

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

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

ITA No.528/Coch/2018 : Asst.Year 2008-2009

M/s.Ponmudi Rubbers Ltd. C/o.Anil D.Nair &Associates Advocates, 39/2661, 2 nd Floor, Panthiyil Towers Warriam Road Kochi – 16. PAN : AABCD3546N.	Vs.	The Asst.Commissioner of Income-tax, Circle 1(1) Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri. Anil D.Nair
Respondent by : Sri. Sudhanshu Shekhar Jha

Date of Hearing : 19.03.2019	Date of Pronouncement : 20.03.2019
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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 27.08.2018. The relevant assessment year is 2008-2009.

2. Two issues are raised in this appeal –
- (i) Whether the CIT(A) is justified in confirming the disallowance of employees' contribution to the Provident Fund amounting to Rs.10,126?
 - (ii) Whether the CIT(A) is justified in confirming the disallowance of interest paid to Rubber Board amounting to Rs.19,14,997 u/s 43B of the I.T.Act?

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of processing rubber and trading in rubber products. For the assessment year 2008-2009, the assessee declared a loss of Rs.52,02,910. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The scrutiny assessment was completed u/s 143(3) of the I.T.Act vide order dated 08.11.2010. In the assessment order completed, the Assessing Officer disallowed employees' contribution to PF amounting to Rs.10,126 u/s 36(1) of the I.T.Act since the amount was remitted beyond the due date mentioned under the relevant labour statute. The Assessing Officer also disallowed interest amounting to Rs.19,14,997 paid to Rubber Board u/s 43B of the I.T.Act on the ground that the said amount was not paid within the due date of filing of return, mentioned u/s 139(1) of the I.T.Act.

4. Aggrieved by the assessment order, the assessee preferred appeal to the first appellate authority. The two disallowances made by the A.O. was confirmed and the appeal filed by the assessee was dismissed.

5. Aggrieved by the CIT(A)'s order, the assessee has preferred the present appeal before the Tribunal, raising following grounds:-

"1. The order Of the Appellate authority to the extent objected to herein is absolutely illegal, arbitrary and unauthorized.

2. The disallowances of expenses by the Assessing Officer is against law and facts.

3. *The appellant has always co-operated with the department and have never concealed their income.*

4. *As per the provisions of Section 43B, interest on any loan or borrowings, from public financial institutions or the State Financial Corporation or State Industrial Investment Corporation from a Scheduled Bank, is disallowed if the interest in accordance with the terms and conditions of the agreement governing such loan/borrowing is not repaid before the due date for filing return .of Income Tax u/s.139 (1) of the relevant previous year.*

However no loan or borrowing or advances has been taken by the assessee from any public financial institution or the State Financial Corporation or State Industrial Investment Corporation or from a Scheduled Bank. The interest payable by the assessee exclusively is to the Rubber Board. The Rubber Board is statutory Board functioning under Ministry of Commerce and Industry, Government of India. It was constituted under the Rubber (Production and Marketing) Act 1947. The Rubber Act 1947 was amended by the Rubber Amendment Act 1960 which made certain alterations in the rate and procedure of collection of cess on rubber. It was again amended by the Rubber (amendment) Act 1982. The main function of Rubber Board is the development of the Rubber Industry. The Rubber Board started forming processing and trading companies with its share participation during 1989 to safe guard the long term interests of the rubber planting community. Now there are 18 Companies functioning all over Kerala. Since Rubber board is the major share contributor and these companies are functioning, without profit orientation for the betterment of the rubber planting community, the Rubber Board Under different Schemes provide financial helps to these Companies for its proper functioning.

In this connection, it may be noted that Rubber Board is not a public financial Institution and the interest payable to the Rubber Board is not a disallowable item u/s 43B of the income Tax Act.

5. *In CIT vs. AIMIL Ltd. If the employees contribution is not deposited by the due date prescribed under the relevant act and is deposited thereafter, the employer not only pays interest on delayed payment but can incur penalties also. In so far as income tax act is concerned, the assessee can get the benefit of deduction of the payments. If the actual payment is made before the return is filled. Accordingly, where the assessee had deposited employer and employee contribution towards PF and ESI after the due date prescribed under the relevant act/rules, but before the due date of filling of return under the Income Tax Act, no disallowance was called for. {321 ITR 508 Delhi HC}.*

In the instant case the Assessee has paid the entire dues before the due date for filing return. As such no disallowance u/s. 36 (1) should have been made by the Assessing Officer.

6. *Considering the above facts, it is hereby requested to allow the expenses disallowed by the Assessing Officer.*

For these and other grounds and documents to be submitted at the time of hearing and it is humbly prayed that the Tribunal be pleased to allow the appeal.

6. Grounds No.1 to 3 and 6 are general in nature and no adjudication is required. Hence, these grounds are dismissed.

7. The learned Counsel for the assessee relied on the grounds raised. The learned Departmental Representative, on the other hand, supported the orders of the Income Tax Authorities.

8. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the

employees' contribution was remitted to the PF account not within the due date specified under the Provident Fund Act. By virtue of provisions of section 36(1)(va) of the I.T.Act, the assessee is entitled to deduction towards contribution to the PF only when the same is paid on or before the due date for making such payment under the PF Act. The Hon'ble jurisdictional High Court in the case of *CIT v. Merchem Limited* [(2015) 378 ITR 443 (Ker.)] had held that the employees' contribution if not remitted within due date mentioned in the Provident Fund Act, was not entitled to deduction u/s 36(1)(va) of the I.T.Act. In view of the judgment of the Hon'ble jurisdictional High Court in the case of *Merchem Limited (supra)*, we are of the view that the disallowance of Rs.10,126 towards employees' contribution to PF was rightly disallowed by the A.O. and the same was confirmed by the CIT(A). It is ordered accordingly. Therefore, ground No.5 is rejected.

9. A sum of Rs.19,14,997 being interest paid to Rubber Board was disallowed by invoking the provisions of section 43B of the I.T.Act since the above said interest was not paid within the due date mentioned u/s 139(1) of the Act. The contention of the assessee is that the interest was paid to the Rubber Board, which is not a Public Financial Institution or a State Financial Corporation or a State Industrial Investment Corporation, and hence, the provisions of section 43B(d) of the I.T.Act does not have application to the facts of the present case. The assessee has also produced the confirmation from the Rubber Board, wherein certain amount

has been paid by the assessee to the Rubber Board as interest on loans availed. The Rubber Board is a Statutory Board, functioning under the Ministry of Commerce and Industry, Government of India. The main function of the Rubber Board is the development of Rubber Industry. The assessee is a company wherein the major share contribution is Rubber Board and is functioning without profit orientation for the betterment of rubber planting community. Under the different scheme, financial help is provided for its better functioning. The Rubber Board is not any of the body mentioned u/s 43B(d) of the I.T.Act. If the sum of Rs.19,14,997 is paid to the Rubber Board, the provisions of section 43B of the I.T.Act does not have application. It is not clear whether the above said payment has been made to the Rubber Board. The Rubber Board had given a certificate stating that the sum of Rs.1,25,63,786 is due from the assessee for the period beginning from 3rd July, 1998 up to 31st March, 2008. It is not clear whether the sum of Rs.19,14,997 is actually paid to the Rubber Board. If the same is paid to the Rubber Board, necessarily provisions of section 43B of the I.T.Act will not have application. To examine this issue, the matter is remitted to the Assessing Officer. The assessee is directed to produce necessary material to prove that the sum of Rs.19,14,997 was paid to the Rubber Board and the provisions of section 43B of the I.T.Act does not have application. Therefore, ground No.4 is allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 20th day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 20th March, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

AR-ITAT- Cochin