

Employees' contribution to PF, ESI paid after due dates but before sec. 139(1) due date is deductible

Summary – The Rajasthan High Court in a recent case of Udaipur Dugdh Utpadak Sahakari Sangh Ltd., (the Assessee) held that where assessee had deposited amount received from his employees as contributions in provident fund and ESI fund of employees after due date, i.e., after 15th of next month, but before due date of filing return, Assessing Officer was wrong in adding said amount to income of assessee as per provisions of section 36(1)(va) read with section 2(24)(x).

Facts

- The assessee was engaged in the business of dairy product, etc. During the previous year relevant to the assessment year 2006-07, it had deposited the amount received from his employees as contributions in the provident fund and ESI fund of the employees after the due date, i.e., after 15th next month. The Assessing Officer added the said amount to the income of the assessee as per the provisions of section 36(1)(va) read with section 2(24)(x).
- On appeal, the Commissioner (Appeals) held that where payments on account of contribution to the PF, ESI, etc. were made within the due date of filing the return, such deductions were allowable. He therefore deleted the impugned addition made by the Assessing Officer.
- On second appeal, the Tribunal upheld the order passed by the Commissioner (Appeals) holding that the employees' contribution was allowable, if the same was paid before the due date of return.
- On appeal to High Court, the revenue contended that after the deletion of the second proviso to section 43B by the Finance Act, 2003, with effect from 1-4-2004, the contribution of the employer was governed by provisions of section 43B, whereas the employees' contribution continued to be governed by provisions of section 36(1)(va) read with section 2(24)(x) and, therefore, the Tribunal fell in error in deleting the addition made by the Assessing Officer under section 36(1)(va) read with section 2(24)(x).

Held

- In view of the decisions of the Supreme Court in the cases of *CIT v. Alom Extrusions Ltd.* [\[2009\] 319 ITR 306/185 Taxman 416](#) and *CIT v. Vinay Cement Ltd.* [\[2009\] 313 ITR \(St\) 1](#) as well as that of Delhi High Court in the case of *CIT v. AIMIL Ltd.* [\[2010\] 321 ITR 508/188 Taxman 265 \(Delhi\)](#), wherein a similar issue arising under section 43B was decided in favour of the assessee, the appeal preferred by the revenue has no substance. Therefore, the same was liable to be dismissed.