

## **Deduction allowable on Employee's Contribution if made on or before Due Date for furnishing Income Tax Return**

### **Fact of the Case**

The assessee, Gopalakrishna Aswini Kumar is an individual, he carries on the business of manufacturing spares.

The difference in the income declared in the return of income and as computed in the intimation under section 143(1) of the Act was due to addition of Rs.17,92,413/-. The sum was ESI and PF contribution of employees' share which the assessee deposited with the authorities under the PF and ESI within the due date for filing return of income under section 139(1) of the Act and those payments were beyond the due date as prescribed in the relevant law relating to contribution to PF and ESI.

The CIT(A) was of the view that Section 36(1)(va) and section 43B(b) operate on totally different footings and have different parameters for due dates, i.e., employee's contribution is linked to payment before the due dates specified in the respective Acts or Funds and employer's contribution is linked to the payment before the prescribed due date for filing of return u/s.139(1) Income Tax Act, 1961. The result of any failure to pay within the prescribed dates also leads to different results

The CIT(A), thereafter held that the amendment to section 36(1)(va) by insertion of explanation 2 and the amendment to section 43B by insertion to explanation 5 by the Finance Bill 2021 was only declaratory / clarificatory in nature and there therefore was applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The CIT(A) finally dismissed the appeal of the Assessee.

### **Decision of the Case**

The coram headed by the Vice President N.V.Vasudevan and Accountant Member, Chandra Poojari ruled that employee's contribution under section 36(1)(va) of the Act would also be covered under section 43B of the Act and therefore if the share of the employee's share of contribution is made on or before due date for furnishing the return of income under section 139(1) of the Act, then the assessee would be entitled to claim deduction.