आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

S.No	ITA No. & A.Y.	Appellant		Respondent
1	ITA No. 322/PUN/2022 A.Y. 2019-20	Sixsigma Medicare and Research Ltd., 1, Satgurus, Water Tank, Opp. Mahatma Nagar, Nashik – 422001. Nashik. PAN: AARCS 2722 B	Vs.	The ADIT, CPC, Bangalore.
2	ITA No. 137/PUN/2022 A.Y. 2019-20	The Residency Club, Near New Palace Post Office, Kolhapur – 416003. PAN: AAATT 8533 D	Vs.	The Asst Commissioner of Income Tax, CPC, Bangalore.
3	ITA No. 20/PUN/2022 A.Y. 2019-20	Zaware Creative Enterprises Pvt. Ltd., 38, INdulal Complex, L B Shastri Road, Navi Peth, Pune – 411030. PAN: AAACZ 0929 J	Vs.	The Asst Commissioner of Income Tax, CPC, Bangalore.
4	ITA No. 386/PUN/2022 A.Y. 2018-19	Subhash Sakharam More, X 280 SHOP NO 17, Near S.T. Stand Oswal Complex, MIDC, Waluj Aurangabad – 431136. PAN: AHRPM 6263 B	Vs.	The ITO/DCIT[CPC], Bengaluru.
5	ITA No. 55/PUN/2022 A.Y. 2019-20	Wonder Cars Private Limited, 64/8, D-II Block, MIDC, Chinchwad, Pune – 411 019. PAN: AAACW 2784 N	Vs.	The Asst.Director of Income Tax, CPC.
6	ITA No. 116/PUN/2022 A.Y. 2019-20	Seema Santosh Ghone, Flat 102, Tower 25, Lodha Belmondo, Gahunje, Pune – 412101. PAN: AEHPG 9169 B	Vs.	The Asst.Director of Income Tax, CPC, Bengaluru.
7	ITA No. 268/PUN/2022 A.Y.2019-20	Rajdeep Info Techno Pvt. Ltd., Bunglow No.4, Liberty Society, Phase II, North Main Road, Koregaon Park, Pune – 411001. PAN: AACCG 0605 J	Vs.	The Asst.Director of Income Tax, CPC, Bengaluru.

8	ITA No. 88/PUN/2022 A.Y.2018-19	Swaraj Excellent Manpower Facilities Pvt. Ltd., Pooja Park, 197/2, Near Over Bridge, Pune Nashik Highway, At Post, Moshi, Tal haveli, Pune – 412105. PAN: AAQCS 0729 M	Vs.	The DCIT, CPC, Bangalore.
9	ITA No. 89/PUN/2022 A.Y.2019-20	Swaraj Excellent Manpower Facilities Pvt. Ltd., Pooja Park, 197/2, Near Over Bridge, Pune Nashik Highway, At Post, Moshi, Tal haveli, Pune – 412105. PAN: AAQCS 0729 M	Vs.	The DCIT, CPC, Bangalore.
10	ITA No. 104/PUN/2022 A.Y. 2019-20	Yashwant Forgings Pvt. Ltd, S.No.1260/62, Sanaswadi, Tal-Shirur Shirur Pune Maharashtra, - 412210. PAN: AAACY 1944 Q	Vs.	The Asst.Director of Income Tax, CPC, Bengaluru.
11	ITA No. 294/PUN/2022 A.Y.2020-21	Rajdeep Industrial Products Pvt. Ltd., 143, Vadgaon Dhayari, Rajdeep Heights, Pune – Sinhagad Road, Pune – 411041. PAN: AAACR 2828 N	Vs.	The DCIT, CPC.
12	ITA No. 267/PUN/2022 A.Y. 2018-19	Rajdeep Info Techno Private Limited, Bunglow No.4, Liberty Society, Phase II, North Main Road, Koregaon Park, Pune – 411001. PAN: AACCG 0605 J	Vs.	The Asst.Director of Income Tax, CPC.
13	ITA No. 281/PUN/2022 A.Y.2018-19	Spare Auto Ancillaries, B-10, MIED, Shiroli, Kolhaupr – 416122. PAN: ABBFS 5533 J	Vs.	The Income Tax Officer, Circle-1, Kolhapur.
14	ITA No. 193/PUN/2022 A.Y.2019-20	M/s.SR Fibreglass Private Limited, G-77, MIDC, Ambad, Satpur, Nasik – 422010. PAN: AAJCS 7657 M	Vs.	The Asst.Director of Income Tax, CPC.
15	ITA No. 115/PUN/2022 A.Y.2018-19	Seema Santosh Ghone, Flat 102, Tower 25, Lodha Belmondo, Gahunje, Pune – 412101. PAN: AEHPG 9169 B	Vs.	The DCIT, CPC, Bangalore.

16	ITA No. 54/PUN/2022 A.Y.2019-20	Sarika Vikram Warpe, Flat No.403, Bldg. No.5, Rakshnagar, Phase – 2, Chandanagar Kharadi, Pune – 411014. PAN: AARPW 1105 F	Vs.	The Income Tax Officer, Ward-7(3), Pune.
17	ITA No. 105/PUN/2022 A.Y.2019-20	V.D.M-Power Private Limited, 6-20-277, Nakshatrawadi Paithan Road, Aurangabad – 431005. PAN: AAFCV 0714 L	Vs.	The DCIT, Aurangabad.
18	ITA No. 154/PUN/2022 A.Y.2018-19	Varad Crop Science Private Limited, C5, Varad House, Aurangabad Road, Addl.MIDC, Jalna, Maharashtra – 431203. PAN: AAACV 6044 Q	Vs.	The DCIT, CPC, Bangalore.
19	ITA No. 155/PUN/2022 A.Y.2019-20	Varad Crop Science Private Limited, C5, Varad House, Aurangabad Road, Addl.MIDC, Jalna, Maharashtra – 431203. PAN: AAACV 6044 Q	Vs.	The DCIT, CPC, Bangalore.
20	ITA No. 179/PUN/2022 A.Y.2017-18	M/s.Thakkers Developers Ltd., 37/39, Kantol Niwas, Modi Street Fort, Mumbai – 400001. PAN: AAACT 1513 E	Vs.	The DCIT, CPC, Bangalore.
21	ITA No. 107/PUN/2022 A.Y. 2019-20	Satish Madhaorao Yeole, W 2/6, tucker Enclave, Gondhale Nagar, Opposite Hemant Karkare Garden, Maharashtra – 411028. PAN: AACPY 5008 N	Vs.	The ITO, Ward-4(4), Pune

Assessee by	Shri/Smt./Ms.: Shri Pramod Shingte(S.No.1, 16); M.K.Kulkarani(S.No.2); Susant Saranti (S.No.21); S.N.Puranikh (S.No.17); Deepa Khare (S.No.11, 12); Sharad A. Vaze(S.No.3) & None (S.No.4, 5, 6, 7, 8, 9, 10, 13, 15, 18, 19, 20) – AR's
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	22/11/2022
Date of pronouncement	08/12/2022

आदेश/ ORDER

PER BENCH :

All these appeals have a common issue. Therefore, with the consent of the ld.Authorised Representative(ld.AR) of the Assessee and ld.Departmental Representative(ld.DR) for the Revenue, all these appeals were heard together and are being disposed by this common order. The common issue involved in all these appeals is that delayed payment of Employees Contribution towards PF/ESIC which has been deposited by the assessee beyond the due date mentioned in the respective statute, but before the due date of filing of return of income. These amounts have been disallowed by the Revenue under section 36(1)(va) of the Act while processing the return of income under secretion 143(1)of the Act.

2. For the sake of convenience, we are reproducing the facts related to the lead case ITA No.322/PUN/2022 in Sixsigma Medicare and Research Ltd.,. The Grounds of appeal are as under:

> *"1. The ld.CIT(A) erred in confirming the addition of Rs.14,80,652/- made u/s 36(1)(va) by holding that :*
>
> *1. The impugned deposits of employees contributions to PF and ESIC, beyond the specified fund due date but before the filing of ROI, are not covered by the provisions of Sec. 43B.*
>
> *2. The amendments introduced vide Finance Act, 2021, by insertion of Expl. 2 to Sec. 36(1)(va) and Expl. 5 to Sec. 43B as clarificatory amendments having retrospective effect.*

And without taking into consideration the decisions of jurisdictional Bombay HC reported at 366 ITR 001, 368 ITR 749 and Hyd. Tribunal decision reported at 62 CCH 189.

Therefore, it is prayed to direct the learned A.O. to delete the impugned disallowance of Rs.14,80,652/-.

2. The learned CIT(A) erred in not deciding upon the 2nd ground of appeal relating to whether the impugned adjustment to the returned income is a permitted adjustment u/s 143(1)(a).

