आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA No. 853/JP/2012
निर्धारण वर्ष/Assessment Year : 2009-10

Assistant Commissioner of Income Tax, Circle-4, Jaipur.	बनाम Vs.	M/s Supersonic Turner Pvt. Ltd., F-393-A, Road No. 9F-2, VK Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCS 5144 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

प्रत्याक्षेपण/C.O. No. 76/JP/2012
(Arising out of आयकर अपील सं./ITA No. 853/JP/2012)
निर्धारण वर्ष/Assessment Year : 2009-10

M/s Supersonic Turner Pvt. Ltd., F-393-A, Road No. 9F-2, VK Area, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCS 5144 H		
प्रत्याक्षेपक/Objector		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Smt. Pratima Kaushik (CIT)
निर्धारिती की ओर से/ Assessee by : Shri Abhinav Mehrotra (Adv)

सुनवाई की तारीख/ Date of Hearing : 16/06/2015
उद्घोषणा की तारीख/ Date of Pronouncement : 10/09/2015

आदेश/ ORDER

PER: T.R. MEENA, A.M.

The appeal by revenue and cross objection by assessee arise from the order dated 06/08/2012 passed by the learned CIT (A)-II, Jaipur for A.Y. 2009-10.

2. The ground of revenue's appeal and ground of the assessee's C.O. are as under:-

Grounds in Revenue's Appeal.

"On the facts and in the circumstances of the case and in law the Ld. CIT(Appeals) has erred in:-

1. *Restricting the addition to Rs. 24,752/- against the addition of Rs. 27,27,293/- made by the A.O. on account of difference in job work receipts.*
2. *Deleting the addition of Rs. 1,15,59,814/- made by the A.O. on account of concealed sale of scrap.*
3. *Deleting the addition of Rs. 2,72,84,704/- made by the A.O. on account of concealed sales."*

Ground in Assessee's C.O.

"1. *On the facts and circumstances of the case Ld. CIT(A) grossly erred in confirming the addition of income of Rs. 22515/- on account of interest on FDR.*
2. *On the facts and circumstances of the case Ld. CIT(A) grossly erred in confirming the addition of Rs. 24757/- on account of job work receipts.*

3. On the facts and circumstances of the case Ld. CIT(A) grossly erred in confirming the addition of Rs. 1,37,927/- for late depositing ESI & PF dues."

2.1 Grounds No. 1 and 2 of the assessee's C.O. are not pressed, therefore, the same are dismissed as not pressed.

3. First ground of revenue's appeal is against restricting the addition to Rs. 24,752/- against the addition of Rs. 27,27,293/- made by the Assessing Officer on account of difference in job work receipts.

3.1 The brief facts of the case are that the assessee has derived income from manufacturing and job work of bearing rings. The assessee filed e-return of income declaring total income of Rs. 2,15,45,510/- on 30/09/2009. The case was scrutinized U/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act). A show cause notice alongwith notice U/s 142(1) dated 21/12/2011 was issued to the assessee in respect of difference in job work receipts amounting to Rs. 27,27,293/-.

3.2 The ld Assessing Officer observed that for job receipts in case of M/s Fag Bearing India Ltd., in comparison to statement appearing 26AS, the assessee has declared the less amount of receipt of Rs.

19,09,091.00 and accordingly the same amount is added back in the income of the assessee.

In case of Tata Steel, the assessee submitted before the Assessing Officer that the company has sold goods to Tata Steel and in respect of that some debit notes, (shortage and rejections) is worked out whereas they relates to sale but ultimate effect of that would be NIL. As per Assessing Officer, the assessee has not been filed any supporting evidence which prove the assessee's submission therefore, it is clear that the assessee company has concealed the receipts of Rs. 7,87,065 and the same is added back in the income of the assessee.

In case of SKF, the ld Assessing Officer observed that the assessee has declared the less receipt of Rs. 31,137/- and he has not been filed any explanation therefore the said amount is added back in the income of the assessee.

In light of above findings/observations, the ld Assessing Officer held that the assessee has concealed the receipt of job work of Rs. 27,27,293/- and the same is added back in the income of the assessee.

4. In first appeal, the ld CIT(A) has partly allowed the appeal on this ground and restricted the addition on account of difference in job work

receipts of Rs. 24,752/- instead of Rs. 27,27,293/- made by the Assessing Officer. The appellant company had submitted a reconciliation statement, which has been reproduced as under:-

M/s Fag Bearing India Ltd.

S. No.	Particulars	Amount (In Rs.)
1.	Receipts as per form No. 26AS	2,31,75,057/-
2.	Less: Bills pertaining to previous year (F.Y. 2007-08) (Booked by the principal company during the F.Y. 2008-09, hence, appearing in Form No. 26AS of current year)	46,99,182/-
3.	Total	2,84,75,875/-
4.	Add: Bills of current year but not accounted for by the deductor, therefore, not appearing in 26AS (Booked by the principal company during the F.Y. 2009-10 hence, not appearing in Form No. 26AS of current year)	11,97,130/-
5.	Total	2,96,73,005/-
6.	Less: Rejections/Debit Notes	18,89,493/-
7.	Total residual job work income of the year as per Form No. 26AS	2,77,83,512/-
8.	Job work income as per Profit and Loss Account	2,77,63,915/-
9.	Difference, if any (7-8)	19,597/-

M/s TATA Steel Limited

S. No.	Particulars	Amount (In Rs.)
1.	Receipts as per form No. 26AS	14,24,097/-
2.	Less: Bills pertaining to previous year (F.Y. 2007-08) (Booked by the principal company during the F.Y. 2008-09, hence, appearing in Form No. 26AS of current year)	1,78,804/-

3.	Total	12,45,293/-
4.	Add: Bills of current year but not accounted for by the deductor, therefore, not appearing in 26AS	78,775/-
5.	Total	13,24,068/-
6.	Less: Rejections/Debit Notes	6,81,881/-
7.	Total residual job work income of the year as per Form No. 26AS	6,42,187/-
8.	Job work income as per Book Account	6,37,032/-
9.	Difference, if any (7-8)	5,155/-

M/s SKF India Limited

S. No.	Particulars	Amount (In Rs.)
1.	Receipts as per form No. 26AS	3,96,000/-
2.	Less: Bills pertaining to previous year (F.Y. 2007-08) (Booked by the principal company during the F.Y. 2008-09, hence, appearing in Form No. 26AS of current year)	31,137/-
3.	Total	3,64,863/-
4.	Add: Bills of current year but not accounted for by the deductor, therefore, not appearing in 26AS	Nil
5.	Total	3,64,863/-
6.	Less: Rejections/Debit Notes	Nil
7.	Total residual job work income of the year as per Form No. 26AS	3,64,863/-
8.	Job work income as per Profit & Loss Account	3,64,863/-
9.	Difference, if any (7-8)	Nil

4.1 The ld CIT(A) held that the Assessing Officer without any basis rejected the submissions of the appellant company and at the same time, he ignored the entries in the books of account and copies of debit

notes/rejections. In the case of M/s Fag Bearing India Ltd., the Assessing Officer accepted the contention of the appellant company that job work receipts of Rs. 46,99,182/- appearing in Form No. 26AS were accounted in the books of account for F.Y. 2007-08, however, similar contention for job work receipts of Rs. 31,137/- was rejected by the A.O. in the case of M/s SKF India Ltd. Similarly in the case of M/s Fag Bearing India Ltd., the Assessing Officer accepted the contention of the appellant company that job work receipts of Rs. 11,97,130/- declared by the appellant company in the books of account for the current year did not appear in Form 26-AS, however, he did not accept the debit notes and rejections of Rs. 18,89,493/-. Similarly in the case of M/s Tata Steel Ltd., the A.O. did not accept the contention of the appellant company that job work receipts of Rs. 78,775/-declared by the appellant company in the books of account for the current year did not appear in Form 26-AS and he also did not accept the debit notes and rejections of Rs. 6,81,881/-. The ld CIT(A) further held that the appellant has satisfactorily explained the difference in job work receipts with the necessary documentary evidences. However, there was a minor difference of Rs. 19,597/- in the case of M/s Fag Bearing India

Ltd. and Rs. 5,155/- in the case of M/s Tata Steel Ltd., which remained un-reconciled. Accordingly, he directed the Assessing Officer to restrict the addition on account of difference in job work receipts to Rs. 24,752/- instead of Rs. 27,27,293/-.

5. Now the revenue is in appeal before us. The ld DR has vehemently supported the order of the Assessing Officer. At the outset, the AR of the assessee has supported the order of the ld CIT(A).

6. We have heard the rival contentions of both the parties and perused the material available on record. It is noted that the Assessing Officer had made addition of Rs. 27,27,293/- on account of difference in job receipts after making comparison between Form No. 26AS and the amount reported as per P&L account. It is noted that the difference as per Form No. 26AS and the amount reflected in P&L account is on account of bills pertaining to previous year, which have been booked in the current year by the principal company. Secondly, the bills of current year, which have been booked in the subsequent financial year by the principal company and thirdly rejection stock/debit notes, which have been received by the appellant during the year. It is also noted that the

assessee has filed detailed reconciliation statement alongwith supporting documentation, which have been duly considered and examined in detail by the ld CIT(A).

6.1 In his order, the ld CIT(A) has held that the difference was worked out by the A.O. by comparing the Form No. 26-AS (Tax Credit Statement) with the job work receipts declared in the books of account. However, many a times, the deductor either did not deduct the tax or accounted for the same in the subsequent year when the goods were lifted from the premises of the appellant company. It was not in dispute that the appellant company was following mercantile system of accounting and job receipts were accounted for in the books of account on accrual basis. The appellant company therefore declared the job receipts in the year of billing however the deductor/principal company accounted for part of job receipts in the subsequent year when the goods were removed from the premises of the appellant company. The mercantile system of accounting was consistently followed by the appellant company since last many years and it was clearly disclosed in the audited financial statements by the Auditors in scheduled 16, sub-point (A)(1) of the balance sheet. This disclosure was strictly in

conformity with the applicable AS-1 issued by ICAI and GAAP also. Many a times, the job work receipts accounted by the appellant in one year were accounted for in the subsequent year by the principal company. As a result, TDS was also deducted by the principal company in that year and credit for the same appeared in Form No. 26-AS.

6.2 We have given out considered thought and agree with the reasoning of ld. CIT(A) and we find no infirmity in the order of the ld CIT(A). Hence we uphold the order of the ld CIT(A) and dismiss the ground No. 1 of the revenue's appeal.

7. Regarding ground No. 2, the department has challenged the action of the ld CIT(A) in deleting the addition of Rs. 1,15,59,814/- on account of concealed sale of scrap on the basis of ER-1 return filed with the Excise Department. The appellant had submitted that the scrap generated at vendor's premises was sold by them as it was their property in terms of the agreement which has been entered into with the appellant. At the same time under the relevant provisions of the Excise law, it was for the appellant company to pay the excise duty on the said scrap which has been generated at the vendor's premises. It

was also submitted by the appellant that the scrap has not been received back physically in the factory premises of the appellant.

7.1 As per the ld CIT(A), the appellant company had satisfactorily explained that it had paid excise duty on the notional value of scrap shown in the ER-1 return. However, the Assessing Officer without causing any enquiry brushed aside the same. The excise duty was levied on the gross value of goods which included the value of scrap generated at the premises of vendor irrespective of the fact that the scrap so generated was returned or retained by the vendor to carry out the job work as per prevailing market practice of the industry. The appellant company had maintained complete details of its vendors alongwith the addresses and PAN. The Assessing Officer could have examined the vendors who had not returned the scrap after the job work. However, nothing of that sort was done by the Assessing Officer. Further, the ld CIT(A) has held that the rates of job work were finalized taking into consideration that this scrap generated for the job work was to be retained by the vendors. Accordingly, no adverse inference could have been drawn against the appellant company merely on surmises. There was no real income, which could be taxed in the hands of the

appellant on accrual basis or receipt basis. In view of the above facts, the ld CIT(A) deleted the addition of Rs. 1,15,59,814/- made by the Assessing Officer.

7.2 The ld Sr. DR vehemently supported the order of the Assessing Officer and the ld AR for the assessee reiterated the arguments made before the ld CIT(A) and prayed to uphold the order of the ld CIT(A).

7.3 We have given a careful consideration to the facts and the issue under consideration. It is undisputed fact that the scrap generated out of manufacturing was retained by the vendors and not returned back to the appellant company. The assessee company had paid excise duty on nonreturnable scrap retained by the vendors by taking its notional value or assessable value by the Excise authorities. ER-1 return not only include the goods sold but also goods removed out of factor. Therefore, it is but natural to have difference between sale figures reported by the assessee and figures disclosed in ER-1 return. The ld CIT(A) has thoroughly examined this issue, which has not been controverted by the ld Sr.DR during the hearing. The ld Assessing Officer had not verified from the books of account of the vendors whether same scrap has been disclosed in its sale or not. As per agreement made between the

appellant and the vendors, the scrap is to be remained with the vendor and it could not be returned back to the appellant as per the terms and conditions of job work charges. The vendor is also assessed to tax and both the parties i.e. the appellant as well as the vendor are also under the excise net. Thus, we do not find any reason to intervene in the order of the ld CIT(A), accordingly we uphold the order of the ld CIT(A). Hence, this ground of revenue is dismissed.

8. In the third ground of the revenue's appeal, the department has challenged the deletion of addition of Rs. 2,72,84,704/- on account of concealed sales being the difference in figures of sale as per P&L account and that declared in ER-1 filed with the Excise Department.

8.1 The ld Assessing Officer observed that the assessee had shown lesser sale of Rs. 3,62,65,136/- by comparing the figure with ER-1 return. He gave reasonable opportunity of being heard to the assessee, which was availed by it vide order dated 22/12/2011. After considering the assessee's reply, the ld Assessing Officer held that debit note for Rs. 31,399/- were not pertained against the invoice issued during the year under consideration, therefore, the same are not deductable from the sales of the year. With regard to interstate 2% had been considered.

The Assessing Officer held that sales of machinery and plants is not deductable on account of sales of goods to compare the sales as declared in ER-1. The sales not pertaining to year under consideration, also not deductable in the sales made during the year to compare the sales as declared in ER-1. Similarly write off balance is also not deductable, therefore, the amount of debit note on account of rate difference is not the part of the sale of ER-1 return. Accordingly, total amount of Rs. 1,08,32,435/- is not deductable from ER-1 return to compare the sale of the assessee as declared in the P&L account.

8.2 He further held that in export sale, it has been held that export was made to the sister concern of the SKF India Limited. M/s SKF India Limited is prime party to whom the group of the assessee received the job work. The ER-1 return was taken on itemwise and not as submitted by the assessee for enhancing the rate on subsequently. The ware house and ocean freight charge as claimed by the assessee is not admissible as these expenses are made outside the country, no evidence regarding liability, justification and no evidence that M/s SKF India Ltd has deducted these expenses from the sale proceeds. Therefore, as per Assessing Officer, the amount to Rs. 1,64,20,870/-

was declared less sale on account of export sale as per P&L account as compared to the ER-1 return, thus total addition of Rs. 2,72,84,704/- was made by the Assessing Officer.

