

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA Nos. 698 & 699/Coch/2019
Assessment Years: 2007-08 & 2010-11

Kerala State Construction Corporation Ltd., Thycaud P.O., Trivandrum-695 014. [PAN:AABCK 1314K]	Vs.	The Assistant Commissioner of Income-tax, Circle-1(1), Trivandrum.
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri Rajeev R., CA
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	02/03/2020
Date of pronouncement	02/03/2020

ORDER

Per CHANDRA POOJARI, AM:

These two appeals filed by the assessee are directed against the different orders of the CIT(A), Trivandrum of even dated 23/08/2019 for the assessment years 2007-08 and 2010-11.

2. Since the issues involved in these two appeals are common, they were heard together and are being disposed of by this common order.

3. There was a delay of 36 days in filing the appeals before the Tribunal. The assessee has filed condonation petitions accompanied by an affidavits stating that the appeal papers got misplaced in their office due to an inadvertent omission and hence, the delay of 36 days occurred in filing the appeals. It was submitted that the delay was not deliberate and was beyond the control of the assessee. Hence, it was prayed that the delay of 36 days in filing the appeals may be condoned considering the largeness of the issue and the merits in favour of the assessee on the grounds raised on facts and law.

3.1 We have heard the rival submissions and gone through the reasons advanced by the assessee for filing the appeal belatedly before this Tribunal. We are satisfied with the reasons explained by the assessee for filing the appeal belatedly. Accordingly, we condone the delay of 36 days in filing the appeal and admit the appeal for adjudication.

4. The assessee has raised the following common grounds of appeal except for variation in figures:

1. The learned CIT(A) has erred in confirming disallowance of Employees Contribution to PF/ESI under section 36(1) (va) of the Income Tax Act, 1961 on the ground that the above amounts have been remitted beyond the due date prescribed under the respective Acts, though the same have been remitted before the due date of filing the return for the year.

2. The learned CIT(A), Trivandrum ought to have noted that in terms of the Hon'ble Supreme Court decision dismissing the SLP filed by the department against the order of the Rajasthan High Court in the case of Rajasthan Beverages Corporation Ltd. reported in (2017) 84 taxmann. com 185, the issue settled in favour of the appellant.

5. We have heard the rival submissions and perused the record. A similar issue came up for consideration before the Tribunal in the case of K.K. Purushothaman in ITA No. 51/Coch/2019 dated 10/06/2019 wherein it was held as follows:

8. *We have heard the rival submissions and perused the record. In our opinion, this issue is squarely covered against the assessee by the judgment of the Jurisdictional High Court in the case of Popular Vehicles and Services Pvt. Ltd. vs. CIT (406 ITR 150) wherein it was held as under:*

"Held, dismissing the appeal, the employees' contribution was covered by clause (va) of section 36(1) and the deduction was restricted by the Explanation below it. If the employer's contribution under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' State Insurance Act, 1948 for the financial year 2007-08 was paid after the year but before the date of filing of the return for that year, it was allowable as a deduction in the assessment year, de hors the fact that it was paid in the subsequent year. Since the employees' contribution was collected from the employees as a deduction in their salary itself it would in effect be income of the assessee, as had been indicated in the definition of "income" under section 2(24)(x). The employees' contribution towards the funds was regulated by sub-clause (x) of section 2(24) and clause (va) of section 36(1) and would not be affected by section 43B. The non obstante clause of section 43B had no effect in so far as the employees' contribution which was specifically covered by clause (va) of section 36(1). By virtue of the Explanation below clause (va), no deduction could be claimed if the contribution had not been paid after collection from the employees by way of deduction from their salaries, within the due date under the labour welfare Acts. The deletion of a proviso under section 43B could not render otiose the Explanation under section 36(1)(va)."

8.1 *In view of above judgment of the Jurisdictional High Court cited supra, we are inclined to dismiss this ground taken by the assessee. "*

Respectfully following the above order of the Tribunal wherein it was held that by virtue of Explanation below clause (va) no deduction could be claimed if the contribution had not been paid after collection from the employees by way of

deduction from their salaries, within the due date under the labour welfare Acts, we are inclined to dismiss both the appeals of the assessee.

In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 2nd March, 2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 2nd March, 2020

GJ

Copy to:

1. Kerala State Construction Corporation Ltd., Thycaud P.O., Trivandrum-695 014.
2. The Assistant Commissioner of Income-tax, Circle-1(1), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin