

**For AYs prior to 2021-22 also, due date u/s 36(1)(va), not u/s 43B, applies for deductibility of employees' contributions to PF,ESI etc**

**Facts of the Case - Checkmate Services (P.) Ltd. v. Commissioner of Income-tax-1**

The employer had belatedly deposited their employees' contribution towards the EPF and ESI, considering the due dates under the relevant acts and regulations. The Assessing Officer ruled that by virtue of Section 36(1)(va) read with Section 2(24)(x) of the IT Act, such sums received by the appellants constituted "income". It was held that those amounts could not have been allowed as deductions under Section 36(1) (va) of the IT Act when the payment was made beyond the relevant due date under the respective acts. The Income Tax Appellate Tribunal and later the Gujarat High Court dismissed the challenge against this order of AO.

**Decision of the case:**

- Section 43B(b) does not cover employees' contributions to PF,ESI etc deducted by employer from salaries of employees.
- The words "any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees" in section 43B (b) cover only employers' contributions to these funds to be borne and paid by employer out of his income, and not employees' contributions to these funds deducted by employer out of employees' income/salary. The former are sums which are liabilities of the employer to be borne by him out of his own income. The latter are sums deducted from others' income and held in trust by him and deemed to be his income under section 2(24)(x) unless deposited with concerned authorities on or before the due date as defined in *Explanation (now Explanation 1)* below section 36(1)(va) i.e. due dates under the relevant employee welfare legislation like PF Act, ESI Act etc.
- The *non-obstante* clause in section 43B cannot be interpreted as overriding section 36(1)(va) and cannot be interpreted to mean that employer will get deduction in respect of employees' contributions deducted from their salaries and deposited by employer after the due date u/s 36(1)(va) but on or before the due date u/s 43B ie due date of filing ITR.
- The *non-obstante* clause in section 43B does not override section 36(1)(va) as both provisions operate in different fields. Section 43B(b) applies to employer's contributions while section 36(1)(va) applies to employees' contributions.
- The Supreme Court observed that employers have to deposit the employee's contribution towards EPF/ESI on or before the due date for availing deduction under Sections 36(1)(va) and 43B of the Income Tax Act, 1961.