

Discussions on Handling of Notices u/s 143(1)(a)/139(9) of Income Tax Act, 1961

Suresh Wadhwa, LL.B., FCA

Time: 17.15 Hrs to 19.15 Hrs

Monday, March-02-2020 at

SHASTRI NAGAR CPE STUDY CIRCLE

Section 143. (1) Where a return has been made u/s 139, or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely:

(a) the total income or loss shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified u/s 139(1);

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v)or

(vi)

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.



Explanation.—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,

i. of an item, which is inconsistent with another entry of the same or some other item in such return;

i. in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or **[e.g. Donations Claimed but details not punched]**

ii. in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

Contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948:



Employee Share

- Deduction u/s 36(1)(va);
- It is trust money in the hands of Employer-Assessee
- Inserted by Finance Act, 1987 w.e.f. 01.04.1988

Employer Share

- Deduction u/s 43B(b);
- Non-Obstante Clause;
- Inserted by Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

Section 2(24)(x) 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.

Other deductions.

36. (1) 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—

(va) 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.....

Certain deductions to be only on actual payment.

43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) 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, or

(c)

.....

(g)

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 u/s 139(1) 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.

Section 43B(b): Pre and Post Amendment:

As on Date

(b) any sum payable by the assessee as an employer by way of contribution to any PF or superannuation fund or gratuity fund or any other fund for the welfare of employees, or 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.

Prior to Amendment by FA, 2003

(b) 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,

Provided that nothing contained in this section shall apply in relation to any sum referred to in clause (a) or clause (c) or clause (d) or clause (e) or clause (f) 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:

[Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the **due date as defined in the Explanation below clause (va) of sub-section (1) of section 36**, and where such payment has been made otherwise than in cash, the sum has been realised within 15 days from the due date.



Sr. No.	Employee` Share	Employer` Share
1	Governed by Section 36(1)(va) read with the Section 2(24)(x)	Governed by Section 43B(b);
2	The deduction is allowed only if the Employee` Share is credited strictly as per the due date given in the relevant PF/ ESI Act. Deposit once delayed; the deduction is forfeited forever.	The deduction is allowed only on actual payment on or before the due date of filing of Income Tax Return.
3	It is reported in Para 20 b of TAR	It is Reported in Para 26 of TAR
4	Explanation to Section 36(1)(va) has never been amended/ deleted since 1.4.1988;	Second Proviso to Section 43B was deleted w.e.f. 01.04.2004 and First provision was also amended.
5	The Employer can not sit on Collected Contributions.	

Case Laws:

Delhi HC: CIT Vs. AIMIL Limited, dated 23.12.2009

17. We may only add that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in Vinay Cement Limited [2007] 213 CTR 268 (SC).

[A very sound and reasonable Logic given by Delhi High Court.]

CIT Vs. Alom Extrusions Limited (SC)

2010 1 SCC 489

Issues before Hon`ble Supreme Court:

- (a) Whether the amendment in Section 43B of the Act, vide Finance Act, 2003 would operate retrospectively w.e.f. 1/4/1988 or not.
- (b) The key issue was with respect to employers' contribution as per section 43(B)(b) of the Act and not with respect to employees' contribution under section 36(1)(va).
- (c) Hon`ble Supreme Court had no occasion to consider deduction under section 36(1)(va) of the Act and with respect to employees' contribution.

Held: that deletion of Second Proviso to Section 43B by the Finance Act, 2003 is curative in nature, hence, it is retrospective and it would operate with effect from 1st April, 1988.

F.No.279/Misc./140/2015-ITJ

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 17th December, 2015

Subject:- Allowability of employer's contribution to funds for the welfare of employees in terms of section 43B(b) of the Income Tax Act.


As per section 43B of the Act certain deductions are admissible only on payment basis. It is observed by the Board that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B of the Act, if it has been paid after the 'due dates', as per the relevant Acts.

2. The matter has been examined in light of the judicial decisions on this issue. In the case of Commissioner vs. Alom Extrusions Ltd, [2009] 185 TAXMAN 416 (SC), the Apex Court held that the amendments made in section 43B of the Act i.e. deletion of second proviso and amendment in the first proviso, being curative in nature are retrospectively applicable from 1.04.1988. It further held that by deleting the second proviso to section 43B of the Act and amending the first proviso, the contribution to welfare funds have been brought at par with the other duty, cess, fee, etc. Thus, the proviso is equally applicable to the welfare funds also. Therefore the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income.

3. Accordingly, w.e.f. 1.4.1988, the settled position is that if the assessee deposits any sum payable by it by way of tax, duty, cess or fee by whatever name called under any law for the time being in force, or 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, on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) of the Act, no disallowance can be made under section 43B of the Act.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn / not pressed upon. This may be brought to the notice of all concerned.

5. It is clarified that this Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the IT Act.


(Ramanjit Kaur Sethi) 17/12
DCIT (OSD) (ITJ),
CBDT, New Delhi.

List of Case Laws AGAINST the Assessee:

Gujrat High Court:

**CIT Vs. Gujarat State Road Transport Corporation
dated 26.12.2013**

Kerala High Court:

- **Merchem Limited 2015 378 ITR 443**
- **Popular Vehicles & Services Pvt. Ltd Vs. CIT dated
02.07.2018 (Merchem Limited, reaffirmed)**

Madras High Court:

**Unifac Management Services (I) P. Ltd. Vs. DCIT
(23.10.2018)**

Case Laws in FAVOUR of Assessee:

Delhi High Court:

- CIT Vs. Aimil Limited (2010) 321 ITR 508

Himachal Pradesh High Court:

- CIT Vs. Nipso Polyfabriks Limited (2013)

Karnataka High Court:

- CIT Vs. Sabari Enterprises (2008)
- Spectrum Consultants India (P) Ltd. Vs. CIT (2013)

Bombay High Court:

- CIT Vs. Pamwi Tissues Ltd (2009) 313 ITR 137

All High Courts Applied Section 43B in respect to both contributions.

Case Laws in FAVOUR of Assessee:

Punjab & Haryana High Court:

- **CIT Vs. Hemla Embroidery Mills (P) Limited (2013)**

Rajasthan High Court:

- **CIT Vs. State Bank of Bikaner & Jaipur (2011)**
- **CIT Vs. Jaipur Vidyut Vitran Nigam Ltd. (2011)**

Allahabad High Court:

- **Sagun Foundry Private Ltd. Vs CIT (2017)**

All High Courts Applied Section 43B in respect to both contributions.

**Part - A
Adjustments u/s 143(1)(a)**

(ii)	Incorrect Claim u/s 143(1)(a)(ii)				
Sl.No	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Variance on account of Proposed adjustment

1	Schedule BP	In Schedule BP, Sl.No.14. Amounts debited to the profit and loss account, to the extent disallowable under section 36 (6s of PartA-OI) is not consistent with amount shown in Sl.No.6.s. Total amount disallowable under section 36 (total of 6a to 6r) of Part-OI.	0	11273	11273
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(iv)	Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)			
Sl.No	Particulars	Amount in Income Tax Return	Amount mentioned in Form Annexure 3CD	Proposed adjustment to total income

1	Any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date	0	11273	11273
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Course of Action to be adopted:

- File a Written Reply with CPC-Bangalore explaining the case of your Case along with Case Laws relied upon.
- File an Appeal before Jurisdictional CIT(A) against Final Intimation passed u/s 143(1);
- Proper Reporting in TAR. Check if TAR, can be revised?
- Educating our Clients for future deposits. 1 day late means.....

(b) Details of contributions received from employees for various funds as referred to in section 36(1)(va):

S.No.	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
1	PROV1948	11273	15/06/2018	11273	26/06/2018
2	PROV1948	11422	15/07/2018	11422	13/07/2018
3	PROV1948	11945	15/08/2018	11945	14/08/2018
4	PROV1948	12003	15/09/2018	12003	14/09/2018
5	PROV1948	13651	15/10/2018	13651	15/10/2018

Defective Return:

139(9) Where the AO considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such further period which, on an application made in this behalf, the AO may, in his discretion, allow; and if the defect is not rectified within the said period of 15 days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return.

Provided that where the assessee rectifies the defect after the expiry of the said period of 15 days or the further period allowed, but before the assessment is made, the AO Officer may condone the delay and treat the return as a valid return.

Instances of Defective Return:

- Filing of ITR on Wrong Form e.g. An NGO Filed its ITR on Form-ITR7 when it is not having any 12AA Registration.
- A Company wherein there is deadlock in the Management filed its Corporate Tax Return based upon Provisional Financial Statements and without obtaining Tax Audit Report;
- Incomplete or Inconsistent information in the return e.g. In No Accounts Cases, the details of Sundry Debtors, Creditors, Stocks, Cash in Hand etc not filled-up in the ITR;
- Self-Assessment Tax Not Paid;
- Unsigned Return

The background of the slide is a golden-yellow color with a dense, repeating pattern of various currency symbols. These symbols, including the dollar sign (\$), euro (€), pound sterling (£), and yen (¥), are rendered in a 3D, embossed style, creating a textured, metallic appearance. The symbols are scattered across the entire background, with some appearing larger and more prominent than others.

Thank You!

For any query (ies), please write/ contact:

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