

## Provision of sec. 43B couldn't be invoked with regards to duty & surcharge collected by state electricity board

**Summary – The Cochin ITAT in a recent case of Kerala State Electricity Board., (the Assessee) held that Section 43B could not be invoked for making assessment of liability of assessee State Electricity Board with regard to amount of electricity duty and surcharge collected by it as an agent of State of Kerala**

**Kerala State Electricity Board is not covered by section 36(1)(viia)**

### Facts

- The assessee, Kerala State Electricity Board, constituted under Electricity Supply Act, 1948, received an amount as electricity duty and surcharge payable by the customers of electricity as an agent on behalf of State of Kerala.
- The Assessing Officer noticed that the assessee had not remitted the amounts payable to the Government within the time stipulated under the relevant Act. As per the provisions of section 43B, any amount payable by way of tax, duty, cess or fee under any law for the time being in force was allowable as deduction only in that previous year in which such sum was actually paid. In the absence of such payment made during the year under consideration, the Assessing Officer brought the said amount to tax by invoking the provisions of section 43B.
- On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer.

### Held

- This issue is squarely covered by the judgment of the jurisdictional High Court in assessee's own case for the earlier years *Kerala State Electricity Board (supra)*. Hence, there is no any infirmity in the order of the Commissioner (Appeals) in allowing the claim of the assessee and confirm the same. This ground of appeal of the revenue is dismissed.