

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

**Before Shri Sanjay Arora, AM & Shri Anil Kumar Dugar, JM**

ITA No.130/Coch/2023 :Asst.Year 2014-2015

M/s.Kairali Exports "Ambadi", Pulimoth PO Kilimanoor Kerala 695 612. <b>PAN :AAKFK2762R.</b>	v.	The Assistant Commissioner of Income-tax, Corporate Cir.1(2), Trivandrum.
(Appellant)		(Respondent)

Appellant by : --- None ---

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

<b>Date of Hearing : 15.04.2024</b>	<b>Date of Pronouncement : 15.04.2024</b>
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**ORDER**

**Per Anil Kumar Dugar, JM :**

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s ["CIT(A)"] for short] order dated 15.12.2022 passed u/s 250 of the Income-tax Act, 1961 ("the Act" for short). The relevant assessment year is 2014-2015.

2. In the instant appeal, the sole ground taken out for challenge to the impugned appellate order as well as assessment order is that the Assessing Authority had disallowed Rs.17,49,196 being the amount of employees' contribution remitted after the due date as prescribed u/s.36(1)(va) of the Act, and appellate authority upheld said disallowance.

3. At the time of call, none appeared on behalf of the assessee. However, Learned Departmental Representative pointed out that the issue involved in this case is duly covered by the judgment delivered by the Hon'ble Supreme Court in the case of Checkmate Services P.Ltd. v. CIT [(2022) 448 ITR 518 (SC)].

4. Since, the only issue involved in the instant case is covered by the judgment of the Hon'ble Supreme Court and is purely legal in nature, we decided to dispose of instant appeal on merits.

5. It is apparent from the assessment order dated 26.12.2016 that a sum of Rs.17,49,196/- was added back to the returned income by invoking the provisions of section 36(1)(va) of the Act on the ground that the assessee remitted the said amount beyond the due date prescribed. In appeal, the learned CIT(A) upheld such addition vide order dated 26.12.2016.

6. Being aggrieved by the said appellate order, the appellant instituted the instant appeal by challenging such addition.

7. As it is no longer *res integra* that, if the employees contribution is remitted after the due date, the deduction as provided under section 36(1)(va) of the Act is not admissible.

8. In this regard, it is noteworthy to quote the relevant observation made in the judgment delivered in the case of

Checkmate Services P.Ltd. (supra) by the Hon'ble Supreme Court in Checkmate Service P.Ltd., and relied upon by the Ld.D.R., as hereunder:

*“53. The distinction between an employer’s contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers’ income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer’s liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees’ income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.*

*54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer’s obligation to deposit the amounts retained by it or deducted by it from the employee’s income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees’ contributions- which are deducted from their income. They are not part of the assessee employer’s income, nor are they heads of deduction per se in the form of statutory pay out. They are others’ income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the nonobstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee’s contribution on or before the due date as a condition for deduction.*

*In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed.”*

9. As it is an admitted fact that the assessee had remitted Rs.17,49,196 being the amount of employees' contribution. after the prescribed due date, we are constrained to hold that the authorities below had rightly disallowed the deduction of said sum of Rs.17,49,196 u/s.36(1)(va) of the Act.

10. With these observations, the instant appeal is dismissed.

Order pronounced in the open court on this 15<sup>th</sup> Day of April, 2024.

**Sd/-**  
**(Sanjay Arora)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Anil Kumar Dugar)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 15<sup>th</sup> April, 2023.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Cochin