

Both employees and employer contribution to PF covered under the ambit of sec. 43B

Summary – The Visakhapatnam ITAT in a recent case of Eastern Power Distribution Company of A.P. Ltd., (the Assessee) held that Employees' or employers' contribution made to PF after due date prescribed under PF Act, but before due date prescribed for filing of income-tax return is deductible under section 43B

Facts

- The Assessing Officer made additions towards belated payment of employees' contribution to PF. According to the Assessing Officer, employees' contribution to provident fund is deductible under the provisions of section 36(1)(va), if the same is paid on or before the due date specified under the Provident Fund Act. He rejected assessee's contention that both, employer's contribution and employees' contribution are allowed, once deposited on or before the due date of furnishing return of income under section 139(1).
- On appeal, the Commissioner (Appeals) held that the assessee would be entitled to deduction of employees' contribution to PF made before the due date of filing return of income under section 139(1).
- On revenue's appeal:

Held

- There is no difference between employees' and employer's contribution under the PF Act. Under the said Act, the employer shall contribute both employees' and employer's share along with administrative charges before the due date specified under the PF Act. The Act prescribed only one due date for depositing the contribution, *i.e.*, 15th of subsequent month with the grace period of 5 days which indicates that there is no difference between employee and employer contribution. If the legislature intends to differentiate employees and employer contribution, then there would have been two due dates like in the case of Income-tax Act. Therefore, from the above, it is clear that the Provident Fund Act does not differentiate employees and employer's contribution and contribution means both employees' and employer's contribution under the PF scheme.
- From a careful consideration of section 43B, it is clear that an extension is granted to the assessee to make the payment of PF contributions or any other fund till the due date of furnishing return of income under section 139(1). Therefore, there is no difference between employees' and employer's contribution to PF and if such contribution is made on or before the due date of furnishing return of income under section 139(1), then deduction is to be allowed under the provisions of section 43B.