

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

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.16/Coch/2022 : Asst.Year 2018-2019

ITA No.17/Coch/2022 : Asst.Year 2019-2020

Sri.Padmanabhan Krishnakumar Thiruthippillil House, R M Road Kadavanthra Ernakulam – 682 020. PAN : AEZPK1912J.	v.	The Income Tax Officer Corporate Circle 2(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.Anil K.Nayar, CA

Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 29.06.2022	Date of Pronouncement : 30.06.2022
-------------------------------------	---

ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against two separate orders of the CIT(A), both dated 22.11.2021. The relevant assessment years are 2018-2019 and 2019-2020. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the disallowance of employees' contribution to PF and ESI u/s 36(1)(va) of the I.T.Act.

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

For the assessment years 2018-2019 and 2019-2020, the employees' contribution to PF and ESI was disallowed u/s

36(1)(va) of the I.T.Act for not making payments within the due date prescribed under the relevant Acts (for assessment year 2018-2019 disallowance of Rs.5,09,090 and for assessment year 2019-2020 disallowance of Rs.4,77,420).

4. Aggrieved, the assessee preferred appeals before the first appellate authority. The CIT(A) dismissed the appeals of the assessee by relying on the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Merchem Limited reported in (2019) 378 ITR 443 (Ker.)*.

5. Aggrieved, the assessee has filed the present appeals before the Tribunal. The assessee has filed an adjournment application stating that he is indispose, however, the learned AR representing the assessee Sri.Anil K Nayar was present. Therefore, the adjournment application was rejected and the matter was heard on merits. The learned AR relied on the ground raised.

6. The learned Departmental Representative submitted that the issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Merchem Limited (supra)*.

7. We have heard rival submissions and perused the material on record. The assessee is claiming deduction of delayed remittance of employees' contribution to PF and ESI, stating that the same has been deposited before the due date of filing return u/s 139(1) of the I.T.Act. However, the Hon'ble

jurisdictional High Court in the case of *CIT v. Merchem Limited (supra)* had clearly held that employees' share of PF and ESI, which was not deposited within the due date under the respective Acts, is not an allowable deduction u/s 36(1)(va) of the I.T.Act. The relevant finding of the Hon'ble High Court has been elaborately extracted at pages 8 and 9 of the impugned order of the CIT(A), hence, the same is not reproduced below. Therefore, following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Merchem Limited (supra)*, we hold that since the employees' contribution to PF and ESI was not deposited within the due date specified in the relevant Acts, the same cannot be allowed as a deduction u/s 36(1)(va) of the I.T.Act. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on this 30th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 30th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Delhi
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.