8.3 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the ld CIT(A), who had allowed the appeal by observing that the appellant company had sold multi splendle machinery for 6.5 and 13 lacs, however, it was wrongly entered in sales interstate C-Form interest account @ 2%, which has been rectified by the assessee himself by passing reversal entry. The appellant company, however, received memo from M/s SKF India Limited for short quantity receipt against different bills pertaining to A.Y. 2007-08, 2008-09 and 2009-10 for Rs. 18,21,421/-. The assessee passed reversed only to the tune of Rs. 3,34,997/- for A.Y. 2009-10 and reduced from the sale. Rate difference bill for HSS rate difference to M/s SKF India Limited for Rs. 2,16,703/-, which was not accepted by M/s SKF India Ltd, which was also reduced from the sale. A further rate difference bill of Rs. 42,32,857/- was sent to M/s SKF India Ltd., which was not accepted by it, the same was also reduced from the sale bill. Another petty rate difference of Rs. 50,592/- relating to A.Y. 2008-09 and 2009-10 was

also reduced. The liability was utilized during the year under consideration, therefore, the same was considered during the year under consideration. The ld CIT(A) further observed as under:-

"Further there were petty debit balances in the account of M/s SKF India Limited, Bangalore against various bills for total amount of Rs. 1,68,823/-. The A.O. did not accept the claim of Rs. 1,68,823/- made by the appellant company. Since the appellant company had received lesser amount against some bills therefore it had rightly reduced the amount from its receipts. Without prejudice to the above, the amount could have been claimed as bad debit alternatively. The A.O. had disallowed the same for the reason that the expenditure did not relate to the year under consideration. However, the event of making the entry or crystallization of liability fell during the year under consideration. So, the appellant company had made the entries in the books of account of the current year. The J.V. No. 164 had been passed by the appellant company on 31/03/2009 on account of short receipt of goods by M/s SKF India Limited, Bangalore. The A.O. did not accept the entire amount of Rs. 14,46,542/- on the ground that concerned invoices did not pertain to the year under consideration. This was factually incorrect as out of total amount of Rs. 14,46,542/-, the major amount of Rs. 13,04,592/- related to the year under consideration and quantification and crystallization of the amounts relating to the past years happened in the year under consideration. All these entries were part of RG-1 Register. Similarly the J.V. No. 232 had been passed by

the appellant company on 31/03/2009 on account of short receipt of goods by M/s SKF India Limited, Bangalore. The A.O. did not accept the entire amount of Rs. 2,07,574/- on the ground that concerned invoices did not pertain to the year under consideration. This was factually incorrect as out of total amount of Rs. 2,07,574/-, the major amount of Rs. 79,910/- related to the year under consideration and quantification and crystallization of the amounts relating to the past years happened in the year under consideration. All these entries were part of RG-1 Register. The J.V. No. 233 had been passed by the appellant company on 31/3/2009 on account of short receipt of goods by M/s SKF India Limited, Bangalore. The A.O. did not accept the entire amount of Rs. 22,24,347/- on the ground that concerned invoices did not pertain to the year under consideration. This was factually incorrect as the total amount of Rs. 22,24,347/- related to the year under consideration and quantification and crystallization of the amount happened in the year under consideration. All these entries were part of RG-1 Register. As regard the addition of Rs. 1,64,20,870/- made on account of export sales, the appellant company had satisfactorily explained that a sum of Rs. 39,18,068/- was reversed vide J.V. No. 153 dated 31/03/2009 on account of refusal of rate difference made vide bill No. 3104 dated 20/11/2008 of the buyer. This entry had been entered in RG-1 register at page 343. Therefore, the appellant company had rightly reversed the sale. The A.O. had made additions of Rs. 56,57,279/- and Rs. 68,45,523/- on the assumption that liability of payment of wharehousing ocean freight charges was not of the assessee but of the buyer. However, both of these reversals had been made by the

appellant company vide J.V. No. 50 dated 20/11/2008 and JV No. 169 dated 31/03/2009 for Rs. 56,57,279/- and 68,45,523/- respectively. The A.O. alleged that the receipt of the lesser payment did not justify the claim of the assessee that the above deduction was made by the party to whom the goods were exported. The A.O. further held that the assessee did not file any claim before the buyer for lesser payment. Though it was the liability of the assessee company to pay the warehousing and ocean freight charges, it had wrongly charged the same in the bills. Subsequently the buyer made the invoice for this difference which was received by the appellant company in the year under reference. Finally the appellant company had to make the payments to the buyer M/s SKF Ltd. on 16/12/2008 for US $ 1,17,835/-. The fact of payment made by the appellant company in itself made the deduction of the amount being eligible to it. It was obvious that the addition made by A.O. was without any material and any basis. As far as the question of some part relating to past year was concerned, the quantification and crystallization happened in F.Y. 2008-09 only when the appellant company received the invoices of difference from the buyer company."

9. Now the revenue is in appeal before us. The ld DR has vehemently supported the order of the Assessing Officer. At the outset, the ld AR reiterated the arguments made before the ld CIT(A) and argued that the ld CIT(A) verified all the debit notes and reversed entry

passed by the assessee at the time of hearing. Therefore, the same may be accepted.

10. We have heard the rival contentions of both the parties and perused the material available on the record. Whatever evidence filed by the appellant before the ld CIT(A) were not forwarded to the Assessing Officer during the appellate proceedings. The assessee filed explanation with evidence before the Assessing Officer on this point but whatever evidences narrated by the ld CIT(A) were not submitted before the Assessing Officer. The ld CIT(A) has coterminous power with the Assessing Officer. However, he has accepted the assessee's explanation without any verification from the third party, therefore, in the interest of justice, this issue required to be decided afresh by the Assessing Officer after providing reasonable opportunity of being heard and assessee also directed to cooperate with the Assessing Officer to produce all the evidences required by the Assessing Officer. Accordingly, this issue is set aside to the Assessing Officer.

11. The third ground of the assessee's C.O. is against confirming the addition of Rs. 1,37,927/- for late depositing ESI and PF dues received from the employees. The ld Assessing Officer observed that during the

course of assessment, it was observed that the assessee had made late payment of ESI in all its units, the details of which is reproduced at page No. 11 to 13 of the assessment order. As per Section 2(24)(x) read with Section 36(va), the payments of ESI and PF made late by the employer are considered as his income for the relevant year. Therefore, the amount of Rs. 1,37,927/- deposited late of ESI and PF were added to the income of the assessee considering as his income of the year.

12. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the ld CIT(A), who had confirmed the addition by observing that the Assessing Officer had made the addition U/s 36(1)(va) read with Section 2(24)(x) of the IT Act. As per provisions of Section 2(24)(x), any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of Employees State Insurance Act or any other fund, for the welfare of such employees' is to be included in the income of the assessee. Further, as per provisions of Section 36(1)(va) of the Income Tax Act, any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) apply, shall be deducted as expenditure, 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. The "due date" as defined in the explanation given under Section 36(1)(va), 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 there under or under any standing order, award, contract of service or otherwise. Admittedly, above mentioned payment of Rs. 1,37,927/- on account of employee's contribution towards ESI/PF had been paid beyond the due date. Therefore, the Assessing Officer had rightly disallowed the same U/s 36(1)(va). The provisions of Section 43B(b) are applicable only in respect of employer's contribution to PF or ESI and not to the employee's contribution. This view is supported by the decision of Hon'ble Pune Tribunal in the case of Indian Card Clothing Company Ltd. (ITA No. 214/PN/98). Therefore, he confirmed the addition of Rs. 1,37,927/- U/s 36(1)(va) made by the Assessing Officer.

13. Now the assessee is in C.O. before us. The ld AR of the assessee has reiterated the arguments made before the ld CIT(A) and further argued that the amount had been deposited before the due date of

filing of the return of income. It is a settled law that if the dues were paid before the due date of filing of the return of income, no disallowance could be made. He placed reliance on the decision of Hon'ble ITAT, Jaipur in the case of DCIT Vs. Royal India Jewellery Manufacturing Private Limited in ITA No. 582/JP/2008 dated 13/02/2009. He also placed reliance on the decision of Hon'ble Supreme Court in case of 213 CTR 68 and 220 CTR 635. Therefore, he prayed to delete the impugned addition of Rs. 1,37,927/-.

14. At the outset, the ld DR has vehemently supported the order of the ld CIT(A).

15. We have heard the rival contentions of both the parties and perused the material available on the record. The Hon'ble Jurisdictional High Court in the case of CIT Vs. State Bank of Bikaner & Jaipur (2014) 43 taxmann.com 411 (Raj) has held as under:-

> *"20. On perusal of Sec.36(1)(va) and Sec.43(B)(b) and analyzing the judgments rendered, in our view as well, it is clear that the legislature brought in the statute Section 43(B)(b) to curb the activities of such tax payers who did not discharge their statutory liability of payment of dues, as aforesaid; and rightly so as on the one hand claim was being made under Section 36*

for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assessees in claiming the deduction i.e. accrual basis and the same was being allowed, as the liability did exist but the said amount though claimed as a deduction was not being deposited even after lapse of several years. Therefore, to put a check on the said claims/deductions having been made, the said provision was brought in to curb the said activities and which was approved by the Hon'ble Apex Court in the case of Allied Motors (P) Ltd. Vs. CIT (1997) 224 ITR 677.

21. *A conjoint reading of the proviso to Section 43-B which was inserted by the Finance Act, 1987 made effective from 01/04/1988, the words numbered as clause (a), (c), (d), (e) and (f), are omitted from the above proviso and, furthermore second proviso was removed by Finance Act, 2003 therefore, the deduction towards the DB ITA-177/2011 DB ITA-189/2011 DB ITA-272/2011 16 employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the explanation appended to Section 36(1)(va) of the Act further envisage that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under Section 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that Sec.43B starts with a notwithstanding clause & would thus override Sec.36(1) (va) and if read in isolation Sec. 43B would become obsolete. Accordingly, contention of counsel for the revenue is not tenable for the reason aforesaid that deductions out of the*

gross income for payment of tax at the time of submission of return under Section 139 is permissible only if the statutory liability of payment of PF or other contribution referred to in Clause (b) are paid within the due date under the respective enactments by the assessees and not under the due date of filing of return.

22. *It is observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assessees though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment DB ITA-177/2011 DB ITA-189/2011 DB ITA-272/2011 17 of interest and other consequences and to get benefit under the Income Tax Act, an assessee ought to have actually deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub-section (1) of Section 139 of the IT Act.*

23. *Thus, it is viewed that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under Section 139(1), cannot be disallowed under Section 43B or under Section 36(1)(va) of the IT Act."*

By respectfully following the judgment of the Hon'ble Rajasthan High Court, we delete the addition made by the ld CIT(A). Hence ground No. 3 of the assessee's C.O. is allowed.

16. In the result, the appeal of the revenue as well as C.O. of the assessee are partly allowed.

Order pronounced in the open court on 10/09/2015.

Sd/-	Sd/-
(आर.पी.तोलानी)	(टी.आर.मीना)
(R.P.Tolani)	(T.R. Meena)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 10th September, 2015
*Ranjan

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- The ACIT, Circle-4, Jaipur.
2. प्रत्यर्थी/ The Respondent- M/s Supersonic Turner Pvt. Ltd., Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 853/JP/2012 & C.O. 76/JP/2012)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar