आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.16/RPR/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Chhattisgarh State Power Generation Company Ltd.
O/o. Executive Director-Finance Ground Floor,
Vidyut Seva Bhawan, Daganiya,
Raipur-492 001 (C.G.)
PAN : AADCC5772F

.....**अपीलार्थी /** Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(2), Raipur (C.G.)

.....**प्रत्यर्थी** / Respondent

आयकर अपील सं. / ITA No.24/RPR/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Chhattisgarh State Power Generation Company Ltd.
Ground Floor, Vidyut Seva Bhawan, Daganiya,
Raipur-492 001 (C.G.)
PAN : AADCC5772F

.....**अपीलार्थी /** Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Raipur (C.G.)

.....**प्रत्यर्थी** / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri V.K Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 25.04.2023
घोषणा की तारीख / Date of Pronouncement : 15.06.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the assessee are directed against the orders passed by the CIT(Appeals)-1, Raipur/National Faceless Appeal Centre (NFAC), Delhi dated 22.12.2016 & 30.12.2021 respectively, which in turn arises from the orders passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 30.12.2011 and 09.03.2021 for A.Ys. 2009-10 & 2018-19, respectively. 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. We shall first take up the appeal filed by the assessee in ITA No.16/RPR/2017 for A.Y.2009-10, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming disallowance of depreciation of Rs.38,06,00,357/- claimed under section 32 of the Income Tax Act, 1961.
>
> 2. That on the facts and in the circumstances of the case and in law, CIT(A) erred in confirming addition of stale cheques of Rs.9,75,363/- by relying on the Supreme Court judgment in the case of CIT Vs. Sundram Iyenger & Sons Ltd. 222 ITR 344.
>
> 3. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming lumpsum 2/3rd disallowance of Rs.20,31,73,159/- out of total expenses on Repair and Maintenance of plant and machinery.
>
> That the above grounds of appeal are without prejudice to each other.
>
> That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal."

3. Succinctly stated, the assessee company which is owned by the State Government of Chhattisgarh and is engaged in the business of generation of power, had come into being on 01.01.2009 consequent upon restructuring /reorganization of erstwhile CSEB. The return of income was filed by the assessee company for A.Y.2009-10 on 30.03.2011, declaring a loss of Rs.(-) 273,10,01,778/- (as per revised return). Case of the assessee was, thereafter, selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of assessment proceedings, it was observed by the A.O that the assessee company had, inter alia, raised a claim for depreciation of Rs.197,24,27,036/- on the basis of WDV received as per the transfer scheme. However, the A.O was of the view that the assessee

company was entitled for depreciation on the WDV that was lastly shown by CSEB, before its disintegration, for each block of assets, which thereafter were ultimately transferred to all the new companies formed on its disintegration, viz. CSPGCL, CSPTCL, CSPDCL and CHPHCL. In the absence of the exact figures of WDV of transferred assets, the A.O calibrated the same on a *pro-rata* basis, i.e. on a percentage allocation to each company that was formed pursuant to the aforesaid disintegration of CSEB, as under:

CSPGCL	ANNEXURE						
CG STATE POWER GENERATION COMPANY			AY.2009-10*	DEPRECIATION CHART AS PER INCOME TAX(*prorata basis*)			
Particulars	WDV as per Income Tax	Transfer of Assets Post FRP	Addition during the ye	Total	Rate of Depreciation	Depreciation Thereof	Closing WDV
Factory Building	252,842,280.28	-	9,061,419.00	261,903,699.28	10%	13,095,184.96	248,808,514.32
Residential Building	142,901,935.59	-	386,789.00	143,288,724.59	5%	3,582,218.11	139,706,506.48
Plant & Machinery	20,591,880,652.98	394,455.00	320,593,199.00	20,912,868,306.98	15%	1,568,465,123.02	19,344,403,183.96
Furniture & Fixture	11,854,340.00	(430,276.00)	328,151.00	11,752,215.00	10%	587,610.75	11,164,604.25
Computer	16,972,709.16	(156,113.00)	266,108.00	17,082,704.16	60%	5,124,811.25	11,957,892.91
Vehicle	12,956,408.46	-	-	12,956,408.46	15%	971,730.63	11,984,677.83
Total	21,029,408,326.47	(191,934.00)	330,635,666.00	21,359,852,058.47		1,591,826,678.72	19,768,025,379.75
AY.2009-10 period is only from Jan to March'2009 after company's formation							

[G.N. SINGH]
ACIT-1(2)
RAIPUR

The A.O on the basis of his aforesaid observations restricted the assessee's claim for deprecation to an amount of Rs.159,18,26679/-. Accordingly, the assessee's claim for excess depreciation of Rs.38,06,00,357/- [Rs.1972427036/- (-) Rs.1591826679/-] was disallowed by the A.O.

5. Further, on perusal of the details, it was gathered by the A.O that the assessee had shown an amount of Rs.9,75,363/- as a liability outstanding against stale cheques. The A.O holding a conviction that there could be no liability based on stale cheques for the reason that the concerned party could not raise any claim on the basis of such cheques which had become barred by time, thus, made an addition of the aforesaid amount of Rs.9,75,363/- to the returned income of the assessee company u/s.41(1) of the Act.

6. Apart from that, it was observed by the A.O that the assessee company had failed to come forth with the relevant details with respect to its claim for deduction of repair and maintenance expenses. Observing, that his predecessor while framing the assessment in the case of erstwhile CSEB for the years prior to A.Y.2009-10 had held 2/3rd part of the expenditure as capital expenditure and thus, restricted its entitlement under similar circumstances to 1/3rd of its claim for deduction of revenue expenditure, the A.O adopted the same approach and disallowed an amount of Rs.20,31,73,159/- out of the aforesaid claim for deduction of repair and maintenance expenses as was raised by the assessee company, as under:

SL	Particulars	P & M (INR)	Building (INR)
(a)	Repair & Maintenance Exp.	29,35,52,568/-	3,49,72,224/-
(b)	2/3rd of Expenditure	19,57,01,712/-	2,33,14,816/-
(c)	Less : Deprn. @7.5%/5%	(-)1,46,77,628/-	(-)11,65,741/-
(d)	Amount of addition	18,10,24,084/-	2,21,49,075/-
	Total Addition	Rs.20,31,73,159/-	

Accordingly, on the basis of his aforesaid deliberations the A.O vide his order passed u/s.143(3) dated 30.12.2011 scaled down the loss of the assessee company to an amount of Rs.(-) 210,45,20,072/-.

7. Aggrieved the assessee assailed the order passed by the A.O u/s.143(3) dated 30.12.2011 before the CIT(Appeals), but without any success in so far the aforesaid additions/disallowances made by the A.O were concerned.

8. The assessee company being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

9. We 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.

10. Apropos the disallowance made by the A.O of the assessee's claim for deprecation on the assets which the assessee company had received consequent upon restructuring/reorganization of erstwhile CSEB, i.e. by calculating the same on the WDV that was lastly shown by CSEB for each block of assets, and which thereafter were ultimately transferred to all the new companies formed by its disintegration, viz. CSPGCL (i.e. assessee company), CSPTCL, CSPDCL and CHPHCL, as against the assessee's claim which in turn was based on WDV received as per the transfer scheme, we find that the said issue is squarely covered by the order passed by the ITAT, Bench "C", Mumbai in the case of Chhattisgarh State Power Distribution Company Ltd. Vs. DCIT, Circle-1(2), Raipur, ITA No.01/BLPR/2013 and ITA No.14/BLPR/2013 for A.Y.2009-10 dated 31.05.2019. On a perusal of the aforesaid order of the Tribunal, it transpires that the latter's indulgence was sought for adjudicating the core issue, viz. as to whether the acquisition of assets by the assessee was pursuant to demerger within the meaning of "Explanation 4" to Section 2(19AA) of the Act so as to invite the provisions of "Explanation 2B" to Section 43(6) of the Act for restricting the deprecation to the WDV of the erstwhile entity? It was observed by the Tribunal that as the assets belonging to CSEB were transferred to the State Government which in turn had transferred the same to the assessee company, therefore, the "Explanation 2B" to Section 43(6) of the Act which was triggered in a

situation where there were only two parties i.e. demerged company and the resulting company, would, thus not be applicable to the facts involved in the case before them, wherein three parties were involved, i.e. (i) CSEB ; (ii) State Government and (iii) assessee company.

