

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos.79 & 80/RPR/2023

निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-2020

Arun Kumar Verma
Plot No.152, Telgu Para,
Maroda Tank, Maroda,
Bhilai (C.G.)
PAN : ABKPV0530H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Puja Bajaj, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.05.2023
घोषणा की तारीख / Date of Pronouncement : 29.05.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 05.01.2023, which in turn arises from the intimations issued by the Centralized Processing Center (CPC)/A.O. under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 23.09.2020 & 29.04.2021 for the assessment years 2018-19 & 2019-20. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal marked as ITA No.79/RPR/2023 for assessment year 2018-19 wherein the assessee has assailed the impugned order on the following grounds of appeal before me :

"1. The Ld. CIT(A) erred in confirming disallowance of Rs.9,80,074/- on account of delayed payment of employee's contribution to ESIC & other welfare fund made by the A.O invoking Sec.36(1)(va). The disallowance made by the A.O and sustained by the Ld. CIT(A) is arbitrary, baseless and not justified.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal."

3. Succinctly stated, the assessee who is an individual and engaged in contract business of Bhilai Steel Plant and HSCL had e-filed his return of income for A.Y.2018-19 on 06.10.2018, declaring an income of Rs.9,00,600/- . Return of income filed by the assessee was processed as such u/s.143(1) of the Act on 17.05.2019, wherein after disallowing assessee's claim for deduction u/s.36(1)(va) of the Act of the delayed deposit of employee's share of contributions towards ESI/PF of Rs.9,08,074/-, his income was determined at Rs.18,80,670/-.

4. Aggrieved the assessee filed an application u/s.154 of the Act with the A.O/CPC, Bengaluru seeking rectification of the disallowance u/s.36(1)(va) of the Act of the delayed deposit of employee's share of contributions towards ESI/PF. However, the aforesaid application filed by the assessee seeking rectification was rejected by the CPC vide its order passed u/s.154 of the Act dated 23.09.2020.

5. The assessee being aggrieved with the order passed by the A.O/CPC, Bengaluru u/s.154 of the Act carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals) while affirming the view taken by the A.O/CPC, Bengaluru, had observed as under:

“7. I have considered the facts of the case, intimation u/s. 143(1) of the Act/order u/s. 154 of the Act and appellant's written submissions. The CPC, while processing the assessee's return of income filed for the AY 2018-19, made an addition of Rs.9,80,074/- u/s.36(1)(va) on account of late deposits of

employees contribution towards PF/ESI. At the outset, the appellant, by placing reliance upon decision of the Hon'ble Mumbai ITAT B' Bench in the case of Mehra Eyetch P. Ltd. vs. ACIT (supra), has contested this action of the CPC by contending that such an adjustment made by the CPC is not permissible under the Act as section 143(1) permits adjustment only when there is arithmetical error or incorrect claim is apparent from any information in the return whereas in the instant case, none of the conditions to make adjustment u/s 143(1) are found to be fulfilled, hence, adjustment made by the DCIT, CPC in respect of disallowance u/s. 36(1)(va)/43B may be held as invalid. However, I am not inclined to agree with this contention of the appellant. In this context, the relevant provisions of sec. 143(1) are reproduced as under:-

1.[Assessment.

2. **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 (a) adjustments, namely:—

(i) any arithmetical error in the return; 22[***]

(ii) an incorrect claim. if such incorrect claim is apparent from any (ii) information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set u ii) off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139:

(iv) disallowance of expenditure [or increase in income] indicated in the (iv) audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter V1-A under the heading "C.—Deductions in (v) respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 (vi) which has not been included in computing the total income in the return:

