

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 16TH DAY OF OCTOBER 2017/24TH ASWINA, 1939

ITA.No. 68 of 2016

AGAINST THE ORDER IN ITA 461/2015 of I.T.A.TRIBUNAL,COCHIN BENCH
DATED 29.10.2015

APPELLANT/APPELLANT IN ITA:

KALYAN SILKS TRICHUR (P) LTD.
CORPORATE OFFICE, 4/621/2,
KURIACHIRA POST, THRISSUR-680006.

BY ADVS.SRI.K.N.SREEKUMARAN
SMT.V.P.SEENA DEVI

RESPONDENT/RESPONDENT IN ITA:

JOINT COMMISSIONER OF INCOME TAX
RANGE-I, THRISSUR-680001.

SC SRI.K.M.V. PANDALAI

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON
16-10-2017, A/W ITA 70/16, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**ANTONY DOMINIC,
&
DAMA SESHADRI NAIDU, JJ.**

Income Tax Appeal Nos.68 & 70 of 2016

Dated this the 16th day of October, 2017

JUDGMENT

Antony Dominic, J.

These appeals are filed by the assessee impugning the common order passed by the Income Tax Appellate Tribunal, Kochi Bench in I.T.A. Nos.461 and 462 of 2015 concerning the Assessment Years 2008-09 and 2009-10.

2. The common questions of law framed read as under:

- "1. Whether on the facts and in the circumstance of the case the appellate Tribunal is justified in dismissing the appeal against the impugned orders for the reasons that the employees contribution to ESI & PF deposited after the statutory period but before filing of returns u/s 139(1) of the IT Act is not entitled to deduction u/s 36(1)(va) of the IT Act?
2. Whether the appellate Tribunal is justified in relying on the decision of this Hon'ble Court

in CIT v. Merchem Ltd. (2015) 61 Taxmann.com 119 (Ker) without following the ratio of the decision of the Apex Court in CIT v. Vinay Cements Ltd. (2007) 213 CTR 268 = (2009) 313 ITR (St) sustaining the view that both employees' contribution if deposited before filing of return is an allowable deduction?

3. Whether the decision of this Hon'ble Court in CIT v. Merchem Ltd., deserves to be reconsidered in the light of the apex Court decision in CIT v. Vinay Cements Ltd. (2007) 213 CTR 268 which was not brought to the notice of this Hon'ble Court?"

3. The solitary common issue that arose in these appeals was with regard to the legality of dis-allowance of deduction made towards belated deposit of employees contribution of Provident Fund/Employees State Insurance. A reading of the order passed by the Tribunal shows that the first appellate authority confirmed the order of dis-allowance following the order passed by the Tribunal in ITA No.454/2014. In the appeal, the Tribunal has decided the cases against the assessee, following the judgments of this Court in **CIT v. South India Corporation (2015) 58**

taxmann.com 208 (Kerala) and CIT v. Merchem Ltd. (2015) 61 taxmann.com 119 (Kerala).

4. In the light of the above, since the law is thus settled, we are not persuaded to think that these appeals give rise to any question of law to be considered by this Court.

Appeals fail and are accordingly dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**DAMA SESHADRI NAIDU
JUDGE**

kns/-

//TRUE COPY//

P.S. TO JUDGE

