

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 970 & 2983/PUN/2017

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

Autoline Industries Limited.  
S. No.313-314 & 320-323,  
Nanewarwadi, Chakan,  
Pune-410501.  
PAN : AABCA4534D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah &  
Shri Rohit Japadiya

Revenue by : Shri T. Vijaya Bhaskar Reddy, CIT

सुनवाई की तारीख / Date of Hearing : 19.11.2019

घोषणा की तारीख / Date of Pronouncement : 21.11.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the assessee emanates from the directions of the Ld. Dispute Resolution Panel (DRP) dated 26.12.2016 & 27.09.2017 for the assessment year 2012-13 & 2013-14 respectively as per the grounds of appeal on record.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order. First, we would take ITA No.970/PUN/2017 for the assessment year 2012-13 as lead case for adjudication.

**ITA No.970/PUN/2017**  
**A.Y.2012-13**

3. At the very outset, the assessee has filed additional ground apart from the grounds of appeal in appeal memo. This additional ground is with regard to the “**disallowance u/s.14A r.w. Rule 8D made to Book profit calculated u/s.115JB of the Income Tax Act, 1961 (hereinafter referred to as the ‘the Act’)**”.

**A. Adjudication of the additional ground:**

3.1 In this additional ground, the assessee wants deletion of addition of Rs.10,93,472/- on account of disallowance u/s.14A r.w. Rule 8D made to Book profit calculated u/s.115JB of the Act.

4. At the time of hearing, the Ld. AR of the assessee apprised the Bench that this issue was adjudicated upon by the Tribunal in assessee’s own case in ITA No.2306/PUN/2016 for the assessment year 2010-11 decided on 15.01.2019. The question before the Tribunal was as follows:

*“Subsequently, the assessee has raised the following additional ground:  
“The Ld. AO be directed to delete the addition of Rs.27,56,582/- ( on account of disallowance u/s.14A r.w. Rule 8D) made to Book Profit calculated u/s.115JB.”*

5. That before the Tribunal with regard to the case as mentioned above, the Ld.A.R. submitted that the Assessing Officer while computing Book Profits under Sec.115JB of the Act, made addition of Rs.27,56,582/- i.e., the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules. No such addition is to be made while computing Book Profits under MAT Provisions. In support of his contentions, the Ld.A.R. placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. M/s. Bengal Finance and Investments Pvt. Ltd., in Income Tax Appeal No.337 of 2013 decided on 10.02.2015. The Ld. DR on the other hand, placed reliance on the findings of the Sub-ordinate Authorities. The Tribunal in this case has observed and held as follows:

*“7. In the additional ground of appeal, the assessee has assailed that while computing Book Profits u/s 115JB of the Act, no addition in respect of disallowance u/s 14A of the Act is to be made. We find that this issue has already been addressed by the Hon'ble Bombay High Court in the case of CIT Vs. M/s. Bengal Finance and Investments (supra). For the sake of completeness, the relevant question of law raised before the Hon'ble High Court is reproduced herein below :*

*“2. The Revenue press the following question of law for our consideration :*

*(a) X X X X*

*(b) Whether on the facts and in the circumstances of the case, and in law, the ITAT is justified in deleting the addition of Rs.78,84,387/- under clause (f) of Explanation 1 to Section 115JB relying upon the decision in the case of Goetze (India) Ltd. v/s. CIT (2009) 32 SOT 101 (Del.), which has been followed by ITAT, Mumbai in the cases referred to in para 5 of the impugned order without appreciating that the above decision in the case of Goetze (India) Ltd. was rendered by the ITAT, Delhi Bench on completely distinguishable set of facts, peculiar to the said case ?*

*The Hon'ble High Court answered the above question by observing as under :*

*“4. So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. v/s. DCIT in ITA No.3850/Mum/20 10 to held that an amount disallowed under Section 14-A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th*

*August, 2014. In view of the above, question (b) does not raise any substantial question of law.”*

*Thus, in view of the decision of Hon’ble Bombay High Court, the additional ground raised in the appeal is allowed.”*

It is clear from the view taken by the Hon’ble Bombay High Court that an amount disallowed u/s.14A of the Act cannot be added to arrive at book profit for purposes of section 115JB of the Act.

6. In view of the findings of the Tribunal in assessee’s own case and ratio laid down by the Hon’ble Bombay High Court, we answer this additional ground in favour of the assessee. Thus, **additional ground raised by the assessee in assessment year 2012-13 is allowed.**

**B. Adjudication of the grounds as per appeal Memo:**

7. **Ground No.1** raised in this appeal relates to TP adjustment for corporate guarantee.

8. The brief facts on this issue are that guarantee charges in respect of corporate guarantee given to Autoline Industries USA Inc. & DEP Autoline LLC, USA, the loan given to Autoline Industries USA Inc. & DEP Autoline LLC, USA and in turn, the assessee has given corporate guarantee to its AE amounting to Rs.29,48,66,670/-. The assessee submitted before the Transfer Pricing Officer (TPO) that non-charting of guarantee commission to Autoline Industries USA Inc. & DEP Autoline LLC, USA as Nil rate is at Arm’s Length Price (ALP). The assessee thereafter, made detailed submissions before the TPO which is at Para 6.2 of the TPO’s order. It is observed that in that detailed submissions, the assessee has stated that without prejudice,

guarantee commission @0.5% has been approved by the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd, ITA No.1165 of 2013. The TPO after considering the submissions of the assessee, facts of the case held the guarantee commission @2% of the value of guarantee as per guidance provided in the Safe Harbour Rules.

9. That when the matter traveled before the Ld. DRP, the assessee took alternate argument that if at all guarantee commission has to be charged, it has been done @0.5% as per the decision of the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd. (supra.). In the findings recorded by the Ld. DRP , it was held and observed as follows:

*“5.2.2. In the proceedings before this Panel, the assessee submitted that (i) by issuing guarantee for its AE, it had carried out its shareholder's Obligation towards its step down subsidiary; (ii) in any case, it would have infused capital directly if the funding was not available from the banks to whom guarantees were issued and, therefore, by issuing corporate guarantees, it did not take any additional risk; and (iii) absence of funding would have caused financial incapacitation of the AE, thereby jeopardizing its investment. Alternatively, it was submitted by the assessee that the rate of guarantee fees should have been restricted to 0.5%, as per the decision of the Hon'ble Jurisdictional High Court in the case of Everest Kanto Cylinders (ITA No.1165 of 2013).*

*5.2.3. We have considered the TPOs order, submissions of the assessee and material on record. We find that the assessee was not correct in not benchmarking these two transactions related to bank guarantees provided to its AEs. In transactions at ALP, there can never be a case where a person provides guarantee without receiving any consideration in view of the risks assumed. No risk can be borne by a person without commensurate compensation.*

*5.2.4 In the present case, the assessee has argued that no guarantee fees should be charged in view of the decision of Bharti Airtel Ltd. Vs. Addl. CIT (43 Taxmann. Com 15) ( Delhi Trib.). We are unable to accept this argument because subsequent to the decision in the case of Bharti Airtel Ltd., the Hon'ble ITAT has held in the following cases that providing of guarantee is an international transaction and needs to be benchmarked at ALP:*

*(i) Hindalco Industries Ltd. (TS-431-ITAT-2015) (MUM)-TP)*

*(ii) Prolifics Corporation Ltd. (TS-497-ITAT-2014)(HYD)-TP)*

*5.2.5 Respectfully following the decision the jurisdictional High Court in the case of Everest Kanto Cylinders Ltd. (ITA No.1165 of 2013), we direct the TPO to compute the ALP in respect of guarantee fees @ 0.5% as against 2% proposed by the TPO.”*

10. At the time of hearing, the Ld. AR of the assessee reiterated the submissions placed before the TPO as well as the Ld. DRP. The Ld.AR further submitted that for the assessment year 2013-14, this ground is not pressed and meaning thereby, they have accepted the directions of the Ld. DRP holding the rate of guarantee commission @0.5% followed by the Hon'ble Bombay High Court's decision (supra.) and therefore, contentions on this issue is only with respect to assessment year 2012-13.

11. Per contra, the Ld. DR supported the findings of the TPO based on Safe Harbour Rules holding the rate of guarantee commission @2%.

12. We have perused the case records and heard the rival contentions. We find that all throughout the submissions before the TPO as well as the Ld. DRP, the assessee has taken alternate argument of charging guarantee commission @0.5% in view of the decision of the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd. (supra.). We further observe that the grievance of the assessee challenging Ld. DRP's order is only with respect to the assessment year 2012-13. However, when the Hon'ble Jurisdictional High Court has already given a view which is on date is still applicable in the case of Everest Kanto Cylinders Ltd. (supra.) wherein it has been held such guarantee commission has to be charged @0.5%, we are bound by the said decision and therefore, we uphold the directions of the Ld. DRP and direct the TPO to compute ALP in respect of guarantee commission @0.5%. Thus, **ground No.1 raised in appeal by the assessee for the assessment year 2012-13 is allowed.**

13. **Ground No.2** raised in this appeal relates to the TP adjustment for interest on Koderat Investment Ltd.

14. The brief facts on the issue are that various amounts of loans were given to Koderat Investments Ltd. which is part of the TPO's order and the assessee submitted that non-charging of interest to Koderat Investment Ltd. as Nil rate is at ALP. Thereafter, the assessee submitted detailed written submissions before the TPO which is on record at Para-5.2 of the TPO's order. The assessee specifically contended that firstly as per the noting in the Balance Sheet, the said transaction is termed as loan and advances (in the nature of investment in share capital). Therefore, amount given to Koderat Investments Ltd. was part of the capital structuring. Even this amount was also shown in the investment schedule of the company. The assessee in alternate submitted that the main subsidiary company of Koderat Investment Ltd., Cyprus had gone into liquidation. These were the reasons for not charging the interest from Koderat Investment Ltd. The TPO after considering the detailed submissions of the assessee, facts of the case held that the best guide would be Safe Harbour Rules and accordingly, ALP for interest to be charged is worked out at SBI PLI Rate Plus 150 points. Applying this method, the rate of TP adjustment works out to Rs.15.50%.

15. Before the Ld. DRP, again same set of detailed arguments were placed which are on record. The Ld. DRP observed that the international transactions undertaken by the assessee includes loans and advances given to its AE, Koderat Investment Ltd. The assessee has not charged interest on this by claiming that though the said amount has been shown under the head 'loans and advances given' in the Balance Sheet, however, it has been

subsequently converted into share capital. Further, it was claimed before the TPO that it has sufficient non-interest bearing funds available at its disposal to advance the said amount to its AE. Moreover, the assessee claimed before the TPO that the holding company of the borrower AE was under liquidation and therefore, there was little likelihood of recovery. The TPO did not accept the contention of the assessee and made TP adjustment @15.5% per annum, as per Safe Harbour Rules on the loans and advances given by the assessee to its AE, Koderat Investment Ltd. The DRP in its order observed that TPO as per decision of the Ld. DRP for assessment year 2009-10, wherein directions were given to charge interest @13.25%, reliance was placed, however, at the relevant year there is decision of the Hon'ble Bombay High Court as well as Delhi High Court wherein it is more or less settled that interest has to be charged for loans and advances given to foreign AEs @LIBOR plus. The Ld. DRP further observed that the assessee itself had charged interest @8% in assessment year 2009-10. The Ld. DRP further observed at Para 4.2.2 of his order observed that the TPO did not accept the contentions of the assessee for following reasons:

- (i) No evidence has been submitted by the assessee to support its claim that the said amount has been converted into share capital;
- (ii) it is not material that there is no likelihood of recovery, since such aspects are not relevant while determining arm's length as per Chapter-X;
- (iii) it is also not material that the said loan has been sourced from interest free funds available at assessee's disposal;
- (iv) the assessee has not submitted any information about the credit rating, duration of loan etc;
- (v) till A.Y.2009-10, the assessee itself was charging interest @8% and
- (vi) for A.Y. 2009-10, the Ld. DRP had directed that interest @13.25 be charged on the loan and advances given.

16. We observe that in the entire DRP's directions, this fact that the assessee had not furnished any evidences in support of its claim that the amount given as loans were later on converted into share capital, were not adjudicated specifically. The facts remains that there is no evidence before the Sub-ordinate Authorities whether actually these amounts given as loans were later on converted into share capital neither before the TPO nor before the Ld. DRP. This factual verification is essential and therefore, in the interest of justice for adjudication of this issue, we set aside the directions of the Ld. DRP and restore the matter to the file of TPO for necessary adjudication as per law after complying with principles of natural justice and analyze the entire evidences of the loans provided whether at all these were converted into share capital or not. Thus, **ground No.2 raised in appeal by the assessee for the assessment year 2012-13 is allowed for statistical purposes.**

17. **Ground No.3** raised by the assessee relates to subsidy received from Government of Maharashtra under 2007 Scheme. The issue is whether deductible from capital assets.

18. The brief facts on the issue are that the assessee received subsidy of Rs.20 Crores from Government of Maharashtra under Package Scheme of Incentive, 2007 for encouraging dispersal of industries to the less-developed areas of the State. The assessee had claimed this subsidy to be capital in nature, since the purpose of the Scheme is to ensure dispersal of industries to the less-developed areas of the State. The Assessing Officer held that as per Explanation 10 to Section 43(1) of the Act, this amount of subsidy is to be reduced from the total cost of assets and depreciation to be allowed only on the net amount of assets. It has also been mentioned in the draft assessment

order by the Assessing Officer that the assessee had agreed to this proposed action.

