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Employees' contribution to EPF/ESIC beyond due dates specified in the relevant statutes disallowed even if deposited before the due date of filing the tax return

In brief

Recently, in the case of Gujarat State Road Transport Corporation¹ (GSRTC/taxpayer), the Gujarat High Court (HC) held that the employees' contribution to the Employees' Provident Fund (EPF)/ Employees' State Insurance Corporation (ESIC) deposited beyond the due date prescribed under section 36(1)(va) of the Income-tax Act, 1961 (the Act) would not be eligible for deduction under section 43B of the Act, even if deposited before the due date of filing the tax return.

Facts

- GSRTC collected the employees' contribution to the EPF but did not deposit it within the due date prescribed under the relevant statute.
- The Assessing Officer (AO) treated this amount as the income of GSRTC under section 2(24)(x) read with section 36(1)(va) of the Act.
- GSRTC filed an appeal before the Commissioner of Income Tax (Appeals) (CIT(A)) who reversed the AO's decision by observing that employees'

¹ CIT v. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100 (Gujarat-HC)

contribution was deposited before filing of the tax return under section 139(1) of the Act for the relevant year.

- The Ahmedabad bench of the Income-tax Appellate Tribunal (the Tribunal) upheld this view by placing reliance on the Hon'ble Supreme Court (SC) verdict in the case of Alom Extrusions Ltd.²

Issue before the HC

Whether the employees' contribution to the EPF/ESIC was allowable as a deduction if it was deposited beyond the due date as defined under the relevant statute though before the due date of filing of the tax return?

Revenue's contentions

- The counsel of revenue contended that the Tribunal materially erred in relying upon the SC decision in the case of Alom Extrusions Ltd.², as in that case, the issue involved was with respect to the employer's contribution to the EPF whereas, in the present case, the issue was with respect to the employees' contribution to the EPF.
- Only the employer's contribution was covered under section 43B of the Act, whereas the employees' contribution was covered under section 36(1)(va) of the Act.
- Section 36(1)(va) of the Act provided for deduction of the employees' contribution to the EPF/ESIC (which is considered as income of the employer under section 2(24)(x) of the Act) if it was paid within the due date under the relevant statute. Accordingly, to the extent there was a shortfall in deposit of the employees' contribution up to that date, the taxpayer would not be entitled to any deduction.

² CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)

- The amendment made in section 43B of the Act, which entitled the employer to a deduction in the relevant year if the employer's contribution was deposited on or before the due date of filing of tax return, would not be applicable with respect to the employees' contribution.

Taxpayer's contentions

- The taxpayer placed reliance on the SC decision in the case of Alom Extrusions Ltd.² as well as several other judgments to support its contention that the employees' contribution to the EPF/ ESIC was allowable if it was deposited before the due date for filing of the tax return, in view of provisions of section 43B of the Act.
- Further, by placing reliance on the decision of the SC in the case of Sarabhai Sons Ltd.³, the taxpayer's counsel contended that, where two views were possible and different HCs had taken one particular view, this Court could not take a contrary view.

HC Ruling

- The HC observed that Section 2(24)(x) of the Act deemed the sum collected by the employer towards the employees' contribution to the EPF/ ESIC as its income, whereas section 36(1)(va) of the Act correspondingly provided for deduction of such contribution in the employer's hands when deposited in the relevant fund on or before the 'due date'. According to Explanation to section 36(1)(va) of the Act, 'due date' meant the date by which the employees' contribution had to be credited to the fund under the relevant statute.
- The HC also observed that section 43B of the Act was amended by Finance Act 2003 whereby the employer's contribution was allowable as a deduction if it was deposited on or before the due date of filing of the tax return. Prior to the

³ CIT v. Sarabhai Sons Ltd. [1983] 143 ITR 473 (Gujarat-HC)

amendment, the employer's contribution was allowable as a deduction if it was deposited within the due date in accordance with section 36(1)(va) of the Act.

- The amendment in section 43B of the Act was only with respect to the employer's contribution as there was no corresponding amendment in section 36(1)(va) of the Act in relation to deposit of the employees' contribution. Explanation to section 36(1)(va) of the Act was still on statute book and was required to be complied with.
- The HC distinguished the cases of Alom Extrusions Ltd.² and certain other rulings⁴ on the ground that these were with respect to the employer's contribution only and were rendered in the context of retrospective amendment in section 43B of the Act.
- On the basis of the aforesaid observations, the HC dissented from the view taken by various other HCs⁵ as relied upon by the taxpayer to contend that the employees' contribution to the EPF/ESIC would be allowable if it was deposited on or before the due date of filing of the tax return.
- The taxpayer's contention that when two views were possible, and different HCs had taken a particular view, a contrary view could not be taken by this Court, was rejected by the HC by holding that only one view was possible in the present case, which was in the revenue's favour.
- Thus, the HC held that the employees' contribution to the EPF/ESIC was not allowable as a deduction in accordance with the provisions of section 36(1)(va) of the Act read with its Explanation if it was deposited beyond the due date

under the relevant statutes, even if it was deposited before the due date of filing of the tax return.

Our Comments

- The allowability of the employees' contribution to the EPF/ ESIC which is deposited beyond the due date in accordance with relevant statute, but before the due date of filing the tax return, is a litigious issue, with Courts divided in their verdict. This is another ruling which may be relied upon by the tax authorities to take a negative view. It would be interesting to see how the issue will be ultimately settled by the SC, considering that the statute requires payment of contributions (both employer's and employees') within the due dates to secure deductions, which are prescribed differently in both the sections (i.e. section 36(1)(va) and section 43B of the Act).

⁴ CIT v. Alembic Glass Industries Ltd. [2005] 279 ITR 331 (Gujarat-HC), CIT v. Sabari Enterprises [2008] 298 ITR 141 (Karnataka-HC) and CIT v. Pamwi Tissues Ltd. [2009] 313 ITR 137 (Bombay-HC)

⁵ CIT v. Nipso Polyfabriks Ltd. [2013] 350 ITR 327 (Himachal Pradesh-HC), Spectrum Consultants India (P) Ltd. v. CIT [2013] 34 taxmann.com 20 (Karnataka-HC), CIT v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd. [2013] 35 taxmann.com 616 (Rajasthan-HC) and CIT v. Hemla Embroidery Mills (P) Ltd. [2013] 37 taxmann.com 160 (Punjab & Haryana-HC)

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