Rs.3,84,970/-

Therefore, considering the fact that the impugned disallowance is a debatable adjustment, since the same has been deleted by the jurisdictional High Court, in the cases citied in the written submissions, it is prayed to hold the same to be beyond the permitted adjustments allowed u/s 143(1)(a) and accordingly direct the learned A.O. to delete the disallowance."

3. This is an appeal filed by the assessee i.e. Sixsigma Medicare and Research Ltd., against the order under section 250 of the Income Tax Act, passed by ld.CIT(A) [NFAC] dated 27.09.2021 for the A.Y. 2019-20, emanating from the order of Assistant Director of Income Tax(CPC), Bangalore under section 143(1) of the Act.

4. Brief facts of the case: Assessee Sixsigma Medicare and Research Ltd. filed return of income for the A.Y. 2019-20 on 01.11.2019. The due date for filing return of income for A.Y. 2019-20 was 31.10.2019. Thus, the assessee has filed return of income beyond the due date mentioned under section 139(1) of the Income

Tax Act. The said return was processed under section 143(1) of the Act. The Assistant Director of Income Tax(CPC) i.e. the Assessing Officer(AO) has made disallowance under section 143(1) of Rs.14,80,652/-. The description given in the order under section 143(1) for the said disallowance is as under:

> "*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 [36(1)(va)].*"

Thus, the AO had made disallowance based on the Audit Report & Return filed by the assessee, in which, the Assessee, itself, had mentioned the "dates of deposit of employee's contribution" & "statutory dates for deposit". Thus, the "delay" is an admitted fact by the assessee.

5. It is also observed that the AO had given an opportunity to the assessee vide communication dated 06.12.2019 send to the email id of the assessee.

6. Aggrieved by the said addition, the assessee filed appeal before the ld.CIT(A)[NFAC]. The ld.CIT(A) upheld the disallowance treating the amendment made to section 36 by Finance Act, 2021 as clarificatory in nature. The ld.CIT(A) dismissed the appeal of the assessee.

7. Aggrieved by the same, the assessee filed appeal before this Tribunal.

8. The ld.AR i.e. Shri Pramod Shingte made elaborate argument. He also filed written submissions:

> *"52. When Parliament introduced Section 43B, what was on the statute book, was only employer's contribution (Section 34(1)(iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting Section 36(1)(va) and simultaneously inserting the second proviso of Section 43B, its intention was not to treat the disparate nature of the amounts, similarly. As discussed previously, the memorandum introducing the Finance Bill clearly stated that the provisions - especially second proviso to Section 43B - was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, etc.) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24)(x) too, deems amount received from the employees (whether the amount is received from the employee or by wav of deduction authorized bv the statute) as income - it is the character of the amount that is important, i.e.. not income earned. Thus, amounts retained bv the employer from out of the employee's income bv wav of deduction etc, were treated as income in the hands of the employer. The significance of this provision is that on the one hand it brought into the fold of "income" amounts that were receipts or deductions from employees income; at the time, payment within the prescribed time - by way of*

contribution of the employees' share to their credit with the relevant fund is to be treated as deduction (Section 36(1)(va)). The other important feature is that this distinction between the employers' contribution (Section 36(1)(iv)) and employees' contribution required to be deposited by the employer (Section 36(1)(va)) was maintained - and continues to be maintained. On the other hand, Section 43B covers all deductions that are permissible as expenditures, or out-goings forming part of the assessees' liability. These include liabilities such as tax liability, cess duties etc. or interest liability having regard to the terms of the contract. Thus, timely payment of these alone entitle an assessee to the benefit of deduction from the total income. The essential objective of Section 43B is to ensure that if assessees are following the mercantile method of accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary pre-condition for allowing the expenditure.

53. The distinction between an employer's contribution which is its primary liability under law - in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e.. depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts- the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

(emphasis supplied)

On perusal of these findings, it is evident that Hon'ble Supreme court has in clear terms held that any amount which is received by assessee from his employees under the circumstances as specified in section 2(24)(x), becomes his income and if it is not paid before due date then it remains as income of the appellant."

9. Mr.J.G.Pendse the ld.AR for Tirupathi Industrial Services Pvt. Ltd. submitted that at the time of the disallowance, there was decision of the Hon'ble Bombay High Court in favour of the assessee, therefore, the AO and ld.CIT(A) were duty bound to follow the decision of Hon'ble Bombay High Court which held that if assessee deposits the Employees Contribution towards ESI/PF before due date of filing of return of income mentioned under section 139(1), then assessee is eligible for deduction under section 36(1)(va) of the Act. The ld.Counsel Mr.Pendse submitted that Hon'ble Supreme Court's decision in the case of Checkmate Services (P) Ltd., is a subsequent decision and it was not available when AO and ld.CIT(A) passed the order, therefore, the AO and ld.CIT(A) failed to follow the order of Hon'ble Bombay High court in the case of Gadge Patil Transport.

9. Advocate Deepa Khare also submitted her arguments, mainly covering the same issues which has been dealt by Mr.Shingte and Pendse.

10. The ld.DR relied on the order of Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd.,

Our Finding:

11. We have heard both the parties and perused the records. In all these cases, the AO i.e. ADIT, CPC, Bangalore had passed order under section 143(1) of the Act. The ADIT(CPC) had disallowed delayed payments towards Employees Contribution of ESI/PF made beyond due date specified in the respective statutes. It is a fact that there is column in the Audit Report by which Auditor has been mandatorily asked to identify delayed payments towards ESI/PF. Accordingly, in all these cases Auditor had certified that there was certain payments which were towards Employees Contribution for ESI/PF deposited beyond the due dates mentioned in the ESI/PF Act, before the date of filing of return of income. Now a days the returns are processed by computer under section 143(1). The computer has picked up the data from Audit Report filed by the assessee. Thus, in the lead case i.e. Sixsigma Medicare and Research Ltd., it is an admitted fact that Auditor in the Audit Report had identified Rs.14,80,652/- which was Employees Contribution to ESI/PF deposited by the employer beyond the due date mentioned in ESI Act and PF Act, but before filing return of income. This issue has been settled now by Hon'ble Supreme Court in the case of Checkmate

Services (P) Ltd.,. The issue of delayed payment of employee's contribution of Provident Fund and ESIC has been decided by Hon'ble SC in the case of **Checkmate Services (P.) Ltd. *Vs.* Commissioner of Income-tax-1 vide order dated** October 12, 2022 as under :

> Quote, *" That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. "* Unquote.

12. The Co-ordinate Bench of ITAT Pune in the case Cemetile Industris Vs. ITO & Others order dated 23.11.2022 has heard various Counsels for different assessee and in a common order has held as under:

> *"2. On a representative basis, we are taking up the factual scenario from the appeal preferred by Cemetile Industries (in ITA No.693/PUN/2022) against the order u/s.154 of the Act, which was espoused for arguments by both the sides as a lead case. Briefly stated, the facts of the case are that the assessee filed its return, which was processed u/s.143(1) on 22-08-2019 making disallowance, inter alia, u/s.36(1)(va) amounting to Rs.3,40,347/- on the ground that the amount received by the assessee from employees as contribution to the Employees Provident Fund (EPF)/Employees State Insurance*

Corporation (ESIC) etc. (hereinafter called `the relevant funds') was not credited to the employees' accounts on or before the due date as prescribed under the respective Acts. Thereafter, the assessee applied for rectification but without any success. No succor was provided in the first appeal. Aggrieved thereby, the assessee has come up in appeal before the Tribunal against the confirmation of disallowance. It is an admitted position that the facts and circumstances of all other cases, except two, which have been separately deliberated upon, are similar.

3. We have heard Sh. Pramod Singte, Ms. Deepa Khare, Sh. Sanket Joshi, Sh. Sharad A. Vaze, Sh. Mahavir Jain, Sh. M.K. Kulkarni, Sh. S.N. Puranik and Sh. Burhanuddin Vora (hereinafter commonly referred to as `the ld. AR') and Sh. Suhas Kulkarni, the ld. Departmental Representative (DR). It is undisputed that the audit report filed by the assessee indicated the due dates of payment to the relevant funds under the respective Acts relating to employee's share and the said amounts were deposited by the assessee beyond such due dates but before the filing of the return u/s 139(1) of the Act. The case of the assessee before the authorities below has been that such payments before the due date as per section 139(1) of the Act amounts to sufficient compliance of the provisions in terms of section 43B of the Act, not calling for any disallowance. Per contra, the Department has set up a case that the disallowance is called for because of the per se late deposit of the employees' share beyond the due date under the respective Act and section 43B is of no assistance.

4. Before proceeding further, it would be apposite to take note of the relevant statutory provision in this regard. Section 2(24) provides that `income' includes: `(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 (34 of 1948), or any other fund for the welfare of such employees'. Thus, contribution by employees to the relevant funds becomes income of the employer. Instantly, there is no dispute as to the taxability of such income in the hands of the assessee. Once such an amount becomes income of the employer-assessee, then section 36(1)(va)

comes into play for providing the deduction. This provision provides that: `(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.'. The term `due date' for the purposes of this clause has been defined in Explanation 1 to this provision to mean: `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 or under any standing order, award, contract of service or otherwise.'

Thus, it is axiomatic that deposit of the employees' share of the relevant funds before the due date under the respective Acts is sine qua non for claiming the deduction. Au Contraire, if the contribution of the employees to the relevant funds is not deposited by the employer before the due date under the respective etc., then the deduction u/s.36(1)(va) is lost notwithstanding the fact that the share of the employees had already crystallized as income of the employer u/s.2(24)(x) of the Act.

5. Adverting to the facts of the case, it is seen that the assessee claimed the deduction for the employees' share for depositing the same in the relevant funds beyond the due date as given in Explanation 1 to section 36(1)(va) on the strength of section 43B. The latter section opens with a non-obstante clause and provides that a deduction otherwise allowable in respect of: `(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' shall be allowed only in that previous year in which such sum is actually paid. The first proviso to section 43B states 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.' The main provision of section 43B, providing

for the deduction only on actual payment basis, has been relaxed by the proviso so as to enable the deduction even if the payment is made before the due date of furnishing the return u/s 139(1) of the Act for that year. The claim of the assessee is that the deduction becomes available in the light of section 36(1)(va) read with section 43B on depositing the employees' share in the relevant funds before the due date u/s 139(1) of the Act. This position was earlier accepted by some of the Hon'ble High Courts holding that the deduction is allowed even if the assessee deposits the employees' share in the relevant funds before the date of filing of return u/s.139(1) of the Act. This was on the analogy of treating the employee's share as having the same character as that of the employer's share, becoming deductible u/s 36(1)(iv) read in the hue of section 43B(b). Recently, the Hon'ble Supreme Court in Checkmate Services P. Ltd. & Ors. VS. CIT & Ors. (2022) 448 ITR 518 (SC) has threadbare considered this issue and drawn a distinction between the parameters for allowing deduction of employer's share and employees' share in the relevant funds. It has been held that the contribution by the employees to the relevant funds is the employer's income u/s.2(24)(x), but the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective Acts. The hitherto view taken by some of the Hon'ble High Courts in allowing deduction even where the amount was deposited in the employee's account before the time allowed u/s.139(1), ergo, got overturned. The net effect of this Apex Court judgment is that the deduction u/s.36(1)(va) can be allowed only if the employees' share in the relevant funds is deposited by the employer before the due date stipulated in respective Acts and further that the due date u/s.139(1) of the Act is alien for this purpose.

6. There is no quarrel that the enunciation of law by the Hon'ble Supreme Court is always declaratory having the effect and application ab initio, being, the date of insertion of the provision, unless a judgment is categorically made prospectively applicable. The ld. AR candidly admitted that this judgment will equally apply to the disallowance u/s.36(1)(va) anent to all earlier years as well for the assessments completed u/s.143(3) of the Act. He, however, accentuated the fact that

the instant batch of appeals involves the disallowance made u/s.143(1) of the Act. It was argued that no prima facie adjustment can be made in the Intimation issued u/s 143(1) of the Act unless a case is covered within the specific four corners of the provision. It was stressed that the action of the AO in making the extant disallowance does not fall in any of the clauses of section 143(1).

7. We fully agree with the proposition bolstered by the ld. AR that adjustment to the total income or loss can be made only in the terms indicated specifically u/s.143(1) of the Act. Now, we proceed to examine if the case falls under any of the clauses. The rival parties are consensus ad idem that the case can be considered as falling either under clause (ii) or (iv) of section 143(1). For ready reference, we are extracting the relevant provision as under:

> *'143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, 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:—*
> *(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
> *(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return'*

8. Sub-section (1) of section 143 states that a return shall be processed to compute total income by making six types of `adjustments' as set out in sub-clauses (i) to (vi). As noted supra, we are concerned only with the examination of two sub-clauses, viz., (ii) and (iv). Sub-clause (ii) talks of 'an incorrect claim, if such incorrect claim is apparent from any information in the return". The expression "an incorrect claim apparent from any information in the return" has not been generally used in the provision. Rather, it has been specifically defined in Explanation (a) to section 143(1) as under:

> *`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;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) 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;'

9. Clause (i) of Explanation (a) refers to a situation in which there is a claim of income or expenditure at two places in the return of income and there is inconsistency in them. For example, if deduction is claimed under a specific section for a sum of Rs.100/- in the Profit and loss account accompanying the return, but in the computation of income, the amount has been taken as Rs.110/-, leading to inconsistency, requiring an adjustment. Clause (ii) of Explanation (a) covers a situation in which claim is made, say, for a deduction u/s.80IA for which audit report is required to be furnished, but such report has not been furnished along with the return. Clause (iii) contemplates a situation in which deduction exceeds specified statutory limit. For example, section 24(a) provides for a standard deduction for a sum equal to 30% of the annual value, but the assessee has claimed deduction at 40%. These situations warrant an adjustment. It is obvious that none of the three clauses of Explanation (a), defining an incorrect claim apparent from any information in the return, gets magnetized to the facts of the present case.

10. Now we turn to clause (iv) of section 143(1)(a) which provides for `disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return'. The words "or increase in income" in the above provision were inserted by the Finance Act, 2021 w.e.f. 01-04-2021. As such, this part of the provision cannot be considered for application during the years under consideration, which are anterior to the amendment. We are left with ascertaining if the disallowance made u/s 36(1)(va) in the

Intimation under section 143(1)(a) can be construed as a `disallowance of expenditure indicated in the audit report not taken into account in computing the total income in the return'. Point 20(b) of the audit report in Form 3CA has columns – Serial number; Nature of fund; Sum received from employees; Due date for payment; The actual amount paid; and The actual date of payment to the concerned authorities. A copy of audit report in one of the cases under consideration, namely, S.M. Auto Stamping Pvt. Ltd. (ITA No.521/PUN/2022) has been placed on record. Point 20(b) of the audit report gives the `Sum received from employees' at Rs.21,800/-. `Due date for payment' has been reported as 15-07-2017 and `The actual date of payment to the concerned authorities' has been given as 20-07-2017. Similar is the position regarding other items disallowed u/s.36(1)(va) having `The actual date of payment' after the `Due date for payment'. Thus, it is manifest that the audit report clearly points out that as against the due date of payment of the employees' share in the relevant fund on 15.7.2017 for deduction u/s 36(1)(va), the actual payment is delayed and deposited on 20.7.2017. The legislature, for the disallowance under sub-clause (iv) of section 143(1)(a), has used the expression `indicated in the audit report'. The word `indicated' is wider in amplitude than the word `reported', which envelopes both the direct and indirect reporting. Even if there is some indication of disallowance in the audit report, which is short of direct reporting of the disallowance, the case gets covered within the purview of the provision warranting the disallowance. However, the indication must be clear and not vague. If the indication in the audit report gives a clear picture of the violation of a provision, there can be no escape from disallowance. Turning to the facts of the case, it is clear from the mandate of section 36(1)(va) that the employees' share in the relevant funds must be deposited before the due date under the respective Acts. If the audit report mentions the due date of payment and also the actual date of payment with specific reference in column no. 20(b) having heading: `Details of contributions received from employees for various funds as referred to in section 36(1)(va)', it is an apparent indication of the disallowance of expenditure u/s 36(1)(va) in the audit report in a case where the actual date of payment is beyond the due date. Though

the audit report clearly indicated that there was a delay in the deposit of the employees' share in the relevant funds, which was in contravention of the prescription of u/s.36(1)(va), the assessee chose not to offer the disallowance in computing the total income in the return, which rightly called for the disallowance in terms of section 143(1)(a) of the Act.

11. The ld. AR vehemently argued that it was a case of "increase in income" which has been enshrined in clause (iv) of section 143(1)(a) w.e.f. 01-04-2021 and hence cannot be take note of for the year under consideration. In our considered opinion, the contention is ill-founded. We have noted above that clause (iv) of section 143(1)(a) talks of two different limbs, namely, `disallowance of expenditure' and `increase in income' by means of indication in the audit report. Both the limbs are independent of each other. The indication in the audit report for `Increase of income' should be qua some item of income and not increase of income because of the `disallowance of expenditure'. Every disallowance of expenditure leads to increase of income. If the contention of the ld. AR is taken to a logical conclusion, then the second expression `or increase in income' inserted by the Finance Act, 2021 would be rendered a redundant piece of legislation. It is trite interpretation has to be given to the statutory provisions in such a manner that no part of the Act is rendered nugatory. Distinction in the scope of the two aspects can be understood with the help of the present context only. We have noted that point no. 20(b) of the audit report, dealing with section 36(1)(va), has columns, inter alia, (i) `Sum received from employees'; (ii) `Due date for payment'; and (iii) `The actual date of payment to the concerned authorities'. The column (i) having details of the amounts received from employees indicates about the `increase in income' as per sub-clause (iv) of section 143(1)(a) if the assessee does not take this sum in computing total income. The columns (ii) and (iii) having details of due date for payment and the actual date of payment indicate about `disallowance of expenditure' if the assessee does not make suo motu disallowance in computing total income. Right now, there is no case of `increase in income' because the AO did not make adjustment for non-offering of income of the `Sums received from employees', but made the adjustment for `disallowance of expenditure'

with the remarks that :`Amounts debited to the profit and loss account, to the extent disallowance under section 36 due to non-fulfillment of conditions specified in relevant clauses'. Thus, it is evident that it is a case of `disallowance of expenditure' and not `increase of income'. Further, the entire challenge by the assessee throughout has been to the disallowance of expenditure made by the AO. It set up a case before the authorities below, including the ld. CIT(A), taking shelter of section 43B of the Act by arguing that the disallowance cannot be made because such payment was made before the due date u/s.139(1) of the Act. As such, the contention of adjustment u/s 143(1)(a)(iv) due to `increase in income' is jettisoned.

12. Another argument point was put forth on behalf of the assessee that the assessee did not claim any deduction in the Profit and loss account of the amount under consideration and hence no disallowance should have been made. This argument is again bereft of force. The assessee claimed deduction for salary on gross basis, inclusive of the employees' share to the relevant funds. To put it simply, if gross salary is of Rs.100, out of which a sum of Rs.10 has been deducted as contribution to relevant fund, then the debit of Rs.100 in the Profit and loss account means deduction has been claimed for Rs.10 as well. Ex consequenti, if deduction of Rs.10 is not allowed u/s 36(1)(va) for late deposit of the amount before the due date under the respective Act, it would mean that the claim of Rs.10 included in Rs.100 is not allowed deduction.

13. The ld. AR referred to section 5 of the Payment of Wages Act, 1936, to contend that deduction made from an employee's salary for the month of October should suffer disallowance only if it is not paid by 15th December. This argument was premised on the language of section 5, which says that the wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before expiry of the seventh day, after the last day of the wage-period in respect of

which the wages are payable. It was contended that salary for the month of October, 2022 will be paid before the 7th of November, which will result into income of the employer only at the time of payment, making the due date of payment into relevant fund as on or before 15th December and not 15th November.

14. There is no merit in the contention of linking the date of deposit of the employees' share in the relevant funds with the date of payment of wages. Section 5 of the Payment of Wages Act simply deals with the 'Time of payment of wages'. It does not stipulate any time limit for deposit of the employees share in the relevant funds. For that purpose, the relevant Acts give a window for depositing the contribution within 15 days of the last month's salary. Thus, contribution to the relevant fund towards the salary for the month of October-ending should be deposited before 15th November.

15. In view of the foregoing discussion, we are satisfied that the ld.CIT(A) was justified in sustaining the adjustment u/s 143(1)(a) by means of disallowance made in these cases for late deposit of employees' share to the relevant funds beyond the date prescribed under the respective Acts.

13. Thus, respectfully following the Hon'ble Supreme Court(supra) and Co-ordinate Bench decision of ITAT Pune(supra) the appeal of the assessee is dismissed.

Appeal Numbers from Sl.No.2 to 21 :

14. As we have noted above that the all these assessees from S.No.2 to 21 have common issue, raised identical grounds of appeal and the facts of this appeal under consideration are almost identical to the facts in ITA No.322/PUN/2022. Therefore, our decision in

ITA No.322/PUN/2022 for A.Y.2019-20 will apply ***mutatis-mutandis*** to these appeals mentioned above i.e. from **Sl.No.2 to 21**. Accordingly, grounds of appeal raised by the assessees from **Sl.No.2 to 21** are dismissed.

15. To sum up, appeals of the all the Assessees are Dismissed.

Order pronounced in the open Court on 8th December, 2022.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 8th Dec, 2022/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.