In the instant case, the appellant had filed its return of income for the AY 2018-19. Therefore, it is necessary to understand what happens after taxpayer has filed the return of income. Central Processing Unit of Income Tax Department carries out a preliminary assessment of all the returns and filed, this assessment primarily includes arithmetical errors, internal inconsistencies, tax calculation and verification of tax payment, this preliminary assessment is wholly computerized and does not have any human intervention. Similar process was followed in assessee's case while processing return of income without any human intervention, it was found that the assessee's case is covered by sub clause (iv) to section 143(1)(a) of the Act. Thus, the CPC made adjustment on account of disallowance of expenditure indicated in the audit report but not taken into account in computing the total income. When there is specific law wherein due date of such payment is prescribed, failing of which disallowance of expenditure is lawful which is duly covered by sec. 143(1)(a)(iv) of the Act. Here, I may refer to the decision of the Hon'ble Delhi High Court in the case of Abhishek Cement Ltd. vs. U10 (W.P. (C) NO. 2130 OF 1990 MAY 22, 2012) The relevant paras. 13 & 14 of the said order are reproduced as under:-

"13. Therefore, the adjustment made by the Assessing Officer was appropriate as per the then applicable existing provisions. Thus, in of the four amounts covered under Section 43B of the Act we do not see any reason and ground to interfere with the adjustments made by the Assessing Officer.

14. The writ petition is accordingly partly allowed in respect of adjustments made under the columns cash payments, charity & donation, disallowance towards entertainment and disallowance on depreciation. With regard to the other disallowances/adjustments under Section 43B, we do not see any reason to interfere with the order of the Assessing Officer."

The appellant has relied on various judicial precedents, but he failed to establish that how the facts of the cases relied on by him are applicable to the facts of the present case, rather in these cases applicability of provisions of sec. 154 is considered. Thus appellant's contention on this aspect is rejected.

8. Coming to the merits of the case, the appellant has contended that since he made payments of PF/ESI before the due date of filing of return of income, therefore, the same may

be allowed in view of ratio laid down by various courts. Before I proceed to decide the issue of allowability of the said sum u/s. 36(1)(va) of the Act, let us have a look at the historical perspective of the relevant provisions of the Act.

Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees. Section 36 of the Act pertains to other deductions. Sub-section (1) of the said section provides for various deductions allowed while computing the income under the head 'Profits and gains of business or profession'. Clause (va) of the said sub-section provides for deduction of 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. Explanation to the said clause provides that, for the purposes of this clause, "due date" 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 there-under or under any standing order, award, contract of service or otherwise. Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B. According to it, if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B and such deduction would be admissible for the accounting year. This provision does not cover employee contribution referred to in clause (va) of sub-section (1) of section 36 of the Act.

9. Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provision of Section 43B on employee contribution as well. There is a distinction between employer contribution and employee's contribution towards welfare fund. It may be noted that employee's contribution towards funds is a mechanism to ensure the compliance by the employers of the labour welfare Hence. it needs to be stressed

that the employer's contribution towards welfare funds such as ESI and PF needs to be clearly distinguished from the employee's contribution towards welfare funds. Employee's contribution is employee's own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measures of penalizing employers who mis-utilize employee's contributions.

10. With respect to the employee's contribution towards Provident Funds/ESI/ Labour Welfare Fund, as to whether disallowable or not with reference to section 36(1)(va) read with section 43B of the Act, different High Courts had been taking divergent views. With a view to rationalize this provision and to achieve consistency, the Finance Act, 2021 has amended clause (va) of sub-section 1 of section 36 of the Act by inserting another explanation 2 to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the "due date" under this clause The amended section 36(1)(va) is reproduced as under:-

"36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(i).....

(ia)

(ib).....

(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.

[Explanation 1].—For the purposes of this clause, "due date" means 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.]

b. [Explanation 2.—For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;]

.....

Further, section 43B of the Act has also been amended by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-section (x) of clause (24) of section 2 applies. The amended section 43B is reproduced as under for the sake of clarity:-

"[Certain deductions to be only on actual payments`".

43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable⁵⁹ under this Act in respect of—

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called. under any law for the time being in force, or]

(b) any sum payable by the assessee as an employer by way of (b) contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, [or]

(c) any sum referred to in clause (ii) of sub-section (1) of section [or]

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution [or a State financial corporation or a State industrial investment corporation]. in accordance with the terms and conditions of the agreement governing such loan or borrowing, or]

(da) any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company. in accordance with the terms and conditions of the agreement governing such loan or borrowing, or]

(e) any sum payable by the assessee as interest on any [loan or advances] from a scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank] in accordance with the terms and conditions of the agreement governing such loan [or advances],] [or]

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee,73[or]]

(g) any sum payable by the assessee to the Indian Railways for the use of railway assets,]

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

[Provided that nothing contained in this section shall apply in relation to any sum [**1 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.

[Explanation 5- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies.]'

From combined reading of the above two amended provisions, it is clear that provisions of section 43B are no longer applicable and deemed to be never to have been applicable in respect of deduction allowed u/s. 36(1)(va) of the Act, this means that any contribution made towards PF/ESI/ Labour Welfare Fund which is made beyond the "due date" as provided in the respective statute is to be disallowed irrespective of the fact that such sum was paid before the due date of filing of return of income.

11. Further, the use of the phrase "deemed never to have applied" in Explanations to Section 36(1)(va) and Section 43B, inserted by the Finance Act 2021, leaves no ambiguity in the statute that the Explanations apply retrospectively, and when there is no ambiguity in the language of the Act the section is to be interpreted by giving literal meaning to the language used in the section itself as laid down by the Apex Court in several decisions, noted in the sub paras below.

(a) In *Turner Morrison & Co. Ltd. v. CIT*, 23 ITR 152 (SC) it was stated that. "The Courts have to construe the statute according to the plain language and tenor thereof and if any untoward consequences result there from, it is for authority other than the Court to rectify or prevent the same".

1. In *CIT v. Ajax Products Ltd.*, 55 ITR 741 (SC), it was observed that "If the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the Legislature".

2. In *CIT v. Shahzada Nand & Sons*. 60 ITR 392 (SC), it is said that "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied.

One can only look fairly at the language used. To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. The underlying principle is that the meaning and intention of a statute must be construed from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient".

(d) In *Smt. Tarulata Shyam v. CIT*, 108 ITR 345 (SC), the court explained that the intention of the Legislature and that the intention of the Legislature must be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be obtained by it. It is impermissible for the Court to read into a taxing provision any words which are not there or exclude words which are there. The words found in the provision must be given their

natural meaning. There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omisus, the defect can be remedied only by legislation and not by judicial interpretation. The normal rule of construction is that the intention of the Legislature is primarily to be gathered from the words used in the statute.

The assessee has also relied on decision of Hon. ITAT Raipur in the case of Vicon Motorcycle and Scooter India Pvt. Ltd and various other decisions in support of the proposition that employees' contribution to PF/ESI, though paid after the "due date" specified in Section 36(1)(va), is allowable as a deduction if such contribution is paid to the relevant funds before the due date for filing return of income u/s 139(1). However, as discussed above, Explanations to Section 36(1)(va) and Section 43B inserted by the Finance Act 2021, by their unambiguous language, explain the law as it always was. Therefore the decisions relied upon by the assessee in support of the proposition that employees' contribution to PF/ESI paid to the relevant funds before the due date for filing return of income u/s 139(1) is allowable as a deduction, are no more applicable as they were rendered before the insertion of the Explanations to Section 36(1)(va) and Section 43B by the Finance Act 2021.

12. The Hon'ble Supreme Court vide its recent judgement in the case of Checkmate Service P. Ltd. vs. CIT in Civil Appeal no. 2833 of 2016 dated 12-10-2022 has affirmed the view expressed by me in previous paras. For the sake of clarity, the relevant paras of the Hon'ble Supreme Court's order are reproduced as under:-

"1. Leave granted. Berger Paints India Ltd. v Commissioner of Income Tax, Kolkata-IV & Anr.1 was the lead matter while hearing this batch of appeals. However, the parties agreed to treat Checkmate Services Pvt. Ltd. v Commissioner of Income Tax-12 as the lead appeal, for convenience. In all these appeals, the common question involved is with respect to the interpretation of Section 36(1)(va) and Section 43B of the Income Tax Act, 1961 (hereinafter. "IT Act"), and whether the appellant assesseees are

entitled to deduction of amounts deposited by them towards contribution in terms of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter, "EPF Act"), The Employees' Provident Funds Scheme, 1952 (hereinafter, "EPF Scheme"), The Employees' State Insurance Act, 1948 (hereinafter, "ESI Act"), The Employees' State Insurance (Central) Regulations, 1950 (hereinafter, "ESI Regulations") or any other provident or superannuation fund.

2. In the years under consideration, the Assessing Officers (hereinafter, "AO") had ruled that the appellants had belatedly deposited their employees' contribution towards the EPF and ESI, considering the due dates under the relevant acts and regulations. Consequently, the AO ruled that by virtue of Section 36(1)(va) read with Section 2(24)(x) of the IT Act, such sums received by the appellants constituted "income". Those amounts could not have been allowed as deductions under Section 36(1)(va) of the IT Act when the payment was made beyond the relevant due date under the respective acts. In other words, as per the AO, as such sums were paid beyond the due dates as prescribed under the respective acts, the right to claim such sums as allowable deduction while computing the income was lost forever. The assessee's pleas were unsuccessful before the Income Tax Appellate Tribunal (hereinafter, "ITAT"). Ultimately, in the case of the impugned judgment, the Gujarat High Court too rejected its pleas.³

3. Noticing a division of opinion on the issue, with the High Courts of Bombay, Himachal Pradesh, Calcutta, Guwahati and Delhi favouring the interpretation beneficial to the assessee on the one hand, and the High Courts of Kerala and Gujarat preferring the interpretation in favour of the Revenue on the other, this court granted special leave to appeal in all these cases.

.....

54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause

would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee is given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. 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. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed.

Considering the fact that delayed payments of PF/ESI are clearly established in the case of the present appellant and the law as laid down by the Hon'ble Apex

Court, it is held that the disallowance made by the AO is justified. Accordingly, the addition made at Rs. 9,80,074/- is confirmed. The ground no. 1 raised by the appellant regarding this issue is dismissed.”

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

7. I have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. As observed by me hereinabove, the A.O/CPC, Bengaluru while processing the assessee's return of income u/s.143(1) of the Act, had disallowed his claim for deduction u/s.36(1)(va) of the Act of the delayed deposit of the employee's share of contributions towards ESI/PF. Ostensibly, the assessee had not agitated the intimation issued by the A.O/CPC, Bengaluru u/s.143(1) of the Act wherein, his claim for deduction of delayed deposit of the employees share of contributions towards ESI/PF was declined, but had preferred an application seeking rectification u/s.154 of the Act of the aforesaid adjustment that was made vide the said intimation. Before advertng to the maintainability of the view taken by the CIT(Appeals) who had upheld the order passed by the A.O/CPC, Bengaluru u/s.154 of the Act, I deem it fit to look into the scope and gamut of the provisions of

Section 154 of the Act and as such, the maintainability of the application filed by the assessee seeking rectification of the impugned mistake by taking recourse to the said statutory provision. Section 154 of the Act reads as under:

“**154.** (1) With a view to rectifying any mistake apparent from the record an income- tax authority referred to in section 116 may,—

- (a) amend any order passed by it under the provisions of this Act ;
- (b) amend any intimation or deemed intimation under sub-section (1) of section 143;
- (c) amend any intimation under sub-section (1) of section 200A;
- (d) amend any intimation under sub-section (1) of section 206CB.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned—

- (a) may make an amendment under sub-section (1) of its own motion, and
- (b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor or by the collector, and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee

or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.

(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

- (a) making the amendment; or
- (b) refusing to allow the claim.”

On a careful perusal of the aforesaid statutory provision r.w. settled position of law as had been expounded in various judicial pronouncements, I find that it is only in a case where an order passed by the A.O is found suffering from a mistake which is glaring, patent, apparent and obvious from record that a recourse for seeking rectification of the said mistake u/s.154 of the Act is allowed. My aforesaid view is supported by the landmark judgment of the Hon'ble Supreme Court in the case of T.S. Balaram ITO vs. Volkart Bros (1971) 82 ITR 50 (SC), wherein the Hon'ble Apex Court after deliberating at length on the scope and gamut of Section 154 of the Act had observed as under:

“From what has been said above, it is clear that the question whether S.17(1) of the Indian Income-tax Act, 1922 was applicable to the case of the first respondent is not free from doubt. Therefore the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under S.154 of

the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In *Satyanarayan Laxminarayan Hegde and ors. v. Millikarjun Bhavanappa Tirumale*(1) this Court while Spelling out the scope of the power of a High Court under Art. 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see *Sidhamappa v.. Commissioner- of Income-tax, Bombay*(2). The power of the officers mentioned in S. 154 of the Income-tax Act, 1961 to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". In this case it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."

Considering the limited scope of Section 154 of the Act, I am of the considered view that as the issue involved in the present appeal, i.e. disallowance u/s.36(1)(va) of the Act of the assessee's claim for deduction of the delayed deposit of the employees share of contribution towards ESI/PF is not free from doubt and debate, therefore, the same cannot be brought within the realm of rectification u/s.154 of the Act. My aforesaid conviction is all the more fortified from the fact that the assessee has assailed the order passed by the A.O u/s.154 of the Act, inter alia, on the ground that as prior to the judgment of the Hon'ble Apex Court in the case of *Checkmate Services (P) Ltd. Vs. Commissioner of Income Tax-1, (2022) 143 taxmann.com 178 (SC)*, there were two school of thoughts on the issue in hand i.e. as to

whether or not the delayed deposit of the employees share of contribution towards ESI/PF was to be allowed as deduction u/s.43B of the Act, therefore, for the said reason no disallowance of the same could have been made u/s.143(1) of the Act. The aforesaid contention of the Ld. AR takes the case of the assessee beyond the scope and ken of Section 154 of the Act. I, say so, for the reason that now when the issue in hand, i.e. allowability of the assessee's claim for deduction of the delayed deposit of employee's share of contributions towards ESI/PF, as claimed by the Ld. AR being a debatable issue could not have been summarily disallowed by the A.O vide his intimation issued u/s.143(1) of the Act, then carrying the said contention of the Ld. AR further, it can safely be concluded that the said issue admittedly being debatable in nature could not have been subjected to rectification u/s.154 of the Act. Accordingly, on the basis of my aforesaid deliberations, I am of the considered view that the application filed by the assessee before the A.O./CPC for rectification u/s.154 of the Act was in itself not maintainable.

9. As I have held the application filed by the assessee seeking rectification of the aforesaid debatable issue i.e. as it was prior to the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) as not maintainable, therefore, I refrain from dealing with other contentions advanced by the assessee on the merits of the case.

10. Considering the fact that the CIT(Appeals) had failed to deal with the aforesaid material aspect, i.e. maintainability of the application filed by the assessee u/s.154 of the Act, and had adverted to the merits of the contentions advanced by the assessee before him, therefore, in terms, of my aforesaid observations, I modify the order of the CIT(Appeals) and uphold the view taken by him wherein he had approved the order passed by the A.O declining the assessee's request for rectification u/s.154 of the Act. Thus, the **Ground of appeal No. 1** raised by the assessee is dismissed in terms of my aforesaid observations.

11. **Ground of appeal No.2** being general in nature is dismissed as not pressed.

12. Resultantly, the appeal filed by the assessee in ITA No.79/RPR/2023 for A.Y.2018-19 is dismissed in terms of my aforesaid observations.

ITA No.80/RPR/2023
A.Y.2019-20

13. As the facts and issues involved in the captioned appeal remains the same as were there before me in ITA No.79/RPR/2023 for assessment year 2018-19, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal i.e., ITA No. 80/RPR/2023 for assessment year 2019-20. In this case also, I

modify the order of the CIT(Appeals) and uphold his order wherein he had approved the order passed by the A.O declining the assessee's request for rectification u/s.154 of the Act.

14. Resultantly, the appeal filed by the assessee in ITA No.80/RPR/2023 for A.Y.2019-20 is dismissed in terms of my aforesaid observations.

15. In the combined result, both the appeals of the assessee are dismissed in terms of my aforesaid observations.

Order pronounced in open court on 29th day of May, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 29th May, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur