

**(2009) 11 P&H CK 0177**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Lakhani India Ltd.

RESPONDENT

**Date of Decision:** Nov. 16, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 10(23C), 2(24), 260A, 36(1), 43B

**Citation:** (2010) 232 CTR 81

**Hon'ble Judges:** Gurdev Singh, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

1. The Revenue has preferred this appeal u/s 260A of the IT Act, 1961 (for short, "the Act") against the order dt. 3rd Oct., 2008 of the Tribunal, Chandigarh Bench "D" in ITA No. 2860/Del/2007 for the asst. yr. 2003-04, proposing to raise following substantial questions of law:

(I) Whether, on the facts and in the circumstances of the case, the learned Tribunal is right in law in upholding the order of the learned CIT(A) in deleting the addition of Rs. 69,10,329 made by the AO, inter alia, on account of employees" contribution to PF and EC, disregarding the fact that the payments were made beyond the due dates and were to be treated as income u/s 2(24)(x) as they were not allowable u/s 36(1)(va) of the IT Act, 1961 in contravention of the decision in the case of CIT v. Pamwi Tissues Ltd. (2008) 215 CTR (Bom) 150 : (2008) 3 DTR (Bom) 66?

(II) Whether, on the facts and in the circumstances of the case, the learned Tribunal is right in law in upholding the order of the learned CIT(A) in deleting the addition of Rs. 69,89,302 made by the AO on account of employer's contribution to PF, EPF and EPF without appreciating the fact that payments were not made by the assessee

within the prescribed "due dates" by which the assessee was required to make payments in contravention of the decision in the case of CIT v. Pamwi Tissues Ltd. (2008) 215 CTR (Bom) 150 : (2008) 3 DTR (Bom) 66?

2. The assessee claimed deduction in respect of payment of contribution towards provident fund, which was disallowed on the ground that payment was beyond the stipulated date. The CIT(A) upheld that claim of the assessee by referring to Explanation to Section 43B, read with Explanation to Section 36(1)(va) and Section 2(24)(x) of the Act with further observation that the payment was within the due date, as per circular issued under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. This view has been upheld by the Tribunal.

3. We have heard learned Counsel for the appellant who submits that the payment having been made beyond the due date, could not be allowed as deduction in view of judgment of Bombay High Court in CIT v. Pamwi Tissues Ltd. (2008) 215 CTR (Bom) 150 : (2008) 3 DTR (Bom) 66.

4. We are unable to accept the submission. Observations of the Tribunal in this regard are as under:

...We find that all the payments were made by the assessee within grace period of five days allowed under the PF Act and hence we are of the considered opinion that no interference is called for in the order of learned CIT(A) because this addition was deleted by the learned CIT(A) by following the judgment of Hon'ble Madras High Court rendered in the case of Commissioner of Income Tax Vs. Salem Co-operative Spinning Mills Ltd., wherein it has been held that PF contribution paid within the grace period are deductible.

5. Learned Counsel for the appellant submitted that there was no power to condone the delay and in such situation, payment made beyond stipulated period could not be taken into account. Reliance has been placed on judgment of the Orissa High Court in Roland Educational and Charitable Trust Vs. Chief Commissioner of Income Tax and Others, wherein in absence of power of condonation of delay, entertaining of application u/s 10(23C)(vi) was held not to be maintainable beyond stipulated period.

6. This submission has no merit. It is not a case of condonation of delay for entertaining application beyond stipulated period, but taking into account the payment made to meet the liability which had accrued, consistent with the provisions of Section 43B of the Act. View of the Tribunal is consistent with the view of judgment of Gauhati High Court in Commissioner of Income Tax Vs. George Williamson (Assam) Ltd., against which SLP was dismissed and which was followed in judgment of Delhi High Court in Commissioner of Income Tax Vs. Dharmendra Sharma, with which we respectfully agree. No substantial question of law arises. The appeal is dismissed.