19. In the proceedings, before the ld. DRP, it was submitted that under an erroneous interpretation of the said Explanation 10 to Section 43(1) of the Act, it agreed for the proposed reduction of its claim of depreciation. It was further submitted that since the proceedings before the Ld. DRP are only an extension of the proceedings before the Assessing Officer/TPO, the Ld. DRP should rectify this mistake. The Ld. DRP observed that 75% of the capital investment made by the assessee up to 31.03.2011 for its mega unit at Chakan, Pune was subsidized /reimbursed by the Government. Therefore, the said subsidy should be reduced from the total cost of assets. The Ld. DRP did not find infirmity in the action of the Assessing Officer in reducing the said amount received by the assessee under the Government of Maharashtra's Package Scheme of Incentive, 2007 from the total cost of the assets and thereby appropriate reducing the assessee's claim of depreciation.

20. At the time of hearing, the Ld. AR of the assessee invited our attention to Page 98 of the paper book (cases laws compilation filed before us) wherein the Pune Bench of the Tribunal had discussed and held regarding this issue in detailed in ITA No.1129/PUN/2016 for assessment year 2011-12, ITA No.1222/PUN/2016 and ITA No.23/PUN/2017 for the assessment year 2011-12 and 2012-13, CO Nos. 37 & 61/PUN/2018 for the assessment year 2011-12 and 2012-13. The question before the Tribunal was as follows:

*"8. Ground No.3 of the Revenue's appeal is against deletion of addition of Rs.13,76,60,000/- on account of subsidy and ground no. 1 of the assessee's appeal is against the direction of the ld. CIT(A) that the amount of subsidy should be reduced from the cost of assets in terms of Explanation 10 to section 43(1) of the Income tax Act, 1961 (hereinafter also called 'the Act')."*

The Tribunal therein on the issue has held and observed as follows:

*“9. Succinctly, the facts of these grounds are that the assessee received financial assistance granted by the Government of Maharashtra to eligible units under the Financial assistance to Grain Distillery Scheme, 2007. The AO has highlighted the important features of the scheme in the assessment order. It has been mentioned that the scheme was brought out to encourage investments in grain based distilleries in the backward regions of Maharashtra State. Such subsidy was paid to the assessee in the form of rebate of Rs.10/- per litre and Excise duty was repaid on the products supplied. The AO held that the subsidy was revenue in nature. The ld. CIT(A) overturned the assessment order on this point. He, however, held that the amount of subsidy should be reduced from the cost of assets in view of Explanation 10 to section 43(1) of the Act. Both the sides are in appeal on their respective stands.*

*10. We have heard both the sides and gone through the relevant material on record. It can be seen from the text of the scheme dated 08-07-200, relevant part of which has been reproduced in the assessment order that the main purpose of providing financial assistance under the scheme was : “to encourage investment in grain based distilleries in the backward regions of the Maharashtra State”. Once the object of the scheme is to encourage setting up of new units, the grant has to be held as a capital receipt. This is a settled legal position which follows from the judgment of the Hon’ble Supreme Court in CIT Vs. Ponni Sugar and Chemicals Ltd. (2008) 306 ITR 392 (SC) in which it has been categorically held that if subsidy is given, inter alia, for expansion, then it is a capital receipt irrespective of the fact that it is given in any form. Adverting to the facts of the instant case, we find that the subsidy was given to the assessee to establish the industrial unit in backward regions of the Maharashtra State. Even if such subsidy was quantifiable in the form of rebate of Rs.10/- per litre on the Excise duty, but the purpose of its grant, which is to accelerate the industrial development in grain based distilleries in the backward regions of the Maharashtra State, does not alter the nature of subsidy from capital to a revenue receipt. Considering the mandate of the scheme issued by the Government of Maharashtra, it becomes clear that the subsidy is a capital receipt not a revenue receipt. The impugned order is upheld to this extent*

*11. At this stage, it is relevant to mention that the Hon’ble Supreme Court in CIT Vs. P.J. Chemicals (1994) 210 ITR 830 (SC) held that subsidy received in Central Scheme is a Capital receipt and the same should not be reduced from the cost of assets for depreciation. The legislature introduced Explanation 10 to section 43(1) with effect from the assessment year 1999-2000 providing that subsidy on assets acquired after this date should be reduced from the cost of asset. The ld. CIT(A) has taken cognizance of Explanation 10 in directing that the amount of subsidy should be reduced from the cost of asset. In our considered opinion, the view so adopted by the ld. CIT(A) is not in accordance with law inasmuch as this explanation gets activated where the subsidy is specifically relatable to cost of a particular asset. The language of Explanation 10 clearly states that : “where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee’. Proviso to this Explanation states that : where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or*

*reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee'. On going through the language of the Explanation 10, it is manifest that it is attracted only when the object of the Scheme is to subsidize the cost of an asset and not otherwise. Proviso also refers to 'such subsidy' only. If the object of the Scheme is to accelerate the industrial development of the State, then the case is not caught within the mandate of the Explanation 10. Similar view has been taken by various benches of the tribunal in several decisions, including Sasisri Extractions Ltd. VS. ACIT (2010) 122 ITD 428 (Visakhapatnam). The Mumbai bench of the Tribunal in Godrej Agrovet Ltd. VS. ACIT in ITA No. 1629/Mum/09 has also taken a similar view vide its order dated 17.9.2010. Though the Department preferred an appeal against this Tribunal order, but did not challenge the finding returned by the Tribunal on this aspect. Copy of the Tribunal order and the judgment of the Hon'ble Bombay High Court have been placed on record.*

*12. To deal with such a situation, the Finance Act, 2015, w.e.f. 1.4.2016, has enlarged the definition of income given u/s 2(24) by inserting sub-clause (xviii), which reads as under:-*

*'(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43;'*

*13. A bare reading of the above provision makes it explicit that now subsidy given by the Central Government or a State Government or any authority etc. for any purpose, except where it is taken into account for determination of the actual cost of the asset under Explanation 10 section 43(1), has become chargeable to tax. Even if a subsidy is given to attract industrial investment or expansion, which is a otherwise a capital receipt under the pre-amendment era, shall be treated as income chargeable to tax, except where it has been taken into account for determining the actual cost of assets in terms of Explanation 10 to section 43(1). This amendment is patently prospective. As the assessment year under consideration is 2011-12 and the amendment is effective from assessment year 2016-17, new hold that section 2(24) (xviii) will have no application. In view of the foregoing discussion, we are satisfied that the subsidy received by the assessee from the Government of Maharashtra is a capital receipt and accordingly not chargeable to tax and at the same time, it is not liable to be reduced from the cost of assets for the purposes of depreciation in the year under consideration. Thus, the ground raised by the Revenue is dismissed and that of the assessee is allowed."*

Respectfully following the aforesaid decision as analyzed through various judicial pronouncements and specific legal parameters, we allow ground No.3 of the appeal raised by the assessee in assessment year 2012-

**13. Thus, ground No.3 raised in appeal by the assessee is allowed.**

21. **Ground No.4** raised in appeal by the assessee relates to delayed payment of PF/ESIC.

22. The facts on the issue are that the Assessing Officer made disallowance of Rs.42,57,169/- towards employee's contribution to PF and ESIC paid after due date as prescribed in PF/ESIC Act in view of Circular No.22 of 2015 issued by CBDT and relying upon the decision of the Gujarat High Court in the case of Gujarat State Road Transport Corporation (2014) (41 taxmann.com 100).

23. At the time of hearing, the Ld. AR of the assessee has placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of **CIT Vs. Gatge Patil Transporters (ITA No.1002 & 1034 of 2012), 368 ITR 749** wherein relying upon the decision of the Hon'ble Supreme Court in the case of Alom Extrusions Ltd. 319 ITR 306 holding that the amendment of Section 43B by the Finance Act, 2003 is retrospective in nature and it was held that delayed payments of employee's contribution to PF cannot be disallowed if the same have been paid prior to due date of filing the return of income.

24. Per contra, the Ld. DR has placed strong reliance on the orders of the Sub-ordinate Authorities.

25. We have perused the case records and heard the rival contentions. We have also given considerable thought to the judicial pronouncements placed before us. We find in the case of **CIT Vs. Gatge Patil Transporters**, the Hon'ble Jurisdictional High Court has answered this issue in favour of the assessee by holding as under:

**13.** *In that judgment, this Court held that no substantial questions of law would arise since section 43B is inserted in the I.T. Act with effect from 1st April, 1984 by which the mercantile system of accounting with regard to tax, duty and contribution to welfare funds stood discontinued. Under section 43B of the I.T. Act, it became mandatory for the assessee to account for such payment including to welfare funds not on mercantile basis but on cash basis. The judgment further mentions that this situation continued between 1st April, 1984 and 1st April, 1988. It is also noticed that section 43B was again amended and the first proviso thereto has been added which was restricted to tax, duty, cess or fee excluding labour welfare. In view thereof, the second proviso as follows came to be inserted:—*

*"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 during the previous year on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36."*

*The second proviso was further amended with effect from 1st April, 1989 to read as under:—*

*"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 fifteen days from the due date."*

**14.** *From a reading of above, it is clear that the employer-assessee would be entitled to deduction only if the contribution to the employee's welfare fund stood credited on or before the due date and not otherwise. It transpires that Industry once again made representations to the Ministry of Finance to remove this anomaly. The result was that an amendment was inserted which came into force with effect from 1st April, 2004 and two changes were made in section 43B firstly by deleting the second proviso and further amendment in the first proviso which reads as under:—*

*"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."*

**15.** *In this manner, the amendment provided by Finance Act, 2003 put on par the benefit of deductions of tax, duty, cess and fee on the one hand with contributions to various Employees' Welfare Funds on the other. All this came up for consideration before the Hon'ble Supreme Court in the case of Alom Extrusions Ltd. (supra). The Tribunal in the case at hand relied upon the said judgment. There is no reason to fault the order passed by the Tribunal. We are of the view that the decision of the Supreme Court in Alom Extrusions Ltd. (supra) applies to employees' contribution as well as employers' contribution. Question Nos.2, 3 & 4 are accordingly answered in favour of the assessee and against the revenue."*

In view of the facts and circumstances of the case and ratio laid down by the Hon'ble Jurisdictional High Court, we answer this issue in favour of the assessee. Thus, **ground No.4 raised in appeal by the assessee is allowed.**

26. In the result, **appeal of the assessee in ITA No.970/PUN/2017 for the assessment year 2012-13 is partly allowed for statistical purposes.**

**ITA No.2983/PUN/2017**  
**A.Y.2013-14**

27. The Ld.AR of the assessee submitted before us that he is not pressing the ground No.1 for the assessment year 2013-14. In view of the submissions of the Ld.AR, **ground No.1 raised in appeal by the assessee for the assessment year 2013-14 is dismissed as 'not pressed'.**

28. Both the parties are unanimous in stating that the ground No.2 raised by assessee in assessment year 2013-14 is identical to ground No.2 raised in ITA No.970/PUN/2017 for assessment year 2012-13. Therefore, the decision rendered in ITA No.970/PUN/2017 for the assessment year 2012-13 **shall apply mutatis-mutandis** on this issue for assessment year 2013-14. Thus, **ground No.2 raised in appeal by the assessee for the assessment year 2013-14 is allowed for statistical purposes.**

29. The Ld.AR of the assessee submitted before us that he is not pressing the ground No.3 for the assessment year 2013-14. In view of the submissions of the Ld.AR, **ground No.3 raised in appeal by the assessee for the assessment year 2013-14 is dismissed as 'not pressed'.**

30. Both the parties are unanimous in stating that the ground Nos.4 & 5 raised by assessee in assessment year 2013-14 is identical to ground No.3 raised in ITA No.970/PUN/2017 for assessment year 2012-13. Therefore, the decision rendered in ITA No.970/PUN/2017 for the assessment year 2012-13 **shall apply mutatis-mutandis** on this issue for assessment year 2013-14. Thus, **ground Nos. 4 & 5 raised in appeal by the assessee for the assessment year 2013-14 is allowed.**

31. **Ground No.6** raised in this appeal by the assessee relates to disallowance of Rs.39,15,518/- towards employee's contribution to PF and ESIC paid after due date as prescribed in PF/ESIC Act. This issue is identical to ground No.4 raised in ITA No.970/PUN/2017. Therefore, our decision rendered in ITA No.970/PUN/2017 shall apply mutatis-mutandis on this issue for the assessment year 2013-14. Thus, **ground No.6 raised in this appeal by the assessee for assessment year 2013-14 is allowed.**

32. In the result, **appeal of the assessee in ITA No.2983/PUN/2017 for the assessment year 2013-14 is partly allowed for statistical purposes.**

33. In the combined result, **appeals of the assessee for the assessment years 2012-13 and 2013-14 is partly allowed for statistical purposes.**

Order pronounced on 21<sup>st</sup> day of November, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> November, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	19.11.2019	Sr.PS/PS
2	Draft placed before author	20.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		