

Employee's contribution deposited before due date of filing of ITR couldn't be disallowed

Summary – The Mumbai ITAT in a recent case of High Volt Electricals (P.) Ltd., (the Assessee) held that where assessee deposited amount towards employees' contribution to Provident Fund, beyond stipulated date contemplated under Provident Fund Act but before 'due date' applicable in its case for furnishing 'return of income' under sub-section (1) of section 139, in view of amended provisions of section 43B, amount so deposited could not be disallowed by invoking provisions of section 36(1)(va), read with section 2(24)(x)

Facts

- The assessee company was engaged in the business of manufacturing and repair of electrical transformers. It filed return declaring certain taxable income.
- During the course of assessment proceedings, the Assessing Officer found that the assessee had deposited amount towards Employees Contribution to Provident fund, beyond the stipulated date contemplated under the Provident Fund Act.
- The assessee relying on the judgment of the Supreme Court submitted before the Assessing Officer, that as the respective payments were made before the 'due date' applicable in its case for furnishing the 'return of income' under sub-section (1) of section 139 for the year under consideration in which the liability to pay such sum was incurred, thus, as per the post-amended section 43B, no disallowance of the aforesaid amount was called for in its hands.
- However, the Assessing Officer did not subscribe to the aforesaid claim of the assessee. The Assessing Officer held that as the judgment of the Apex Court in the case of *CIT v. Alom Extrusions Ltd.* [\[2009\] 319 ITR 306](#) was rendered in context of section 43B, thus the same would have no bearing as regards the disallowance of the aforesaid amount under section 36(1)(va), read with section 2(24)(x) of the Act.
- On the basis of his aforesaid deliberations, the Assessing Officer *inter alia* disallowed the amount in question under section 36(1)(va), read with section 2(24)(x) of the Act.
- The Commissioner (Appeals) upheld the order passed by Assessing Officer.
- On second appeal:

Held

- The assessee filed instant appeal for adjudicating, as to whether in the backdrop of the post-amended section 43B, the lower authorities were justified in disallowing the amount of the employees contribution to provident fund that was deposited by the assessee beyond the stipulated period contemplated under the Provident Fund Act, but before the 'due date' of filing of its return of income under section 139(1) of the Act. It is an admitted fact, that though the assessee had deposited the employees contribution to provident fund beyond the time period allowed under the

PF Act, however, the said amounts were paid before the 'due date' of filing of the return of income by the assessee under section 139(1) of the Act.

- The observations of the lower authorities, that the provisions of section 43B would not be applicable as regards the employees contribution to provident fund, and the same would continue to be governed by section 36(1)(va), read with section 2(24)(x) cannot be accepted the issue under consideration is squarely covered by the judgment of the High Court of Bombay in the case of *CIT Central, Pune v. Ghatge Patil Transports Ltd.* (ITA Nos. 1002 & 1034 of 2012; dated 14-10-2014) (Bom.). The High Court in its aforesaid order had clearly observed that both employees and employers contribution would be covered under the amendment to section 43B of the Act. Thus, it is held that the impugned disallowance as upheld by the Commissioner (Appeals), not being in conformity with the aforesaid judgment of the High Court cannot be sustained and is hereby vacated.
- The appeal of the assessee is allowed.