



CAL HC - No Section 36(1)(Va) Disallowance Where Applicable PF Regulations Don't Prescribe Due Date And Excess Contribution To Superannuation Fund And Gratuity Fund Is Not Subject To Ceiling In Certain Cases

Facts of the Case:

For AY 2018-19, the AO disallowed three amounts in the hands of Syama Prasad Mookherjee Port (formerly Kolkata Port Trust) excess contributions to the Superannuation Fund (beyond the 27% Rule 87 ceiling), excess contributions to the Gratuity Fund (beyond the 8.33% Rule 103 ceiling), and alleged belated employees' PF/ESI contributions U/S 36(1)(va). CIT(A) and ITAT both deleted all three disallowances, relying on Calcutta High Court precedents. The Revenue appealed to the High Court U/S 260A.

Contention of the Assessee:

The Superannuation and Gratuity Fund contributions were extraordinary ad hoc payments made to bridge actuarial deficits - not ordinary annual contributions. The percentage ceilings under Rules 87 and 103 do not apply to such actuarially-mandated gap-filling payments. Further, once the Commissioner has approved a fund, the AO has no jurisdiction to disallow contributions by superimposing rule-based ceilings.

No statutory due date for depositing employees' PF/ESI contributions is prescribed under the Kolkata Port Trust Regulations 1988. The deadline appearing in the Tax Audit Report was entered solely due to e-filing software constraints it has no legal basis. Without a legally prescribed due date, no 'delay' arises and section 36(1)(va) cannot be invoked.

Contention of the Revenue:

The excess fund contributions were a recurring multi-year practice, not exceptional one-time payments -they should be treated as ordinary annual contributions subject to the applicable ceilings. The Exide Industries decision is factually distinguishable.

The Tax Audit Report flagged the PF/ESI deposits as delayed; since no appeal was filed against the original disallowance, the AO was merely carrying it forward for computation purposes.

Reasoning and Decision of the Court:

On the fund contributions, the Court held that the legal character of a payment is determined by its purpose bridging an actuarial deficit not by how often such payments are made. A persistent shortfall due to past funding constraints cannot transform gap-filling payments into ordinary annual contributions. section 36(1)(v) imposes no percentage cap on contributions to an approved gratuity fund; once the Commissioner grants approval, the AO has no power to look behind it or apply Rule 103 as a disallowance mechanism. Both the Superannuation and Gratuity Fund disallowances were rightly deleted.



On PF/ESI, section 36(1)(va) requires non-credit by the 'due date' prescribed under the applicable law or contract. The Port Trust Regulations specify no such date; the 15th-of-month deadline in the Tax Audit Report was an artificial software-generated entry with no statutory backing. In the absence of a legally defined due date, the trigger for disallowance simply does not exist. The Revenue's appeal was dismissed with no order as to costs.

Citation:

[TS-1306-HC-2026(CAL)]

Conclusion:

The Calcutta High Court upheld the deletion of all three disallowances. Actuarially-mandated contributions to approved Superannuation and Gratuity Funds are not subject to the percentage ceilings under Rules 87 and 103, and a commissioner-approved fund cannot be second-guessed by the AO. The PF/ESI disallowance also failed as the applicable Port Trust Regulations prescribe no statutory due date, making any alleged 'delay' legally meaningless.