view, the aforesaid issue is squarely covered by our judgment dated 03.11.2008 in the case of *CIT v. P.M.Electronics Ltd* (ITA No.475/2007) as corrected by our order dated 05.12.2008 passed in CM 17067/2008 in ITA No.475/2007. In the said judgment we have noted that a Division Bench of the Madras High Court in *CIT v. Nexus Computer (P) Ltd* by a judgment dated 18.8.2008 passed in *Tax Case (A) No. 1192/2008* has taken a view contrary to that of its own Division Bench, in the case of, *CIT v. Synergy Financial Exchange Ltd* (supra) by holding that the decision of the Supreme Court, in the case of *CIT v. Vinay Cement Ltd* 213 ITR 268 being the law declared under Article 141 of the Constitution of India was binding on it, as also, the fact that in *Vinay Cement* (supra) the Supreme Court had dealt with the case



5. In view of the above, the question framed in this appeal is answered in favour of the assessee. The appeal of the assessee is allowed and the impugned judgment dated 24th August, 2007 passed by the Tribunal is set aside and that of the CIT(A) dated 31.03.2001 on this issue is sustained.

A handwritten signature in black ink, appearing to read 'Rajiv Shakdher'.

RAJIV SHAKDHER, J

A handwritten signature in black ink, appearing to read 'Badar Durrez Ahmed'.

BADAR DURREZ AHMED, J

December 03, 2008

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