

F.No.279/Misc./140/2015-ITJ

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, 17th December, 2015

Subject:- Allowability of employer's contribution to funds for the welfare of employees in terms of section 43B(b) of the Income Tax Act.

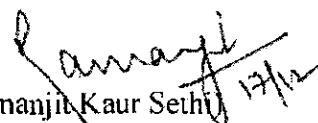
As per section 43B of the Act certain deductions are admissible only on payment basis. It is observed by the Board that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B of the Act, if it has been paid after the 'due dates', as per the relevant Acts.

2. The matter has been examined in light of the judicial decisions on this issue. In the case of Commissioner vs. Alom Extrusions Ltd, [2009] 185 TAXMAN 416 (SC), the Apex Court held that the amendments made in section 43B of the Act i.e. deletion of second proviso and amendment in the first proviso, being curative in nature are retrospectively applicable from 1.04.1988. It further held that by deleting the second proviso to section 43B of the Act and amending the first proviso, the contribution to welfare funds have been brought at par with the other duty, cess, fee, etc. Thus, the proviso is equally applicable to the welfare funds also. Therefore the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income.

3. Accordingly, w.e.f. 1.4.1988, the settled position is that if the assessee deposits any sum payable by it by way of tax, duty, cess or fee by whatever name called under any law for the time being in force, or 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, on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) of the Act, no disallowance can be made under section 43B of the Act.


4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn / not pressed upon. This may be brought to the notice of all concerned.

5. It is clarified that this Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the IT Act.


(Ramanjit Kaur Sethi)
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Copy to:

1. The Chairperson, Members and officers of the CBDT of the rank of Under Secretary and above.
2. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
3. The Pr. Director General of Income-Tax, NADI, Nagpur.
4. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
5. The Pr. DGIT (Vigilance), New Delhi.
6. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list (100 copies).
7. The Comptroller and Auditor General of India (40 copies).
8. The ADG-4 (Systems) for uploading on ITD website.
9. Data Base Cell for uploading on irsofficersonline.
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