

Both employees and employer's contribution covered under Sec. 43B: Patna HC

Summary – The High Court of Patna in a recent case of Bihar State Warehousing Corporation Ltd., (the Assessee) held that Although technical reading of section 43B and the provisions of sub-section (2) of section 24 (x) read with section 36 (1) (va) creates the impression that the employees' contribution would continue to be treated differently under a different head of deduction, as the head of deduction is separate under section 43B and section 36 but on a broader reading of the amendments made to section 43B repeatedly and the intention of Parliament, there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to be treated in the same manner

Facts

- The assessee was a Public Sector Undertaking of the Government of Bihar and was carrying on the business of warehousing.
- During assessment, the Assessing Officer after considering the fact that the contribution had been made after due date statutorily prescribed disallowed the payment of employer's contribution to EPF under section 43B and also disallowed the employees' contribution to Provident Fund treating the same as income from other sources as per the provision of sub-section (2) of section 24 read with section 36(1)(va).
- On appeal, the Commissioner(Appeals)allowed the appeal so far as the delayed payment of employer's contribution to EPF under section 43B was concerned and deleted said addition. So far as the delayed payment of the employees' contribution to EPF is concerned, the addition of the same was confirmed holding that no relief was allowable on the ground of section 43B as the omission of second proviso to the said section with effect from 1-4-2004 does not apply to delayed payment of employees' contribution to any Provident Fund or any fund mentioned in sub-section (2) of section 24 .
- On appeal to the High Court:

Held

- Both the Bombay High Court in *CIT v. Ghatge Patil Transports Ltd.* [2014] 368 ITR 749 (Bom) and Punjab and Haryana High Court in the case of *CIT v. Hemla Embroidery Mills (P.) Ltd.* [2014] 366 ITR 167 (P. & H.) have dealtt with the issue as to whether a distinction can be made between the employees' contribution and employer's contribution with regard to applicability of section 43B and held that both the employees' and employer's contributions are covered by the amendment of section 43B. Thus following same both contributions were to be treated on the same footing.