Decoding The Allowability Of Late Deposit Of Employee Contribution To EPF And ESI

Both section 43B and Section 36 are restrictive in nature and allow the deductibility of the expenditure on completion of certain conditions.

The author by this article has tried to analyze the allowability of employee contribution to EPF and ESI on late deposit which is governed by 36(va) under the Income Tax Act.

The Author has dissected his discussion under the following heads:-

1 Analysis of section 43B under Income Tax Act
2 Analysis of section 36(va) under the Income Tax Act
3 Analysis of the meaning of employer contribution under PF Act
4 Scope of addition under section 143(1)(a)
5 Analysis of Bharat Hotel Limited 410 ITR 417(DHC)
6 Analysis of Pro assessee judgement
7 Analysis of Anti assessee judgement

1 Analysis of section 43B under Indian Income Tax Act, 1961

The section 43B before amendment by finance Act 2003 is read as under:-

Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(*a*) ------- or

(*b*) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

After Amendment in section 43B, the section reads as under:-

Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(*a*) ------- or

(*b*) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

This the amendment was made in the proviso whereby the employer contribution to EPF and ESI is allowed if deposited till the due date of filing return of income otherwise, earlier the position was that it was not allowable if not paid within fifteen days after 31st March that is the end of the financial year.

2 Analysis of section 36(va) under the Income Tax Act

Other deductions.

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(***va***) any sum received by the assessee from any of his employees to which the provisions of sub-clause (*x*) of clause (*24*) of section 2 apply, 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.

Explanation.—For the purposes of this clause, "due date" 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 thereunder or under any standing order, award, contract of service or otherwise;

It is relevant to mention here that Explanation to section 36(va), 'Due date' is worded unhappily. It defines due date as under:-

'means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account'

Kindly note that employer only makes deposit with the Respective ESI & PF authorities and credit of the same in the accounts is made by the ESI & PF department. Employer cannot make any credit to employees account as the employees accounts are not under his control

CIRCULAR NO. 495, DATED 22-9-1987

Measures of penalising employers who misutilise contributions to the provident fund or any fund set up under the provisions of the Employees State Insurance Act, 1948, or any other fund for the welfare of employees.(Emphasis Supplied)

12.1 The existing provisions provide for a deduction in respect of any payment by way of contribution to a provident fund or superannuation fund or any other fund for the welfare of employees in the year in which the liability is actually discharged [section 43B]. The effect of the amendment brought about by the Finance Act, is that no deduction will be allowed in the assessment of the employer(s) unless such contribution is paid to the fund on or before the due date. Due date means the date by which an employer is required to credit the contribution to the employee's account in the relevant fund under the provisions of any law or term of contract of service or otherwise.[*Explanation* to section 36(1)(*va*) of the Finance Act]

12.2 In addition, the contribution of the employees to the various funds which are deducted by the employer from the salaries or wages of the employees will be taxed as income [insertion of new sub-clause (*x*) in clause (*24*) of section 2] of the employer, if such contribution is not credited by the employer in the account of the employee in the relevant fund by the due date. Where such income is not chargeable to tax under the head Profits and gains of business or profession, it will be assessed under the head Income from other sources

Further, I would like to reproduce para 90, page 16 of the finance minister speech that

"Let me know come to the measures for the welfare of workers, members of armed forces and the handicapped. There are number of cases where

the employers do not credit their own contribution or those of the employees to the credit of provident fund and state insurance fund. it is also unfortunate that a separate fund is not being kept by employers in respect of gratuity of workers. To prevent this anti labour practices, we **propose to penalize such delinquent employer** by providing that the contribution of employees to these funds will be taxed as income of the employer by providing that the contribution of employees to these funds will be taxed as income of the employer and allowed as a deduction only when they are made over to the separate accounts relating to these funds within the time allowed these status."

Note

From the perusal of the above circular and the FM speech, it is very much clear that the intention was not to cover each and every case of late deposit but only those where the employer mis-utilize the fund and not in genuine cases. (Emphasis Supplied)

Looking into the above intent of the legislature, following K P Varghese, 1981 AIR 1922 whether it may be submitted that the primary onus will be on the revenues to prove that the employer has misutilised the fund and only then section 36(va) can be invoked.

3 Analysis of word employer contribution used in 43B of the Income Tax Act

With regard to the meaning of word "employer contribution" whether it includes employee contribution also, **Karnataka High Court in the case of ESSAE TERAOKA (P) LTD Vs DCIT 366 ITR 408 (KAR)** has analyzed the entire PF ACT and PF scheme in this regard and held as under:-

In the present case, admittedly, though the employer did not deposit the contribution, within the stipulated time, as contemplated by paragraph-30 of the PF Scheme or before the due date under the provisions of the PF scheme/Act, he deposited the contribution to the PF/ESI fund before the due date contemplated under Section 139(1) of the Act.

Section 6 of the PF Act provides for contributions and matters which may be provided for in Schemes. Paragraph-29 of the PF Scheme states what is "Contribution". The expression "contribution" is also defined under the PF Act by **Section 2(c) of the PF Act, which means a contribution payable in respect of a member under the Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.** If this definition is read with sub-para(1) of paragraph-29 in Chapter-V of the PF Scheme, it would mean that the contributions payable by the employer under the Scheme shall be at a particular rate and the contribution payable by the assessee shall be equal to the contribution payable by the employer.

Paragraph-30 of the PF Scheme provides for payment of contributions. Sub-para(1) of paragraph-30 states that the employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

From bare perusal of sub-para (1) of paragraph-30, **it is clear that the word "contribution" is used not only to mean the contribution of the employer but also contribution to be made on behalf of the member employed by the employer directly.**

Paragraph-38 of the PF Scheme provides for Mode of payment of contributions. As provided in sub-para(1), the employer shall, before paying the member, his wages, deduct his contribution from his wages and deposit the same together with his own contribution and other charges as stipulated therein with the provident fund or the fund under the ESI Act within fifteen days of the closure of every month pay. It is clear **that the word "contribution" used in Clause (b) of Section 43B of the IT Act means the contribution of the employer and the employee. That being so if the contribution is made on or before the due date for furnishing the return of income under sub-section(1) of Section 139 of the IT Act is made, the employer is entitled to deduction.**

Patna High in Bihar State Warehousing Corporation Ltd V CIT 386 ITR 410 (PAT) has also taken the same view that the word contribution in 43B(a) would include both employer and employee contribution.

Kindly note that the word 'Contribution' has not been defined in the Income Tax Act therefore we have to rely on its meaning as given in PF Act. Since section 43B(b) deals with contribution relating to PF only.

4 Scope of addition under section 143(1)(a)

Recently there is steep hike in additions made to the returned income of assessee's by CPC while processing their return of income under section 143(1)(a) on account of late deposit of employee contribution to PF AND ESI, under section 143(1)(a) (iv)of Income tax Act.

For understanding the correctness of addition, it is necessary to understand the substance of section 143(1a):-

The section was substituted by the finance act 2008, and clause (iii) and (iv) were added by Finance Act 2016 after the amended section reads as follows:

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(*a*) The total income or loss shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the return;

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*iii*) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(*iv*) **disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;**

(*v*) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(*vi*) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

[**Provided also** that no adjustment shall be made under sub-clause (*vi*) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]

Memorandum relating to Finance Bill 2008

Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralized Processing of Returns

Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income.

In India, **the scheme of summary assessment being in force since the 1st day of June, 1999 does not contain any provision allowing for *prima facie* adjustment**. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss.

With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return:—

(*a*) any arithmetical error in the return; or

(*b*) an incorrect claim, if such incorrect claim is apparent from any information in the return.

Further it is proposed to clarify the meaning of the term "an incorrect claim apparent from any information in the return". This term shall mean such claim on the basis of an entry, in the return,—

(*a*) of an item, which is inconsistent with another entry of the same or some other item in such return;

(*b*) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act;

or

(*c*) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

Further, these adjustments will be made only in the course of computerized processing without any human interface. In other words, the software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income. For this purpose the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this, it is also proposed that—

(*a*) the Board may formulate a scheme with a view to expeditiously determine the tax payable by, or refund due to, the assessee;

(*b*) the Central Government may issue a notification in the Official Gazette, directing that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such restrictions, modifications and adaptations as may be specified in the notification. However, such direction shall not be issued after 31st March 2009;

(*c*) every notification shall be laid before each House of Parliament as soon as such notification is issued. Along with the notification, the scheme referred above is also required to be laid before each House of Parliament.

Memorandum relating to Finance Bill 2016

Clause (*a*) of sub-section (1) of section 143 provides that, a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.

In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department

in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

In view of the above amendments and memorandum, let us analyses whether disallowance can be made under section 143(1)(iv) on account of late deposit of employee contribution to EPF and ESI.

As the section says disallowance of expenditure indicated in the audit report, so it is relevant to refer to the relevant part of the audit report (Form 3CD)

20. (b) Details of contributions received from employees for various funds as referred to in section 36(1)(va):

Serial number	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities

From a perusal of above, it is submitted that the auditor never indicates disallowance nor it is asked from the auditor, they simply report the date of the due date and date of payment.

Hence, in view of the above, it may be said that the revenue is wrong in invoking the provision of section 143(1)(a)(iv) of the Income Tax Act on the fallacy of presumption that the auditor has disallowed the employee contribution to EPF /ESI.

Further, as there are contrary judgement on the issue of allowability of late deposit of ESI and EPF which has been taken in the end whether it can be said that it falls under the word prime facie adjustment.

Further**, memorandum to FB 2008 talks of prima facie adjustment**.

What is prime Facie adjustment has been dealt in the following case laws:-

CIT vs Mekins Agro-Products Ltd, 55 taxmann.com 216 (Andhra Pradesh and Telangana)

Section 143 of the Act provides for different modes of disposals that can be given to the returns filed by the assessee. If the **Assessing Officer feels that, by and large, the particulars, mentioned in a return, are not debatable, and are acceptable,** prima facie, he just gives an intimation, in that behalf, under section 143(1)(a) of the Act.

ACIT vs Haryana Telecom Pvt Ltd, 14 taxmann.com 122 (Delhi)

It is beyond any doubt that when a deduction is claimed in the return of income and it is somewhat controversial, it cannot be treated to be prima facie disallowable. If the claim is made by the assessee is treated not to be free from debate and argument, it is bound to be regarded as debatable issue, which is not enable to prima facie adjustment within the meaning of section 143(1)(*a*) of the Act. Thus, **where the issue involved is debatable, an intimation under section 143(1)(*a*) disallowing the claim based on such debatable issue on the ground that it is** prima facie **inadmissible, cannot be sustained**

Modern Fibotex India Ltd. v. Dy. CIT [1995] 126 CTR (Cal.) 69 : [1995] 212 ITR 496 (Cal.),

The jurisdiction of the AO under s. 143(1)(*a*) to make an adjustment and to issue an intimation is, in my view, limited not only to **the obvious but also to that which is deducible from the return as filed, without doubt or debate**. This is clear form the language of the section and is supported by the authority as well as the circulars issued by the CBDT in this connection.

the said decision of the learned Single Judge was also affirmed by the **Hon'ble Division Bench of this High Court in APO No. 383** of 1995 decided on 23rd Nov., 2000 and the said decision of the learned Single Judge also approved by **the Hon'ble Supreme Court in *CIT* v. *Hindustan Electro Graphites Ltd.*** [2000] 160 CTR (SC) 8 : [2000] 243 ITR 48 (SC)

Khatau Junkar Ltd. v . K.S. Pathania, Dy. CIT [1992] 102 CTR (Bom.) 194 : [1992] 196 ITR 55 (Bom.)

This is because the scope of the powers to make prima facie adjustments under s. 143(1)(*a*) is somewhat coterminous with the power to rectify a mistake apparent from the record under s. 154 In its literal sense, 'prima facie' means on the fact of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then can it be disallowed under the proviso to s. 143(1)(*a*). If any further enquiry is necessary, or if the ITO feels that further proof is required in connection with the claim for deduction, he will heave to issue a notice under sub-s. (2) of s. 143.'

SRF Charitable Trust* v. *Union of India [1991] 100 CTR (Delhi) 160 : [1992] 193 ITR 95 (Delhi).

In Circular No. 581 [see [1990] 88 CTR (St) 5 : (1990) 186 ITR (St)2] dt. 28th Sept., 1990, issued by the CBDT it has been said that the scope of the powers

to make prima facie adjustments under s. 143(1)(*a*) is **'somewhat coterminous with the power to rectify a mistake apparent from the record under s. 154'.** The nature of the remedy, therefore, circumscribes the power under s. 143(1)(*a*).

Mintri Tea Co. (P.) Ltd. vs CIT, 319 ITR 264 (Calcutta)/[2009]

Section 143(1)(a) of the Income-tax Act, 1961 - Assessment - Prima facie adjustment - Assessment years 1989-90 and 1994-95 - In view of the decision in **Jagatdal Jute & Industries Ltd. v. CIT [2004] 188 CTR (Cal.) 593/[2004] 266 ITR 587 (Cal.)** the Assessing Officer could not make a disallowance in respect of provident fund contribution in proceedings under section 143(1)(a) or 154. [In favour of assessee]

Analysis of Bhart Hotel Limited 410 itr 417 of Honorable Delhi High Court

There was a lot of uneasiness in Delhi Tax Payer and professional, especially after judgemnent of Honorable DHC whereby they affirmed the revenue stand of disallowance of employee contribution under section 36(va) on account of late deposit of it after due date:-

Here, the Author likes to points out certain aspects that leads to think whether this judgement will have precedence value.

1 It has not considered earlier judgment of coordinate judgement of honorable DHC which are in favor of assessee

2 It pertain to A.Y. 2001-02 prior to amendment in section 43B by finance act 2003.

Generally, the following kind of Judgments are not considered as a precedent:

- The judgment that is not expressed.
- The judgment not founded on reasons.
- An Obiter Dicta of a case is not binding as it has a persuasive value.

- Judgments made on Per Incuriam cannot be used as precedent. Literal meaning of per incuriam is resulting from ignorance.
- Judgments where point of law or particular question of law was not consciously determined are also not binding.
- Court's observations on the facts of the case are not binding.

Bharat HOTEL has not followed the earlier judgement of DHC coordinate bench decision in the case of M/s CIT Vs. AIMIL Ltd. [2010] 321 ITR 508 (Delhi). Hence, Whether Bharat Hotel can be said to have precedence value.

In this regard, the following judgements are referred :-

State of Bihar Vs. Kalika Kuer alias Kalika Singh & others, (2003) 5 SCC 448

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, [AIR 2011 SC 312 : (2011) 1 SCC 694]

"The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co-equal strength.....In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the court doubts the correctness of the judgments by two or three judges, then the proper course would be to request Hon'ble the Chief Justice to refer the matter to a larger Bench of appropriate strength."

From a perusal of the above, whether it can be said that the Bharat Hotel has a precedent value.

Further, this is submitted that After Bharat Hotel, there is another judgement of DHC in the case of M/s Pro Interactive Services (India) Pvt Ltd, ITA NO. 983/2018 datd 10.09.2018 where the honorable Court following DHC in ITO vs Aimil Ltd (2010) 321 ITR 508 allowed relief to the assessee on late deposit of employee contribution to ESI and EPF.(Emphasis Supplied)

Further, the Judgement on the allowability of late deposit of ESI and EPF contribution are as follows:

CIT Vs kichha Sugar co Ltd 2013- TIOL-450-HC-UK-IT

It was held that due date mentioned in section 36(1)(va) would mean due date as mentioned in the proviso to section 43B i.e due date of return as prescribed in section 139 (1)

CIT vs SPL Industries Ltd, 9 taxmann.com 195 (Delhi)

Section 43B of the Income-tax Act, 1961 - Business disallowance - Certain deduction to be allowed only on actual payment - Assessment year 2005-06 - Whether where assessee had deposited contribution deducted from employees' salary towards provident fund and employees State insurance before due date of filing return, it would be entitled to deduction of said payments under section 43B - Held, yes

CIT v. *AIMIL Ltd.* [2010] 188 Taxman 265(DHC)

We may only add that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income-tax Act is concerned, the assessee can get the benefit if the actual payment is made

before the return is filed, as per the principles laid down by the Supreme Court in *Vinay Cement* (*supra*).

***CIT* v. *P.M. Electronics Ltd.*, 313 ITR 161 (Del.)**

It was held that if the payments are made before the due date of filing the return, no such disallowance can be made under section 43B. Therefore, we find no infirmity in the order of CIT(A) *vide* which the relief has been given to assessee. We decline to interfere."

ACIT vs Dixon Technologies (I) (P.) Ltd32 taxmann.com 218 (Delhi - Trib.)

Grievance of the revenue is that Learned CIT(Appeals) has erred in deleting the disallowance of Rs. 11,75,769 and Rs. 66,636 which are representing employees contribution to employees PF and ESI. In brief, the dispute is, whether employees contribution paid to PF and ESI accounts after the due dates provided under the respective acts can be allowed as a deduction or not? Hon'ble Delhi High Court in the case of *CIT* v. *PM Electronics Ltd.* [2009] 313 ITR 161/177 Taxman 1 and *CIT* v. *AIMIL Ltd.* [2010] 321 ITR 508/188 Taxman 265 has held that if the employees contribution was paid before the due date of filing of the return then the deduction of these amounts would be allowed to the assessee. In the present case, Learned First Appellate Authority has considered this aspect and held that payments to the EPF and ESI accounts have been made before the due date of filing of the return. Thus, the issue in dispute is squarely covered in favour of the assessee by the decision of the jurisdictional High Court. We do not find any merit in this ground of appeal.

ACIT vs Ranbaxy Laboratories Ltd, 20 taxmann.com 334 (Delhi)

Section 36(1)(va) of the Income-tax Act, 1961 - Employee's contributions - Assessment year 2005-06 - Contribution to Employees' State Insurance is allowable as deduction if same is paid before due date of filing return [In favour of assessee]

Unitech Ltd. vs DCIT, 112 taxmann.com 162 (Delhi - Trib.)

Lastly turning to the ground no. 4 in ITA no. 4781/Del/2017, it relates to the addition of Rs. 4,85,65,343/- on account of late deposit of PF. Ltd. CIT(A) deleted the same by following the decision of the Hon'ble Supreme Court in the

case of *CIT* v. *Vinay Cements Ltd.* (2007) 213 CTR 268 (SC) and the decision of the Hon'ble Jurisdictional High Court in the case of *CIT* v. *AIMIL Ltd.* 188 taxman 265 (Delhi). No fact is brought to our notice which renders these two decisions inapplicable to the facts of the case on hand are as to how the Ld. CIT(A) went wrong in following the decision in these 2 cases. We, therefore, do not find any illegality or irregularity in the conclusion reached by the Ld. CIT(A) on this aspect and, therefore, while upholding the same and dismiss this ground of appeal."

Universal Precision Screws VS ACIT, 69 taxmann.com 368 (Delhi - Trib.)

The assessee deposited employees contribution towards Employee State Insurance belatedly. The Assessing Officer, by invoking section 43B, disallowed payment.

Held that where employees contribution was paid before due date of filing return, no disallowance could be made.

Bihar State Warehousing Corporation Ltd V CIT 386 ITR 410 (PAT)

Both employee's and employer's contributions to EPF are covered by amendment to section 43B and have to be treated on same footing.

Bartronics India Ltd. VS dcit, 93 taxmann.com 457 (Hyderabad - Trib.)

Considering the facts and circumstance of this case and also following the judicial precedents as discussed above, we are of the view that there is no distinction between employee's and employer's contribution to PF/ESI, when the total contribution is deposited on or before the due date of furnishing of return of income u/s 139(1) of the IT Act then, no disallowance can be made towards employee's contribution alone. Accordingly, we agree with assessee's contentions and therefore set aside the order of AO and DRP on the issue and allow the ground. AO is directed to allow the amounts.

The decision against the assessee are as follows:

CIT vs Gujarat State Road Transport Corporation, 41 taxmann.com 100 (Gujarat)

Where assessee did not deposit employees' contribution to employees' account in relevant fund before due date prescribed in Explanation to section 36(1)(va), no deduction would be admissible even though he deposits same before due date under section 43B

CIT Vs Merchem Ltd, 61 taxmann.com 119 (Kerala)

In case of employee's contribution, an assessee is entitled to get deduction of amount as provided under section 36(1)(va) only if amount so received from employee is credited in specified account within due date as provided under relevant statute.

Conclusion

Similarly, other adjustments u/s 143(1)(a) can not be made if the issue is debatable in nature.

The revenue in their eagerness to collect tax taxes should not ignore the basic law and the purpose of brining that law. CPC act in disallowing the aforesaid contribution has ignored the basic principle of law that taxes can be collected with authority of law kindly see Article 265 of the Constitution of India. Such type of disallowance leads to unauthorized collection of taxes.

According to Chanakya, "Taxation should not be a painful process for the people. There should be leniency and caution while deciding the tax structure. Ideally, governments should collect taxes like a honeybee, which sucks just the right amount of honey from the flower so that both can survive. Taxes should be collected in small and not in large proportions".

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The above article is the personal opinion of the author and he is not responsible to anyone if he suffers on account of following it.