

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 50 of 2009

The Commissioner of Income Tax Appellant

Versus

M/s Kichha Sugar Company Ltd. Respondent

Present: Mr. H.M. Bhatia, Advocate for the appellant.
Mr. S.K. Posti, Advocate for respondent.

JUDGMENT

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble V.K. Bist, J.**

BARIN GHOSH, C.J. (Oral)

The Assessing Officer purported to disallow payments actually made by the assessee to the Provident Fund Authority on account of employees' contribution towards provident fund. There was delay. Obligation to pay accrued within an accounting year, but discharged in the next accounting year but before filing of return for the accounting year when obligation accrued. The amount of contribution, thus paid, was disallowed by the Assessing Officer. The Appellate Commissioner has correctly held that the money thus paid is no longer in the hands of the employer and, accordingly, cannot be taken to be the income in the hands of the assessee. The same is the view of the Tribunal. The Department contends that in view of section 36(1)(va) read with section 2(24)(x) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), such payment though made to the Provident Fund Authorities, should be treated to be income of the assessee. Section 36(1)(va) of the Act is as follows:-

“The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited

by the assessee to the employee's account in the relevant fund or funds on or before the due date:

Explanation- For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule order or notification issued thereunder or under any standing order, award, contract of service or otherwise; "

2. Therefore, employees' contribution deducted from the salaries of the employees of the assessee, if deposited with the Provident Fund Authority by the assessee on or before the due date for depositing the same, the amount, thus deposited, will entail deduction from the income of the assessee. Section 2(24)(x) of the Act is as follows:-

"income" includes-

any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees;"

3. Therefore, while any sum received by the assessee from his employees towards contributions to the Provident Fund is the income of the assessee, Section 36(1)(va) of the Act makes it a deduction in the event the contribution thus received is deposited on or before the due date. Section 43(B)(b) of the Act provides as follows:-

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return”.

4. Therefore, the due date referred to in section 36(1)(va) of the Act must be read in conjunction with section 43B(b) of the Act and a reading of the same would make it amply clear that the due date as mentioned in Section 36(1)(va), is the due date as mentioned in section 43B(b) i.e. payment/contribution made to the Provident Fund Authority any time before filing the return for the year in which the liability to pay accrued alongwith evidence to establish payment thereof. The Assessing Officer proceeded on the basis that “due date”, as mentioned in section 36(1)(va) of the Act, is the due date fixed by the Provident Fund Authority, whereas in the matter of culling out the meaning of the word “due date”, as mentioned in the said section, the Assessing Officer was required to take note of Section 43B(b) of the Act and by not taking note of the provisions contained therein committed gross error, which having been rectified by the Appellate Authority and confirmed by the Tribunal, there is no scope of interference.

5. The appeal fails and the same is dismissed.

(V.K. Bist, J.)
20.05.2013

(Barin Ghosh, C.J.)
20.05.2013