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

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Decision delivered on: 05.09.2023

+ **ITA 267/2023**

M/S. AERO CLUB

..... Appellant

Through: Mr Ashesh Jain with Mr Abhijit Mittal, Mr Gaurav Kumar and Ms Shaivya Singh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 49(1),
NEW DELHI

..... Respondent

Through: Mr Shailendra Singh, Sr. Standing Counsel with Ms Dacchita Shahi and Ms Anuja Pethia, Jr. Standing Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. We have heard the learned counsel for the parties.
2. According to us, the appeal requires to be admitted qua one issue which, according to us, arises for consideration.
3. Resultantly, the appeal is admitted, and the following question of law is framed for consideration by the Court.
 - (i) Whether the Income Tax Appellate Tribunal [in short, "Tribunal"] misdirected itself on facts and in law in failing to notice that Rs. 44,28,453/-, the amount payable towards the provident fund and Rs. 72,131/-, the amount



payable towards the ESI, fell due on a National Holiday i.e., 15.08.2018 and therefore the deposit made on the following date i.e., 16.08.2018 was amenable to deduction?

4. We had the occasion to deal with a similar question of law in ITA No. 12/2023, titled ***Pr. Commissioner of Income Tax-7 vs Pepsico India Holding Pvt. Ltd.*** The observations made by us therein, being apposite, are extracted hereafter:

“5. Mr Deepak Chopra, learned counsel, who appears on behalf of the respondent/assessee, says that in this particular matter, since the deposit of the employee’s contribution towards the provident fund was made on 16.08.2018, following a National Holiday i.e., 15.08.2018, the deduction claimed would have to be allowed, as steps had been taken by the respondent/assessee towards the deposit of the said amount on 14.08.2018.

6. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that since the respondent/assessee had deposited the employee’s contribution towards the provident fund amounting to Rs. 1,56,12,404/- on 16.08.2018, the Assessing Officer (AO) had rightly disallowed the deduction, as the due date was 15.08.2018.

7. According to us, this submission advanced by Mr Rai cannot be accepted. Since the due date fell on a date which was a National Holiday, the deposit could have been made by the respondent/assessee only on the date which followed the National Holiday.

8. Mr Chopra, as noticed on 12.01.2023, was right that Section 10 of the General Clauses Act would help the respondent/assessee to tide over the objections raised on behalf of the appellant/revenue.

9. Therefore, the second question of law, as framed via the order dated 12.01.2023, which is extracted hereinabove, is answered against the appellant/revenue and in favour of the respondent/assessee.

10. Accordingly, the appeal is closed, in the aforesaid terms.”

5. In view of what is stated hereinabove, the question of law, as framed, is answered in favour of the appellant/assessee and against the respondent/revenue.



6. Accordingly, the appeal is dismissed in the aforesaid terms.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

SEPTEMBER 5, 2023/RY

Click here to check corrigendum, if any