

## Employer's and employee's contribution to PF and ESI are deductible if paid before due date of filing return

**Summary – The Cochin ITAT in a recent case of Merchem Ltd., (the Assessee) held that payments of employee's and employer's contribution to provident fund and ESI made on or before due date for filing return of income under section 139(1) have to be allowed as deduction while computing taxable income.**

### ORDER

Both the revenue and the assessee filed the appeal against the very same order of CIT(A)-II, Kochi dated 23-10-2013 for the assessment year 2010-11.

The revenue's only ground of appeal is with regard to disallowance of employees' contribution to provident fund and ESI.

The assessing officer by way of annexure to the assessment order extracted the amount collected from the employees and the date of payment. The date as extracted by the assessing officer falls within the due date for filing the return of income u/s 139(1) of the Act for the assessment year under consideration. Admittedly, second proviso to section 43B was deleted and the entire sub clauses under section 43B were brought under Explanation 1 to section 43B.

Therefore, all payments including employees' and employer's contribution to provident fund and ESI paid on or before the due date for filing the return of income u/s 139(1) has to be allowed as deduction while computing the taxable income. The CIT(A), in fact, followed the judgment of the Apex Court in *CIT v. Vinay Cements Ltd.* [2007] 213 CTR 268.

Therefore, the ITAT did not find any infirmity in the order of the lower authority. Accordingly, the order of CIT(A) was confirmed.