11. Considering the aforesaid factual position, it was further observed by the Tribunal that the deeming section created by virtue of "Explanation 4" to Section 2(19AA) treating the reorganization of State bodies as a demerger cannot be extended to Section 43(6) of the Act so as to calculate the WDV of the successor companies as per "Explanation 2B" below Section 43(6) of the Act. In sum and substance, it was observed by the Tribunal that the provisions of "Explanation 2B" to Section 43(6) of the Act were not applicable to the case before them. On the basis of the aforesaid facts, it was observed by the Tribunal that the cost of assets acquired by the assessee company would be the consideration that was paid by it by issuing equity shares to CGSPHCL. It was further observed by the Tribunal that cost of assets in the hands of the assessee would be the value on which depreciation would be allowed as per the rates prescribed u/s.32(1)(ii) of the Act. Backed by its aforesaid observations, the Tribunal had directed the A.O to allow deprecation to the assessee on the cost of acquisition of the assets as was recorded by the assessee in accordance

with the scheme framed by the Government of Chhattisgarh. For the sake of clarity, the relevant observations of the Tribunal are culled out as under:

> "10. We have carefully considered the rival submission. The question before us is whether the acquisition of assets by the assessee was pursuant to demerger within the meaning of Explanation 4 to section 2(19AA) of the Act so as to invite the provisions of Explanation 2B to section 43(6) of the Act in order to restrict the depreciation to the WDV of the erstwhile entity. At the outset, we refer to Explanation 4 to section 2(19AA) of the Act, which reads as under:
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> > "2(19AA)... "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 77 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—
> >
> > (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;
> >
> > (ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
> >
> > Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils [such conditions as may be notified in the Officer Gazette, by the Central Government"].
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> (Underlined for emphasis by us)
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> 10.1 The Explanation 4 to section 2(19AA) of the Act was inserted vide Finance Act, 1999 which was subsequently amended by Finance Act, 2000 to provide that reconstruction will be deemed demerger subject to fulfilment of conditions as may be specified by the Central Government. The effect of amendment has been

explained in the CBDT Circular No. 794 dated 9.8.2000, which reads as under:

> "6.1 Explanation 4 of section 2(19AA) as inserted by the Finance Act of 1999 provided that the splitting up or reconstruction of any authority or body constituted under a Central, State or Provincial Act or a local authority or a public sector company into separate bodies or authorities shall be deemed to be demerger on fulfilling the conditions specified in sub-clauses (i) to (vii), to the extent possible. It was pointed out that in case of spitting of these authorities, boards or companies, the conditions specified in the section may not be relevant in relation to such authorities or boards, inasmuch as all properties and liabilities may not be transferred; there may not be any consideration for demerger by way of issue of shares; the transfer may not be on going concern basis, etc.
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> ****
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> 6.2 The Act, therefore, amends Explanation 4 to provide that such splitting up or reconstruction shall be subject to conditions as may be specified by the Central Government.
>
> 6.3 This amendment takes effect retrospectively from the 1st day of April, 2000.
>
> (Underlined for emphasis by us)

As can be seen from above, Explanation 4 to section 2(19AA) of the Act creates deeming fiction to cover within its ambit even the cases of splitting up or the reconstruction of any authority or body constituted under a Central, State or Provincial Act into separate company provided the split up or reconstruction fulfils the conditions notified by the Central Government. Thus, in order to fall within the deeming fiction, twin conditions need to be satisfied, namely, (a) there should be splitting up or reconstruction of any authority or body, etc.; and (b) such spilt up or reconstruction shall fulfil the conditions notified by the Central Government. Further, in cases wherein Explanation 4 is applicable, the other conditions of demerger as stated on earlier part of the section will not be applicable as is evident from the above Circular explaining the rationale behind amendment in Explanation 4 to section 2(19AA).

10.2 In exercise of the power conferred under Explanation 4 to section 2(19AA) of the Act, the Central Government has issued Notification No. 11576/F.No.149/133/2000-TPL(Pt.) dated 26.12.2000 wherein it laid down following two conditions to be fulfilled for treating the reconstruction as demerger, namely,

(i) splitting up or reconstruction is effected through a notification in the Official Gazette by the Central or the State. Government; and,

(ii) assets of the split up or reconstructed authority or body, are transferred to one or more resulting companies on a going concern basis.

10.3 In the present case, the CSEB, being a body established under state law, was split up/ reorganized into separate companies. The State Government notified the scheme of reorganization known as 'CSEB Transfer Scheme Rules, 2010 according to which as per the provisions of section 131 of the Electricity Act, 2003, all the assets of the erstwhile CSEB were transferred and stood vested in the State Government, The State Government after acquiring the assets, transferred these assets to all the companies at the value determined on the basis of the earning potential of the assets.

10.4 We find that admittedly there was reconstruction of body established by the State Government, namely CSEB, into separate companies through a notification in the Official Gazette of Government of Chhattisgarh, being State Government. Thus, first condition laid down by the Central Government in the above notification is fulfilled.

10.5 The second condition is that assets of the reconstructed body should be transferred to one or more resulting companies on 'going concern basis. We find that the assets and liabilities of the power distribution activities were very much transferred in favour of the assessee company by the State Government as is evident from the Notification dated 29.10.2010 dated No. 202/F-21/13/09/13/2/ED notifying the opening balance sheet of successor company which, inter alia, included the liabilities.

10.6 Thus, we find that all the conditions of section 2(19M) of the Act are fulfilled in this case and, therefore, the above transaction clearly falls within the meaning of provisions of Explanation 4 to section 2(19AA). We may hasten to note here that the aforesaid finding is not enough to uphold the stand of the Assessing Officer in altering the depreciation claimed by the assessee. The next, and the more pertinent, question to examine is as to whether or not Explanation 2B to section 43(6) of the Act which provides for depreciation on WDV of the assets in the hands of resulting company under demerger is applicable in this case or not? Explanation 2B to section 43(6) of the Act reads as under:

> "Explanation 2B.-Where in a previous year, any asset forming part of a block of assets is transferred by a demerged

> company to the resulting company, then, notwithstanding anything contained in clause (1), the written down value of the block of assets in the case of the resulting company shall be the [written down value of the transferred assets [***] of the demerged company immediately before the demerger"

It is evident from the above that for applicability of the above provision, there ought De transfer of assets by the demerged company to the resulting company. In the =sent case, the assets have been transferred by the State Government to the assessee and admittedly, the State Government has not demerged its undertaking art thus, it cannot be said to be demerged company; the assets belonged to CSEB, fetich were transferred to the State Government, who in turn transferred the assets the assessee-company. The Explanation 2B to section 43(6) of the Act provides for situation wherein there are only two parties i.e. demerged company and resulting company, whereas in the present case three parties are involved namely (i) CSEB, (ii) State Government; and, (iii) assessee. Thus, the above Explanation 26 does not govern the present situation, as ostensibly, the deeming fiction created by virtu; of Explanation 4 to section 2(19AA) treating the reorganization of state bodies as demerger cannot be extended to section 43(6) of the Act so as to calculate the WDV of the successor companies as per Explanation 28 below section 43(6) of the Act. Thus, the provisions of section Explanation 2B to section 43(6) of the Act are not applicable in the present case. The aforesaid legal position is also fortified by the fact the WDV of the assets as per the Act which were transferred to the assessee are also not available, on account of the fact that all assets classifiable under one block sets formed part of that block of assets and thus, the WDV of each individual asset was un-determinate. Thus, the stand of the Assessing Officer is liable to be vacated.

10.7 We may now examine the approach of the assessee while making the claim of depreciation. In this context, we may refer to the provisions of section 32(1)(ii) of the Act which provides for allowance and rate of depreciation. It has been pointed out that as per section 32(1)(ii) of Act, the deprecation is allowable on the WDV of the block of asset and in case the asset is acquired during the year, it will be actual cost of asset on which depreciation is to be allowed.

10.8 In this regard, it is pertinent to note here that the scheme notified by the State Government, namely 'CSEB Transfer Scheme Rules, 2070, for reorganization of CSBE, which at Rule 7(g) states that the value of the assets to be transferred to the transferees shall be the fair value determined in any one or more of the following

> basis namely, (a) revenue earning potential, (b) depreciation replacement value or (c) book value. Further Rule 7(j) states that opening balance sheet of the transferee companies may be notified by the State Government. Accordingly, in terms of Rule 7(j) of the Transfer Rules, Government of Chhattisgarh vide notification dated 29.10.2010 No. 202/F-21/13/09/13/2/ED notified the opening balance sheet of successor companies which included the opening balance sheet of the assessee company as on 01.01.2009, being one of the successor company. Based on the values assigned in the said opening balance sheet, assessee-company recorded the value of assets and liabilities in its books of account and also for the purpose of income tax it reported the addition to the fixed assets based on the same value. In consideration for the transfer of these assets, assessee issued equity shares to the CGSPHCL. As such, the cost of the assets acquired by the assessee corresponds to the consideration paid by the assessee by way of issue of shares. The fact that assessee has issued shares to the extent of value of the assets acquired by it, as above, is consideration of transfer of assets in its favour has not been controverted by the Revenue at any stage. Thus, the cost of assets in the hands of the assessee will be the value on which depreciation is to be allowed as per the rates prescribed in section 32(1)(ii) of the Act.
>
> 10.09 In view of the above discussion, we set aside the order of CIT(A) and direct the Assessing Officer to allow depreciation to the assessee on the cost of acquisition of the assets as recorded by the assessee in accordance with the Scheme framed by the Government of Chhattisgarh. Thus, Ground of appeal no. 2 is allowed."

As the facts involved in the case before us remains the same as were there before the Tribunal in the aforementioned case of Chhattisgarh State Power Distribution company Ltd. (supra), therefore, we respectfully follow the same. Accordingly, we set-aside the order of the CIT(Appeals) and direct the A.O to allow depreciation to the assessee company on the cost of acquisition of the assets as recorded by the assessee in accordance with the scheme framed by the Government of Chhattisgarh. Thus, the **Ground of appeal No.1** is allowed in terms of our aforesaid observations.

12. We shall now deal with the grievance of the assessee company that both the lower authorities had erred in making/confirming an addition of Rs.9,75,363/- on account of stale cheques u/s. 41(1) of the Act.

13. As observed by us hereinabove, the A.O was of the view that as the concerned parties could not raise any claim on the basis of stale cheques as the same had become barred by limitation, therefore, the said liabilities had ceased to exist. On appeal, the CIT(Appeals) concurred with the view taken by the A.O.

14. We have given a thoughtful consideration and find that the same issue had come up before a co-ordinate Bench of the Tribunal i.e. ITAT, Bench "C", Mumbai in the case of Chhattisgarh State Power Distribution Company Ltd. Vs. DCIT, Circle-1(2), Raipur, ITA No.01/BLPR/2013 in ITA No.14/BLPR/2013 for A.Y.2009-10 dated 31.05.2019, wherein involving identical facts the A.O while framing assessment in the case of CSPDCL had made an addition of Rs.19,98,021/- on account of remission and cessation of liability pertaining to stale cheques. The aforesaid addition was, thereafter, vacated by the CIT(Appeals). On further appeal, the Tribunal had upheld the view taken by the CIT(Appeals) by observing as under:

> "32. Ground of appeal no. 4 relates to addition of Rs. 19,98,021/- on account of remission and cessation of liability. The Assessing Officer relied on the judgment of CIT Vs. Sundaram lyengar and

> Sons Ltd, 222 ITR 344 and held that as the cheque had become stale and the parties have not encashed the same, therefore, they are not payable and, hence, shall be treated as income of the assessee. The CIT(A) accepted the contention of the assessee, that as the liability is still standing in the balance sheet, therefore, it cannot be assumed that it had ceased to exist for the reason that the cheques have become stale. The CIT(A) held that there is nothing on record to prove that the opposite parties have given up their claims and therefore, the same cannot be treated as a ceased liability. The CIT(A) relied on the decision of the Hon'ble Calcutta High Court in the case of Goodricke Group Limited Vs. CIT, 338 ITR 116 to decide the issue in favour of the assessee.
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> 33. In our considered view, merely because the cheque issued by the assessee was not enchased by the creditor cannot be treated as a cessation of liability. The non-presentation of cheque could be due to any reason and cannot ipso facto lead to an inference that creditor has agreed to waive his right to claim the amount in future. It is not a case wherein there was bilateral agreement for cessation of liability or assessee has suo-moto written back the amount in its books of account. Accordingly, we uphold the decision of CIT(A) and the Ground of appeal No.4 raised by the revenue is hereby dismissed."

As the facts involved in the present appeal remains the same as were there before the Tribunal, therefore, we respectfully follow the same. Accordingly, we uphold the order of the CIT(Appeals) and vacate the addition of Rs.9,75,363/- made by the A.O. Thus, the **Ground of appeal No.2** raised by the assessee company is allowed in terms of our aforesaid observations.

15. We shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the lumpsum disallowance of 2/3rd of the assessee's claim for deduction on account of repair and maintenance of plant and machinery.

16. As observed by us hereinabove, the A.O had primarily for two fold reasons held 2/3rd out of the assessee's claim for deduction of repair and maintenance expenditure as a capital expenditure, viz. (i) that the relevant details were not filed by the assessee on the ground that some time would be required as the same were maintained at its different sites; and (ii) that involving identical facts his successor had while framing the assessment in the case of erstwhile CSEB for the years prior to A.Y.2009-10 held 2/3rd part of the assessee's claim for deduction of repair and maintenance expenditure as a capital expenditure. At the same time, we may herein observe that the A.O after recharacterizing 2/3rd of the assessee's claim for deduction of repair and maintenance expenditure as a capital expenditure had allowed depreciation as per prescribed rate on the capitalized figure.

17. We have given a thoughtful consideration to the aforesaid issue, and find that the primary issue that had weighed in the mind of the A.O while recharacterizing 2/3rd of the assessee's claim for deduction of repair and maintenance expenditure as a capital expenditure was the fact that such approach was adopted by his predecessor while framing assessment in the case of CSEB for the years prior to A.Y.2009-10. Our attention was drawn by the Ld. AR to the order passed by the Co-ordinate Bench of the Tribunal, Bench "C", Mumbai in the case of Chhattisgarh State Electricity Board Vs. DCIT, Circle-8(3) Raipur, ITA No1/NAG/2009 for A.Y.2004-05

dated 20.08.2010, wherein the Tribunal after deliberating at length on the issue of recharacterizing of the assessee's claim for deduction of repair and maintenance expenditure as a capital expenditure by the A.O, had restored the matter to the file of the A.O for fresh adjudication on merits, observing as under:

> "10. We have noted that the impugned disallowance proceeds on the basis that the assessee did not produce the requisite details before the Assessing Officer, but, as stated in the affidavit filed before us, the assessee's representative did produce as Many as 131 files before the Assessing Officer and the Assessing Officer did not even examine these files. The assessee had brought large number of files, which he were claimed to be containing copies of requisitioned vouchers, to our court as well. The assessee is a public sector undertaking and subjected to various audits and internal control measures. It cannot, therefore, be said that the assessee does not have any vouchers in support of the expenses claimed, or that he is not in a position to furnish the same. We have also noted that the time granted to the assessee, whether in assessment proceedings or in remand proceedings, was merely eight and seven days respectively. In these circumstances, resorting to a, disallowance only on the basis of sample study of three vouchers, which is clearly an inadequate size of sample anyway — to be truly representative of all the vouchers , is totally devoid of any legally sustainable merits. In any case, the admissibility of repairs and maintenance expenses is to be examined on the merits and not on the, basis of inferences. In view of these discussions and having regard to assessee's assurance that the requisitioned details will be duly furnished before the Assessing Officer in remanded proceedings, we deem it fit and, proper to remit the matter to the file of the Assessing Officer for fresh adjudication after giving a fair and reasonable opportunity of hearing to the assessee. We also direct the assessee to scrupulously comply with all the requisitions of the Assessing Officer, in a fair and reasonable manner, and not to resort to any dilatory tactics. As we are remitting the matter to the file of the Assessing Officer for fresh adjudication on merits, we refrain from making any observations on merits of the admissibility of the claim. That aspect of the matter is to examined by the Assessing Officer in the limits of the submissions of the cases and on specific facts of the claims. With these observations, the matter stands restored to the file of the Assessing Officer."

18. Ostensibly, the issue involved in the present appeal before us, i.e. sustainability of the disallowance of 2/3rd of repair and maintenance expenditure as a capital expenditure by the A.O, which, therein, had been upheld by the CIT(Appeals) is primarily based on the fact that such approach was adopted by the A.O while framing assessment in the case of CSEB for years prior to A.Y.2009-10. We are of the considered view that now when in the case of CSEB for A.Y.2004-05 the matter has been remitted by the Tribunal to the file of the A.O for fresh adjudication, therefore, in all fairness, a similar direction would be required qua the issue in hand in the case of the present assessee company before us. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O for fresh adjudication qua the admissibility of the assessee's claim for deduction of repair and maintenance expenses. Needless to say, the A.O in the course of set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee company which shall remain at a liberty to substantiate its claim on the basis of fresh documentary evidence. Thus, the **Ground of appeal No.3** raised by the assessee company is allowed for statistical purposes in terms of our aforesaid observations.

19. In the result, appeal of the assessee in ITA No.16/RPR/2017 is allowed for statistical purposes in terms of our aforesaid observations.

ITA No.24/RPR/2022
A.Y.2018-19

20. We shall now take up the appeal filed by the assessee in ITA No. 24/RPR/2022 for A.Y.2018-19, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1). On the facts and in the circumstances of the case, CIT(A) erred in confirming action of Assessing Officer in assessing total income as per normal provisions of the Income-tax Act' 1961 at Rs.4,29,50,20,023/- as against returned income of Rs. Nil and raising demand of Rs.1,39,66,64,313/- in spite of AO's specific relevant observation in assessment order that "no addition is made and sum payable is determined as per return" as assessee company had paid due income-tax of Rs.45,76,20,500/-, surcharge of Rs.5,49,14,460/-, education cess of Rs.1,53,76,049/- and interest u/s 234A/B/C of Rs.4,02,13,333/- on the returned income as per section 115JB on or before filing of revised return.
>
> 2). On the facts and in the circumstances of the case, CIT(A) erred in confirming action of Assessing Officer in making disallowance of Rs.4,44,59,090/- by alleging that employees contribution to "Employee Provident Fund (EPF)" paid after the due date specified in the "Employees' Provident Funds and Miscellaneous Provisions Act, 1952" but on or before the due date specified u/s.139(1) of the Income-tax Act, 1961 is not allowable in view of provision of section 36(1)(va) in spite of the fact that said contribution was paid on 16.04.2018 because on the due date of payment, i.e. on 15.04.2018 and a day before it, there was bank holiday and there are so many judicial pronouncements, including of hon'ble Jurisdictional ITAT' Raipur Bench, in which it is held in clear terms that payment of employees contribution to EPF made on or before the due date of filing of return/s 139(1) is allowable in view of the provisions of Section 43B, as amended vide Finance Act, 2003.
>
> 3). On the facts and in the circumstances of the case, CIT(A) erred in confirming action Assessing Officer in making disallowance of Rs.26,01,340/-by alleging that employees contribution to "Employee State Insurance Corporation (ESIC)" paid after the due date specified in the "Employment State Insurance Act, 1948" but on or before the due date specified u/s.139(1) of the Income-tax Act, 1961 is not allowable in view of provision of section 36(1)(va) in spite of the fact that said contribution was paid on 23.03.2018 as against due date of 21.03.2018 due to some unavoidable circumstances and

there are so many judicial pronouncements, including of hon'ble Jurisdictional ITAT' Raipur Bench, in which it is held in clear terms that payment of employees contribution to ESIC made on or before the due date of filing of return/s.139(1) is allowable in view of the provisions of Section 43B, as amended vide Finance Act, 2003.

4). On the facts and in the circumstances of the case, CIT(A) erred in confirming action of Assessing Officer in making addition of "Interest on IT Refund" of Rs.3,34,68,556/- under the head "Profits & gains of business or profession" in spite of the fact that said income was already offered for taxation under the head "Income from other sources" while filing revised return of income for the year under consideration.

5). On the facts and in the circumstances of the case, CIT(A) erred in confirming action of Assessing Officer in determining book profit as per section 115JB of the Income-tax Act' 1961 at Rs. 2,99,36,24,326/-as against returned book profit of Rs. 2,47,36,24,326/- by making double addition of Rs.52,00,00,000/- under clause (i) of Explanation 1 of section 115JB in spite of AO's specific relevant observation in assessment order that "no addition is made and sum payable is determined as per return" as assessee company had paid due income-tax of Rs.45,76,20,500/-, surcharge of Rs.5,49,14,460/-, education cess of Rs.1,53,76,049/- and interest u/s 234A/B/C of Rs.4,02,13,333/- on the returned income as per section 115JB on or before filing of revised return.

6) The appellant reserves the right to add, amend or alter any ground or grounds of appeal at the time of hearing."

21. Succinctly stated, the assessee company had e-filed its original return of income for A.Y. 2018-19 on 30.03.2019 declaring an income of Rs. Nil under the normal provisions of the Act a/w. book profit u/s.115JB of Rs.43,33,74,802/-. Thereafter, the assessee revised its return of income, wherein the income under normal provisions was disclosed at Rs. Nil a/w. book profit u/s.115JB of the Act at Rs.56,81,24,342/-.

22. Return of income filed by the assessee was processed vide intimation issued u/s.143(1)(a) of the Act dated 16.10.2019, wherein its claim for deduction of delayed deposit of employee's share of contributions towards Employee's Provident Fund (EPF) and Employee's State Insurance Corporation (ESIC) of Rs.4,44,59,090/- and Rs.26,01,340/-, respectively, were disallowed u/s.36(1)(va) r.w.s. 2(24)(x) of the Act.

23. Case of the assessee was, thereafter, selected for scrutiny assessment u/s.143(2) of the Act, wherein, no further addition was made by National e-Assessment Centre (NeAC) vide its order passed u/s.143(3) of the Act dated 09.03.2021.

24. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) on a very peculiar ground, which reads as under:

> "1) That Assessing Officer erred in raising demand of Rs.1,39,66,64,313/- while passing assessment order u/s.143(3) in spite of his observation in assessment order that "no addition is made and sum payable is determined as per return" as assessee company had paid due income tax of Rs.45,76,20,500/-, surcharge of Rs.5,49,14,460/-, education cess of Rs.1,53,76,049/- and interest u/s.234A/B/C of Rs.4,02,13,333/- as on the returned income as per section 115JB on or before filing of revised return."

However, the aforesaid ground did not find favour with the CIT(Appeals), who observed that as the demand in question was raised on the basis of adjustments that were made earlier by CPC at the time of processing the assessee's return of income, therefore, there was no substance in the claim

of the assessee that the demand was wrongly raised in its hand. In sum and substance, the CIT(Appeals) was of the view that the observation of the A.O that no additions were being made, was only to convey that no further addition was made in the regular assessment as the *prima facie* adjustments that were already made at the time of processing the return of income have to be retained. For the sake of clarity the relevant observation of the CIT(Appeals) is culled out as under:

> "…….. To sum up, the appellant has argued that since no addition has been made in the regular assessment, the demand raised in the computation of income, on the basis of adjustments made earlier by the CPC at the time of processing of return, was uncalled for, and hence, should be deleted.
>
> 7.3. This argument of the appellant, however, is based on the incorrect appreciation of facts available on record. The regular assessment order u/s. 143(3) dated 09.03.2012 has been passed by the A.O, after the issuance of the intimation under section 143(1) dated 16.10.2019. In the body of the regular assessment order, it is mentioned that no addition is being made in view of the material available on record, and that assessment of income is made as per the computation sheet. It is however, noticed from the computation sheet, annexed to the regular assessment order under section 143(3), that the total income has been /computed therein at Rs 4,29,50,20,023/-, as against the total income at Rs Nil, reported in the return. It is also noticed that the computation of income in the regular assessment order under section 143(3), is on similar lines as the computation of income made in the intimation order under section 143(1). In other words, the adjustments made to total income under section 143(1)(a) at the time of processing of return, towards disallowance of employees' contribution to the provident fund and ESI, and provision for gratuity, have not been interfered with in the regular assessment order, i.e. the respective additions have been repeated in regular assessment. It is a matter of general practice that the computation of income, while making a regular/revised assessment, starts from the total income as

> determined in the earlier assessment order which existed as on date. i.e. in the instant case, the total income as determined in the intimation order under section 143(1). The remarks in the body of the regular assessment to the effect that no addition is being made, when appreciated in this context, only convey that no further addition is being made in the regular assessment; but the prime facie adjustments already made at the time of processing of return have to be retained, unless there is any specific discussion and direction to the contrary, in the body of the regular assessment order.

Accordingly, the CIT(Appeals) after deliberating on certain other issues, partly allowed the appeal of the assessee.

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

26. We 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.

27. At the very outset of hearing of the appeal, Shri R.B Doshi, Ld. Authorized Representative (for short "AR") for the assessee, had submitted that as per instructions he is not pressing the grounds of appeal Nos. 4 & 5. Accordingly, as per concession of the Ld. AR the **Grounds of appeal Nos. 4 & 5** are dismissed as not pressed**.**

28. We shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the action of the A.O in assessing the

total income of the assessee company as per the normal provisions of the Act at Rs.429.50 crore (approx.), as against its returned income of Rs. Nil and had wrongly raised a demand of Rs.139.66 Crore (approx.) despite specifically observing in the body of the assessment order that "no addition is made and sum payable is determined as per return". It was stated by the Ld. AR that now when the assessee had duly paid taxes on the returned income as per Section 115JB of the Act, therefore, in light of the specific observation of the A.O that no addition was being made and sum payable was being determined as per return, there was no basis for him to have assessed its income at Rs.429.50 crore (approx.) and raised a consequential demand in its hand.

29. We have given a thoughtful consideration to the issue in hand in the backdrop of the contentions advanced by the ld. authorized representatives of both the parties. In our considered view, the aforesaid claim of the assessee is absolutely misconceived and in fact misleading. As observed by the CIT(Appeals), and, rightly so, though the A.O while framing the assessment u/s.143(3) dated 09.03.2021, had observed that no addition was being made and assessment of income was done as per computation sheet and sum payable is determined as per return of income, but by so stating, he had considered the *prima facie* adjustments that were already made at the time of processing the return of income of

the assessee that had been retained and no further additions were made in the regular assessment. We are unable to fathom as to how the assessee can claim to be so naive while trying to impress upon us that he was oblivion of the adjustments and consequential tax demand that had earlier been made/raised in its hands u/s.143(1)(a) of the Act. Apart from that, we are of the considered view that there is no justification for the assessee to divorce the assessment order from the notice of demand issued u/s.156 of the Act, which forms an integral part of the assessment order itself. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Kalyankumar Roy Vs. Commissioner of Income Tax, (1991) 191 ITR 634 (SC)**. The Hon'ble Apex Court in its aforesaid order had, inter alia, observed that I.T.N.S 150 is a form for determination of tax payable and when it is signed or initialed by the Income-tax Officer, it is certainly an order in writing by the Income-tax Officer determining the tax payable within the meaning of Section 143(3) of the Act which has received the imprimatur of the Income-tax Officer and is to be treated as part of the assessment order.

30. Be that as it may, in our considered view, as the CIT(Appeals) had rightly observed that the A.O while framing the regular assessment had proceeded with the *prima facie* adjustments that were made to the assessee's returned income u/s.143(1)(a) of the Act as a base figure,

therefore, no infirmity did arise from his well-reasoned order, is approved on our part. Thus, the **Ground of appeal No.1** raised by the assessee is dismissed in terms of our aforesaid observations.

31. We shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the action of the A.O in disallowing the assessee's claim for deduction of delayed deposit of employee's share of contribution towards Labour Welfare Funds, viz. (i) EPF : Rs.4,44,59,090/- ; and (ii) ESIC : Rs.26,01,340/-.

32. Admittedly, it is a matter of fact borne from record that the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-I, Civil Appeal No.2833 of 2016 dated 12.10.2022, while clarifying the position of law, had held that the delayed deposit of employee's share of contribution towards labour welfare funds, viz. Employee's Provident fund (EPF) and Employee's State Insurance (ESI) is liable to be disallowed as per the mandate of Section 36(1)(va) r.w.s 2(24)(x) of the Act.

33. Considering the law laid down by the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. Vs. Commissioner of Income Tax-I (supra), we are of the considered view that the delayed deposit of employee's share of contribution towards EPF & ESI is liable to be disallowed as per the

mandate of Section 36(1)(va) r.w.s. 2(24)(x) of the Act. The Hon'ble Apex Court had observed that the employee's share of contribution towards ESI & EPF deposited by the assessee beyond the due dates prescribed under the said respective Acts, would by virtue of Section 36(1)(va) r.w.s. 2(24)(x) of the Act constitute the income of the assessee. It was observed by the Hon'ble Apex Court as under:

> "Analysis and Conclusions
>
> 30. The factual narration reveals two diametrically opposed views in regard to the interpretation of Section 36(1)(va) on the one hand and proviso to Section 43(b) on the other. If one goes by the legislative history of these provisions, what is discernible is that Parliament's endeavour in introducing Section 43B [which opens with its non-obstante clause] was to primarily ensure that deductions otherwise permissible and hitherto claimed on mercantile basis, were expressly conditioned, in certain cases upon payment. In other words, a mere claim of expenditure in the books was insufficient to entitle deduction. The assessee had to, before the prescribed date, actually pay the amounts – be it towards tax liability, interest or other similar liability spelt out by the provision.
>
> 31. Section 43B falls in Part-V of the IT Act. What is apparent is that the scheme of the Act is such that Sections 28 to 38 deal with different kinds of deductions, whereas Sections 40 to 43B spell out special provisions, laying out the mechanism for assessments and expressly prescribing conditions for disallowances. In terms of this scheme, Section 40 (which too starts with a non- obstante clause overriding Sections 30-38), deals with what cannot be deducted in computing income under the head "Profits and Gains of Business and Profession". Likewise, Section 40A(2) opens with a non-obstante clause and spells out what expenses and payments are not deductible in certain circumstances. Section 41 elaborates conditions which apply with respect to certain deductions which are otherwise allowed in respect of loss, expenditure or trading liability etc. If we consider this scheme, Sections 40- 43B, are concerned with and enact different conditions, that the tax adjudicator has to enforce, and the assessee has to comply with, to secure a valid deduction.
>
> 32. The scheme of the provisions relating to deductions, such as Sections 32- 37, on the other hand, deal primarily with business, commercial or professional expenditure, under various heads (including depreciation). Each of these deductions, has its contours, depending upon the expressions used, and the conditions that are to be met. It is therefore necessary to bear in mind that specific

enumeration of deductions, dependent upon fulfilment of particular conditions, would qualify as allowable deductions: failure by the assessee to comply with those conditions, would render the claim vulnerable to rejection. In this scheme the deduction made by employers to approved provident fund schemes, is the subject matter of Section 36 (iv). It is noteworthy, that this provision was part of the original IT Act; it has largely remained unaltered. On the other hand, Section 36(1)(va) was specifically inserted by the Finance Act, 1987, w.e.f. 01-04-1988. Through the same amendment, by Section 3(b), Section 2(24) – which defines various kinds of "income" – inserted clause (x). This is a significant amendment, because Parliament intended that amounts not earned by the assessee, but received by it, - whether in the form of deductions, or otherwise, as receipts, were to be treated as income. The inclusion of a class of receipt, i.e., amounts received (or deducted from the employees) were to be part of the employer/assessee's income. Since these amounts were not receipts that belonged to the assessee, but were held by it, as trustees, as it were, Section 36(1)(va) was inserted specifically to ensure that if these receipts were deposited in the EPF/ESI accounts of the employees concerned, they could be treated as deductions. Section 36(1)(va) was hedged with the condition that the amounts/receipts had to be deposited by the employer, with the EPF/ESI, on or before the due date. The last expression "due date" was dealt with in the explanation as the date by which such amounts had to be credited by the employer, in the concerned enactments such as EPF/ESI Acts. Importantly, such a condition (i.e., depositing the amount on or before the due date) has not been enacted in relation to the employer's contribution (i.e., Section 36(1)(iv)).

33. The significance of this is that Parliament treated contributions under Section 36(1)(va) differently from those under Section 36(1)(iv). The latter (hereinafter, "employers' contribution") is described as "sum paid by the assessee as an employer by way of contribution towards a recognized provident fund". However, the phraseology of Section 36(1)(va) differs from Section 36(1)(iv). It enacts that "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 essential character of an employees' contribution, i.e., that it is part of the employees' income, held in trust by the employer is underlined by the condition that it has to be deposited on or before the due date.

34. It is therefore, manifest that the definition of contribution in Section 2 (c) is used in entirely different senses, in the relevant deduction clauses. The differentiation is also evident from the fact that each of these contributions is separately dealt with in different clauses of Section 36 (1). All these establish that Parliament, while introducing Section 36(1)(va) along with Section 2(24)(x), was aware of the distinction between the two types of contributions. There was a statutory classification, under the IT Act, between the two.

35. It is instructive in this context to note that the Finance Act, 1987, introduced to Section 2(24), the definition clause (x), with effect from 1 April 1988; it also

brought in Section 36(1)(va). The memorandum explaining these provisions, in the Finance Bill, 1987, presented to the Parliament, is extracted below:

"Measures of penalising employers mis-utilising contributions to the provident fund or any funds set up under the provisions of the Employees State Insurance Act, 1948, or any other fund for the welfare of employees -

12.1. The existing provisions provide for a deduction in respect of any payment by way of contribution to the provident fund or a superannuation fund or any other fund for welfare of employees in the year in which the liabilities are actually discharged (Section 43B). The effect of the amendment brought about by the Finance act, is that no deduction will be allowed in the assessment of the employer, unless such contribution is paid into the fund on or before the due date. "Due date" means the date by which an employer is required to credit the contribution to the employees account in the relevant fund or under the relevant provisions of any law or term of the contract of service or otherwise.

(Explanation to Section 36 (1) of the Finance Act) 12.2. In addition, contribution of the employees to the various funds which are deducted by the employer from the salaries and wages of the employees will be taxed as income within brackets insertion of new [clause (x) in clause (24) of Section 2] of the employer, if such contribution is not credited by the employer in the account of the employee in the relevant fund by the due date. Where such income is not chargeable to tax under the head "profits and gains of business or profession" it will be assessed under the head "income from other sources."

36. Significantly, the same Finance Act, 1987 also introduced provisos to Section 43B, through amendment (clause 10 of the Finance Bill). The memorandum explaining the Bill, pertinently states, in relation to second proviso to Section 43B that:

> "…The second proviso seeks to provide that no deduction shall be allowed in regard to the sum referred to in clause (b) unless such sum has actually been paid during the previous year on or before the due date. The due date for the purposes of this proviso shall be the due date as under Explanation to clause (va) of sub-section (1) of Section 36."

37. It is evident that the intent of the lawmakers was clear that sums referred to in clause (b) of Section 43B, i.e., "sum payable as an employer, by way of contribution" refers to the contribution by the employer. The reference to "due date" in the second proviso to Section 43B was to have the same meaning as provided in the explanation to Section 36(1)(va). Parliament therefore, through this amendment, sought to provide for identity in treatment of the two kinds of payments: those made as contributions, by the employers, and those amounts credited by the employers, into the provident fund account of employees, received from the latter, as their contribution. Both these contributions had to necessarily be made on or before the due date.

38. This court had occasion to consider the object of introducing Section 43B, in Allied Motors. The court held, after setting out extracts of the Budget speech of the Finance Minister, for 1983-84, that:

"Section 43B was, therefore, clearly aimed at curbing the activities of those tax-payers, who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund, etc., for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. It was to stop this mischief that Section 43B was inserted."

39. Original Section 43B(b) enabled the assessee/employer to claim deduction towards contribution as an employer, "by way of contribution to any provident fund". The second proviso was substituted by Finance Act, 1989 with effect from 01.04.1989 and 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 to 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 same has been realised within 15 days from the due date."

40. The position in law remained unchanged for 14 years. The Central Government then constituted the Kelkar Committee, to suggest tax reforms. The report suggested amendments inter alia, to Section 43B. The relevant extract of the report is as follows:

"In terms of the provisions of section 43B of the Income-tax Act, deduction for statutory payments relating to labour, taxes and State and public financial institutions are allowed as deductions, if they are paid during the financial year. However, under the provisions payment of taxes and interest to State and public financial institution are deemed to have been paid during the financial year even if they are paid by the due date of filing of return. Further if the liability is discharged in the subsequent year after the due date of filing of return, the payment is allowed as a deduction in the subsequent year. In the case of statutory payment relating to labour, the deduction for the payment is disallowed if such payment is made any time after the last date of payment of the about related liability. Trade and industry across the country represented that the delayed payment of statutory liability related to labour should be accorded the same treatment as delayed payment of taxes and interest, i.e. they should be allowed in the year of account.

Since the objective of the provision is to ensure that a tax-payer does not avail of any statutory liability without actually making a payment for the same, we are of the view that these objectives would be served if the deduction for the statutory liability relating to labour are allowed in the year of payment. The complete disallowance of such payments is too harsh a punishment for delayed payments. Therefore, we recommend that the deduction for delayed payment of statutory

liability relating to labour should be allowed in the year of payment like delayed taxes and interest."

Based on the report, the Union introduced amendments to the IT Act, including an amendment to Section 43B; the memorandum explaining the provisions in the Finance Bill, 2003 in the matter of Section 43B. inter alia, reads thus:

"The Bill also proposes to provide that in case of deduction of payments made by the assessee as an employer by way of contribution to any provident fund or superannuation fund or any other fund for the welfare of the employees shall be allowed in computing the income of the year in which such sum is actually paid. In case the same is paid before the due date of filing the return of income for the previous year, the allowance will be made in the year in which the liability was incurred.

These amendments will take effect from 1st April, 2004 and will accordingly apply in relation to the assessment year 2004-05 and subsequent years."

41. The Notes on Clauses inter alia, reads as follows:

"It is also proposed to amend the first proviso to the said section so as to omit the references of clause (a), clause (c), clause (d), clause (e) and clause (f) which is consequential in nature.

It is also proposed to omit the second proviso to the said section. These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years."

42. The rationale for introduction of Section 43B was explained by this court in M.M. Aqua Technologies Ltd. vs. Commissioner of Income Tax, Delhi:16 "19. The object of Section 43B, as originally enacted, is to allow certain deductions only on actual payment. This is made clear by the non- obstante Clause contained in the beginning of the provision, coupled with the deduction being allowed irrespective of the previous years in which the liability to pay such sum was incurred by the Assessee according to the method of accounting regularly employed by it. In short, a mercantile system of accounting cannot be looked at when a deduction is claimed under this Section, making it clear that incurring of liability cannot allow for a deduction, but only "actual payment", as contrasted with incurring of a liability, can allow for a deduction."

43. This condition, i.e., of payment of actual amount on or before the due date to enable deduction, continued for 14 years. By the amendment of 2003, the second proviso was deleted. This court interpreted the law, in the light of these developments, in Alom Extrusions. The court considered the effect of omission of the second proviso, and observed as follows:

"10. "Income" has been defined under Section 2(24) of the Act to include profits and gains. Under Section 2(24)(x), any sum received by the assessee from his

employees as contributions to any provident fund/superannuation fund or any fund set up under the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees constituted income. This is the reason why every assessee(s) M.M. Aqua Technologies Ltd. vs. Commissioner of Income Tax, Delhi, 2021 SCC OnLine SC 575.

[employer(s)] was entitled to deduction even prior to 1-4-1984, on mercantile system of accounting as a business expenditure by making provision in his books of accounts in that regard. In other words, if an assessee(s) [employer(s)] is maintaining his books on accrual system of accounting, even after collecting the contribution from his employee(s) and even without remitting the amount to the Regional Provident Fund Commissioner (RPFC), the assessee(s) would be entitled to deduction as business expense by merely making a provision to that effect in his books of accounts. The same situation arose prior to 1-4-1984, in the context of assessees collecting sales tax and other indirect taxes from their respective customers and claiming deduction only by making provision in their books without actually remitting the amount to the exchequer. To curb this practice, Section 43-B was inserted with effect from 1-4-1984, by which the mercantile system of accounting with regard to tax, duty and contribution to welfare funds stood discontinued and, under Section 43-B, it became mandatory for the assessee(s) to account for the aforestated items not on mercantile basis but on cash basis. This situation continued between 1-4-1984 and 1-4-1988, when Parliament amended Section 43-B and inserted the first proviso to Section 43-B.

11. By this first proviso, it was, inter alia, laid down, in the context of any sum payable by the assessee(s) by way of tax, duty, cess or fee, that if an assessee(s) pays such tax, duty, cess or fee even after the closing of the accounting year but before the date of filing of the return of income under Section 139(1) of the Act, the assessee(s) would be entitled to deduction under Section 43-B on actual payment basis and such deduction would be admissible for the accounting year. This proviso, however, did not apply to the contribution made by the assessee(s) to the labour welfare funds. To this effect, the first proviso stood introduced with effect from 1-4-1988.

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15. By the Finance Act, 2003, the amendment made in the first proviso equated in terms of the benefit of deduction of tax, duty, cess and fee on the one hand with contributions to the Employees' Provident Fund, superannuation fund and other welfare funds on the other. However, the Finance Act, 2003, bringing about this uniformity came into force with effect from 1-4-2004. Therefore, the argument of the assessee(s) is that the Finance Act, 2003, was curative in nature, it was not amendatory and, therefore, it applied retrospectively from 1-4-1988, whereas the argument of the Department was that the Finance Act, 2003, was amendatory and it applied prospectively, particularly when Parliament had expressly made the Finance Act, 2003 applicable only with effect from 1-4-2004.

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18. However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of the Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by Parliament only with effect from 1-4-2004, would become curative in nature, hence, it would apply retrospectively with effect from 1-4-1988.

19. Secondly, it may be noted that, in Allied Motors (P) Ltd. v. CIT [(1997) 3 SCC 472 : (1997) 224 ITR 677] , the scheme of Section 43-B of the Act came to be examined. In that case, the question which arose for determination was, whether sales tax collected by the assessee and paid after the end of the relevant previous year but within the time allowed under the relevant sales tax law should be disallowed under Section 43-B of the Act while computing the business income of the previous year? That was a case which related to Assessment Year 1984-1985. The relevant accounting period ended on 30-6-1983. The Income Tax Officer disallowed the deduction claimed by the assessee which was on account of sales tax collected by the assessee for the last quarter of the relevant accounting year. The deduction was disallowed under Section 43-B which, as stated above, was inserted with effect from 1-4-1984

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22. It is important to note once again that, by the Finance Act, 2003, not only is the second proviso deleted but even the first proviso is sought to be amended by bringing about a uniformity in tax, duty, cess and fee on the one hand vis-à-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003 is retrospective in operation. Moreover, the judgment in Allied Motors (P) Ltd. [(1997) 3 SCC 472 : (1997) 224 ITR 677] was delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that the Finance Act, 2003 will operate retrospectively with effect from 1-4-1988 (when the first proviso stood inserted).

23. Lastly, we may point out the hardship and the invidious discrimination which would be caused to the assessee(s) if the contention of the Department is to be accepted that the Finance Act, 2003, to the above extent, operated prospectively.

Take an example, in the present case, the respondents have deposited the contributions with RPFC after 31st March (end of accounting year) but before filing of the returns under the Income Tax Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under Section 43-B of the Act for all times. They would lose the benefit of

deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right up to 1-4-2004, and who pays the contribution after 1-4-2004, would get the benefit of deduction under Section 43-B of the Act."

44. There is no doubt that in Alom Extrusions, this court did consider the impact of deletion of second proviso to Section 43B, which mandated that unless the amount of employers' contribution was deposited with the authorities, the deduction otherwise permissible in law, would not be available. This court was of the opinion that the omission was curative, and that as long as the employer deposited the dues, before filing the return of income tax, the deduction was available.

45. A reading of the judgment in Alom Extrusions, would reveal that this court, did not consider Sections 2(24)(x) and 36(1)(va). Furthermore, the separate provisions in Section 36(1) for employers' contribution and employees' contribution, too went unnoticed. The court observed inter alia, that:

> "15. …It is important to note once again that, by Finance Act, 2003, not only the second proviso is deleted but even the first proviso is sought to be amended by bringing about an uniformity in tax, duty, cess and fee on the one hand vis-a-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003, is retrospective in operation. Moreover, the judgement in Allied Motors (P) Limited (supra) is delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that Finance Act, 2003 will operate retrospectively with effect from 1st April, 1988 [when the first proviso stood inserted]. Lastly, we may point out the hardship and the invidious discrimination which would be caused to the assessee(s) if the contention of the Department is to be accepted that Finance Act, 2003, 2003, to the above extent, operated prospectively. Take an example - in the present case, the respondents have deposited the contributions with the R.P.F.C. after 31st March [end of accounting year] but before filing of the Returns under the Income Tax Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under Section 43B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April, 2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under Section 43B of the Act. In our view, therefore, Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated that Finance Act, 2003, will operate with effect from 1st April, 2004. However, the

matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003".

46. A discussion on the Principles of interpretation of tax statutes is warranted. In Ajmera Housing Corporation & Ors. vs. Commissioner of Income17 this court held as follows:

"27. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See: Cape Brandy Syndicate v. Inland Revenue Commissioners (1921) 1 KB 64 and Federation of A.P. Chambers of Commerce and Industry and Ors. v. State of A.P. and Ors.(2000) 6 SCC 550. In interpreting a taxing statute, the Court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. (Also see: Commissioner of Sales Tax, Uttar Pradesh v. The Modi Sugar Mills Ltd. 1961 (2) SCR 189.)"

47. Likewise, this court underlined the rule, regarding interpretation of taxing statutes, in Commissioner of Income Tax-III v Calcutta Knitwears, Ludhiana.18 Recently, in Union of India & Ors. vs. Exide Industries Limited & Ors,19 this court examined, and repelled a challenge to the constitutionality of Section 43B, especially the provision requiring actual payment, in respect of leave encashment benefit of employees. The court observations in this regard are relevant:

"20. Section 43B, however, is enacted to provide for deductions to be availed by the Assessee in lieu of liabilities accruing in previous year without making actual payment to discharge the same. It is not a provision to place any embargo upon the autonomy of the Assessee in adopting a particular method of accounting, nor deprives the Assessee of any lawful deduction. Instead, it merely operates as an additional condition for the availment of deduction qua the specified head.

Ajmera Housing Corporation & Ors. vs. Commissioner of Income, 2010 (8) SCC 739.

Commissioner of Income Tax-III v Calcutta Knitwears, Ludhiana 2014 (6) SCC 444.

Union of India & Ors. vs. Exide Industries Limited & Ors., 2020 (5) SCC 274.

21. Section 43B bears heading "certain deductions to be only on actual payment". It opens with a non-obstante clause. As per settled principles of interpretation, a non obstante Clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by the Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for. Out of the allowable deductions, the legislature

consciously earmarked certain deductions from time to time and included them in the ambit of Section 43B so as to subject such deductions to conditionality of actual payment. Such conditionality may have the inevitable effect of being different from the theme of mercantile system of accounting on accrual of liability basis qua the specific head of deduction covered therein and not to other heads. But that is a matter for the legislature and its wisdom in doing so.

22. The existence of Section 43B traces back to 1983 when the legislature conceptualised the idea of such a provision in the 1961 Act. Initially, the provision included deductions in respect of sum payable by Assessee by way of tax or duty or any sum payable by the employer by way of contribution to any provident fund or superannuation fund. It is noteworthy that the legislature explained the inclusion of these deductions by citing certain practices of evasion of statutory liabilities and other liabilities for the welfare of employees..."

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23. With the passage of time, the legislature inserted more deductions to Section 43B including cess, bonus or commission payable by employer, interest on loans payable to financial institutions, scheduled banks etc., payment in lieu of leave encashment by the employer and repayment of dues to the railways. Thus understood, there is no oneness or uniformity in the nature of deductions included in Section 43B. It holds no merit to urge that this Section only provides for deductions concerning statutory liabilities. Section 43B is a mix bag and new and dissimilar entries have been inserted therein from time to time to cater to different fiscal scenarios, which are best determined by the government of the day. It is not unusual or abnormal for the legislature to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to override regulations or conditions.

24. The leave encashment scheme envisages the payment of a certain amount to the employees in lieu of their unused paid leaves in a year. The nature of this payment is beneficial and pro-employee. However, it is not in the form of a bounty and forms a part of the conditions of service of the employee. An employer seeking deduction from tax liability in advance, in the name of discharging the liability of leave encashment, without actually extending such payment to the employee as and when the time for payment arises may lead to abhorrent consequences. When time for such payment arises upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Consequently, the innocent employee will be entangled in litigation in the evening of his/her life for claiming a hard-earned right without any fault on his part. Concomitantly, it would entail in double benefit to the employer - advance deduction from tax liability without any burden of actual payment and refusal to pay as and when occasion arises. It is this mischief Clause (f) seeks to subjugate."

48. One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to

be strictly complied with.20 This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations.

49. That deductions are to be granted only when the conditions which govern them are strictly complied with. This has been laid down in State of Jharkhand v Ambay Cements21 as follows:

"23…. In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood changed on account of any subsequent event the exemption would not operate.

24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.

25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein." See for e.g., Eagle Flask Industries Ltd. v. Commissioner of Central Excise, 2004 Supp (4) SCR 35.

State of Jharkhand v Ambay Cements, (2005) 1 SCC 368.

This was also reaffirmed in a number of judgments, such as Commissioner of Income Tax v. Ace Multi Axes Systems Ltd.22

50. The Constitution Bench, in Commissioner. of Customs v. Dilip Kumar & Co. 23 endorsed as following:

"24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution ["265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State

cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

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34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi & Sons Ltd. [CIT v. Kasturi & Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as "Kesoram Industries case [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201]", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

'(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing Commissioner of Income Tax v. Ace Multi Axes Systems Ltd., 2018 (2) SCC 158 Commissioner. of Customs v. Dilip Kumar & Co, 2018 (9) SCC 1.

unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.'"

51. The analysis of the various judgments cited on behalf of the assessee i.e., Commissioner of Income-Tax v. Aimil Ltd.24; Commissioner of Income-Tax and another v. Sabari Enterprises25; Commissioner of Income Tax v. Pamwi Tissues Ltd.26; Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd.27 and Nipso Polyfabriks (supra) would reveal that in all these cases, the High Courts principally relied upon omission of second proviso to Section 43B (b). No doubt, many of these decisions also dealt with Section 36(va) with its explanation. However, the primary consideration in all the judgments, cited by the assessee, was that they adopted the approach indicated in the ruling in Alom Extrusions. As noticed previously, Alom Extrutions did not consider the fact of the introduction of Section 2(24)(x) or in fact the other provisions of the Act.

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 Commissioner of Income-Tax Vs. Aimil Ltd., [2010] 321 ITR 508 (Delhi High Court).

Commissioner of Income-Tax and another Vs. Sabari Enterprises, [2008] 298 ITR 141 (Karnataka High Court).

Commissioner of Income Tax Vs. Pamwi Tissues Ltd., [2009] 313 ITR 137 (Bombay High Court).

Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd., [2013] 35 taxmann.com 616 (Rajasthan High Court).

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 way of deduction authorized by the statute) as income - it is the character of the amount that is important, i.e., not income earned. Thus, amounts retained by the employer from out of the employee's income by way 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.
>
> 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 assessees are 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."

As the issue involved in the present appeal is no more *res-integra* pursuant to the aforesaid judgment of the Hon'ble Apex Court, therefore, in terms of our aforesaid observations we respectfully follow the same. We,

thus, uphold the order of the CIT(Appeals) and sustain the disallowance towards Labour Welfare funds, viz. (i) EPF : Rs.4,44,59,090/-; and (ii) ESIC : Rs.26,01,340/- made by the A.O u/s.36(1)(va) r.w. Sec.2(24)(x) of the Act. Thus, the **Grounds of appeal Nos. 2 & 3** raised by the assessee are dismissed in terms of our aforesaid observations.

34. **Ground of appeal No.6** being general in nature is dismissed as not pressed.

35. In the result, the appeal of the assessee in ITA No.24/RPR/2022 for A.Y.2018-19 is dismissed in terms of our aforesaid observations.

36. In the combined result, appeal of the assessee in ITA No.16/RPR/2017 for A.Y.2009-10 is partly allowed for statistical purposes while for, the appeal of the assessee in ITA No.24/RPR/2022 for A.Y.2018-19 is dismissed in terms of our aforesaid observations without cost.

Order pronounced in open court on 15th day of June, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; **दिनांक** / Dated : 15th June, 2023
SB

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

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**, **रायपुर बेंच**, **रायपुर** / DR, ITAT, Raipur Bench, Raipur.
6. **गार्ड फ़ाइल** / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur.

		Date	
1	Draft dictated on	10.06.2023	Sr.PS/PS
2	Draft placed before author	12.06.2023	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		