

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.394/Coch/2018 : Asst.Year 2015-2016

M/s.Daily Express (LLP) C/o.M/s.Rangamani & Co. Chartered Accountants CARD Bank Building IInd Floor, V.C.S.B.Road Allapppy-688 001. PAN : AAIFD1341F.	Vs.	The Income-tax Officer Ward 1 Alappuzha.
(Applicant)		(Respondent)

Appellant by : Sri.R.Sreenivasan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 10.10.2018	Date of Pronouncement : 11.10.2018
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ORDER

Per George George K., JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.07.2018. The relevant assessment year is 2015-2016.

2. The solitary issue for consideration is whether the CIT(A) is justified in confirming the assessment order, wherein belated remittance of employees' contribution to EPF and ESI u/s 36(1)(va) of the I.T.Act.

3. Brief facts of the case are as follows:-

The Assessing Officer had disallowed a sum of Rs.5,42,357, being employees' contribution towards ESI & PF since the payment was not made within the due date specified

in the respective statutes. The relevant observation of the Assessing Officer reads as follows:-

"16. On verification of the records it has been noticed that during the year the assessee collected Rs.72,210/- as "Employees' Contribution towards ESI" and Rs.4,70,147/- as "Employees' Contribution towards PF", the aggregate of which comes to Rs.5,42,357/-. For getting deduction on this amount the assessee has to remit the amount so deducted on or before the due date specified, as envisaged in Section 36(1)(va). Verification of the records reveals that the assessee failed to remit the amount within the due date specified. As such Rs.5,42,357/- collected as Employees Contribution to ESI and PF and not remitted within the due date is hereby added to the total income of the assessee."

4. Aggrieved by the confirmation of disallowance, the assessee preferred an appeal before the first appellate authority. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Merchem Limited [(2015) 378 ITR 443 (Ker.)]*, dismissed the appeal of the assessee.

5. The assessee being aggrieved by the CIT(A)'s order, has filed the present appeal before the Tribunal. The learned AR submitted that the employees' contributions received by the assessee were paid before the date of the filing of the return, and hence, was an allowable deduction. The learned Departmental Representative, on the other hand, submitted that the issue in question is squarely covered in favour of the Revenue by the judgment of the Hon'ble jurisdictional High Court in the case of *Merchem Limited (supra)*.

6. We have heard the rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of *Merchem Limited (supra)* had categorically held that employees' contribution to PF and ESI, if not paid within the due date mentioned in the respective statute cannot be allowed as a deduction u/s 36(1)(va) of the I.T.Act. The Hon'ble jurisdictional High Court in the case of Hon'ble jurisdictional High Court in the case of *Merchem Limited (supra)* had considered the judicial pronouncements on the issue and had taken a decision in favour of the Revenue. The judgment of the Hon'ble jurisdictional High Court in the case of Hon'ble jurisdictional High Court in the case of *Merchem Limited (supra)* was followed by the recent judgment of the Hon'ble Kerala High Court in the case of *Alliaz Corhill Information Services (P) Ltd. v. DCIT [(2018) 406 ITR 150 (Ker.)]*. In view of the above judicial pronouncement of the Hon'ble jurisdictional High Court, we hold that the Assessing Officer has correctly disallowed the sum of Rs.5,42,537. Therefore, the CIT(A)'s order confirming the assessment order does not require any interference and the same is upheld. It is ordered accordingly.

7. In the result, assessee's appeal is dismissed.

Order pronounced on this 11th day of October, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 11th October, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Applicant.
2. The Respondent.
3. The CIT (A)-Kottayam
4. The Pr.CIT, Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin