

## **Hyderabad ITAT treats employee's and employer's contribution to PF at par for purpose of sec. 43B**

**Summary – The Hyderabad ITAT in a recent case of Nuzivedu Swati Coastal Consortium., (the Assessee) held that where employee contributions were not deposited by assessee within due date as prescribed under P.F. Act., but same were made before due date of furnishing return under section 139(1), allowance of deduction of employees contribution to P.F under section 43B was justified**

### **Facts**

- The assessee, an Association of Persons ('AOP') filed its return of income.
- The Assessing Officer completed the assessment under section 143(3).
- The Commissioner issued notice under section 263 to revise the assessment order passed by the Assessing Officer, by stating that it was erroneous and prejudicial to the interests of the revenue in so far as allowing of deduction of employees contribution to P.F even though it was remitted to the Government account after the due dates.
- On appeal to the tribunal:

### **Held**

- Section 43B provides for certain deductions to be allowed only on actual payment basis. Sub-clause (b) of section 43B covers any sum payable by the assessee as an employer by way of contribution to any P.F. or superannuation fund or gratuity fund of any other fund for the welfare of the employees. The proviso to the section provides that any sum paid by the assessee on or before the due date of furnishing the return of income under section 139(1), then no disallowance can be made under section 43B. On careful consideration of section 43B, it is clear that an extension is granted to the assessee to make the payment of P.F. contributions or any other fund till the due date of furnishing of the return under section 139(1). Therefore, there is no difference between employees and employer contribution to P.F., and if such contribution is made on or before the due date of furnishing the return of income under section 139(1), then deduction is to be allowed under section 43B of the I.T. Act.
- In the present case on hand, the contributions are not deposited as prescribed under the P.F. Act., but the payments are made before the due date of furnishing the return under section 139(1) as required by law under section 43B. The assessment order is not erroneous and prejudicial to the interests of the revenue in so far as allowing of deduction of employees contribution to P.F. is concerned.