

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "D" NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, J.M. AND
SHRI J. SUDHAKAR REDDY, AM**

**ITA No: 2773/Del/2013
AY : - 2007-08**

Kisan Sahakari Chini Mills Ltd.
Anoopshahr, PO Jhangirabad
Bulandhsahr

vs.

ACIT, Range
Bulandshahr

PAN:AAACT 5521 E

(Appellant)

(Respondent)

Appellant by : Sh.Ashwani Taneja and
Sh.Rohan Khere, Advs.
Respondent by: Sh. S.N.Bhatia, D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against the order of the Ld.CIT(Appeals), Meerut dated 28.2.2013 pertaining to the Assessment Year 2007-08 on the following grounds.

- "1. That having regard to facts and circumstances of the case, Ld.CIT(Appeals) has erred in law and on facts in sustaining an addition of Rs.24,735/- being the cash payment made to truck driver.*
- 2. That having regard to facts and circumstances of the case, Ld.CIT(Appeals) has erred in law and on facts in sustaining an addition of Rs.66,14,816/- being the amount deposited of P.F. and E.S.I. contribution of the employees and employer with delay, but prior to end of the financial year.*
- 3. That having regard to facts and circumstances of the case, Ld.CIT(Appeals) has erred in law and on facts in observing that provisions of section 36(1)(va) is override the provision of section 43B of the Income Tax Act, 1961.*

4. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other."

2. The assessee is a Cooperative Society owned by the Government of U.P. and is engaged in the business of manufacturing of sugar and molasses and sale thereof, besides sale of fertilizers and pesticides to its Members.

3. After hearing rival contentions, we hold as follows.

4. Ground no.1 relates to disallowance of Rs.24,735/-, being payment made in cash to truck drivers on account of transportation expenses. The Assessing Officer invoked the provisions of S.40A(3) of the Act. The assessee submits that the payments in question were made after banking hours, since the trucks reached the factory gate after banking hours. Reliance was placed by the assessee on a number of decisions. Alternatively it is contended that disallowance can be made only to the extent of 20% as 100% disallowance of such expenditure was inserted by the Finance Act, 2007 w.e.f. 1.4.2008. The Ld.CIT(Appeals) rejected the arguments of the assessee. In our view the issue is covered in favour of the assessee by the following decisions.

RC GoEL VS. CIT (2013) 259 CTR (Del) 15
Basu Distributors Pvt.Ltd. vs. ACIT (Delhi High Court) ITA nos. 48/59/56 of 2011) vide order dt. 6.2.2012

Respectfully following the same we allow this claim of the assessee.

5. Ground nos. 2 and 3 relate to disallowance of P.F. and E.S.I. contribution on the ground that the contribution was not made within time. The Assessing Officer disallowed the same based on the tax audit report. The assessee's case is that the remittances in question were made before the due date stipulated for filing the return of income u/s 139(1) of the Act. This claim of the assessee is not disputed by the Revenue. Under these facts and circumstances we rely on the jurisdictional High Court decision in the case of CIT vs. Aimil Ltd. and others (2010) 229 CTR (Del) 418 and uphold the contentions of the assessee. In the result these grounds are allowed.

4. In the result, the appeal by the assessee stands allowed.

Order pronounced in the Open Court on 25th July, 2014.

Sd/-

**(I.C.SUDHIR)
JUDICIAL MEMBER**

Sd/-

**(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 25th July, 2014

*manga

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar