

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5th DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR
AND
THE HON'BLE MR. JUSTICE B.VEERAPPA

I.T.A. NO.257/2009

BETWEEN :

1. The Commissioner of Income-tax,
C.R. Building, Queens Road,
Bangalore.
2. The Income-Tax Officer,
Wared-12(1), C.R.Building,
Queens Road, Bangalore.

...APPELLANTS

(By Sri.K.V.Aravind, Adv.)

AND :

M/s. Magus Customers
Dialog Pvt. Ltd.,
No.41, Christu Complex,
Next Mandovi Motors,
Lavelle Road,
Bangalore – 560 001.

...RESPONDENT

(By Dr.R.B.Krishna, Adv.)

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This I.T.A. is filed under Section 260A of the Income Tax Act, 1961, arising out of order dated 30.12.2008 passed in ITA No.1135/Bang/2008 praying to :

- (i) formulate the substantial questions of law stated therein,
- (ii) Allow the appeal and set-aside the order passed by the Income Tax Appellate Tribunal, Bangalore in I.T.A. No.1135/Bang/2008 dated 30.12.2008 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward-12(1), Bangalore, in the interest of justice and equity.

This I.T.A. coming on for *admission*, this day, **N.Kumar J.**, delivered the following:

JUDGMENT

The Revenue have preferred this appeal against the order passed by the Tribunal holding that even the employees contribution made by the assessee on or before the due date for filing the return under Section 139(1) of the Income-tax Act would be eligible for the benefit conferred under Section 43B(b) of the Act.

2. The substantial questions of law that is raised in this appeal are as under:

- (1) *Whether the Appellate Authorities were correct in holding that in view of the provisions of Section 43B of the Act deduction in respect of employees contributions made to PF and ESI belatedly was an allowable deduction?*
- (2) *Whether the Appellate Authorities were correct in applying Section 43B of the Act which was applicable to employers contribution and failing to apply Section 36(1)(va) and Section 2(24)(x) of the Act under which the employees contribution would become the income of the assessee at the end of the year if the same is not deposited within the stipulated time?*

3. This Court had an occasion to consider the said question of law in the case of ***The Commissioner of Income-tax Vs. The Spectrum Consultants India Pvt. Ltd.***, decided on 9th December, 2013 in ***W.A. No.4077/2013*** where, after referring to Sections 29, 30 and 31 of the Provident fund Act has held as under:

A reading of the aforesaid provisions makes it clear that the contributions payable by the employer under the scheme shall be at the rate of 10% of the basic wages, Dearness Allowance. The contribution payable by the employee shall be equal to the contribution payable by the employer in respect of such employee. However, the employer shall, in the first instance, pay both the contribution payable by himself i.e. the employer's contribution as well as the employee's contribution and thereafter he is entitled to recover by means of deduction from the employee the contribution which he has paid as employee's contribution. Therefore, in law, the payment of contribution by the employer to the fund under the scheme means both employer's contribution and employee's contribution. Whether he deducts the employee's contribution from the salary or not, in law, he is liable to pay the said amount. Therefore, Section 2(24)(x) of the Act makes it clear that the employee's contribution which the employer deducts from his salary before it is paid into the fund, is

treated as the income of the employer, and the employer by contributing can get the deduction. That payment must be made within the due date i.e. the due date prescribed under Section 139(1) of the Act. Because it was causing lot of problem as discussed in the judgment of the Apex Court, on a representation made by the industry, subsequent amendment was carried out to mitigate the difficulties caused to the employer under Section 43B of the Act. Though such contributions are not paid within the time prescribed under the relevant act, if those contributions are paid before the due date prescribed under Section 139(1) of the Act, the employer shall be entitled to the deductions as provided under Section 36(1) of the Act. While extending such benefit, the Parliament has not made any distinction between the employee's contribution and the employer's contribution. It is for the simple reason, under the provident fund scheme, an employer has to pay both the contribution and then recover from the salary of the employee. Therefore, in view of the aforesaid judgment,

*we do not find any substance in this appeal.
Therefore, the appeal is dismissed.*

4. In that view of the matter, the substantial questions of law are answered in favour of the assessee and against the Revenue. There is no merit in this appeal. Appeal stands **dismissed**.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS