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 Nos.91 & 92/RPR/2020

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

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

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Chhattisgarh Steel & Power Limited.
142, Sahid Smarak, G.E Road,
Raipur (C.G.)
PAN : AACCC7479G

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing :05.06.2023
घोषणा की तारीख / Date of Pronouncement : 18.07.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(Appeals)-I, Raipur (C.G.) dated 19.06.2020, 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 17.03.2015 & 29.03.2016 for A.Ys. 2012-13 & 2013-14, respectively. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. Although the registry had pointed out a delay of 33 days in filing of the present appeals, but as the said period is covered by the order of the Hon'ble Supreme Court in suo moto Writ Petition (Civil) No.3 of 2020 dated 23.03.2020, which thereafter was from time to time modified vide further order(s) dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022, therefore, we admit the same.

3. We shall first take up the appeal filed by the revenue in ITA No.91/RPR/2020 for A.Y.2012-13 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, the ld. CIT(A) erred in deleting the addition of Rs.1,36,688/- made by the Assessing Officer on account of disallowance out of festival expenses, gift expenses and puja expenses.

2. On the facts and in the circumstances of the case, the ld.CIT(A) erred in deleting the addition of Rs.1,08,17,711/- made by the Assessing Officer on account of disallowance u/s.14A of the Income Tax Act r.w.r.8D of the Income Tax Rules.

3. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting addition of Rs.1,18,63,401/- made by the Assessing Officer on account of disallowance u/s.40(a)(ia) of the Income Tax Act r.w.r.8D of the Income Tax Rules.

4. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.5,17,200/- made by the Assessing Officer on account of disallowance of ash handling expenses."

4. Succinctly stated, the assessee company which is engaged in the business of generation and transmission of power had e-filed its return of income for A.Y.2012-13 on 30.09.2012, declaring a loss of Rs. 6,86,93,769/- . Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

5. Original assessment was thereafter framed by the A.O vide his order passed u/s.143(3) of the Act dated 17.03.2015, wherein the income of the assessee company was determined at Rs.2,82,02,237/- after, inter alia, making following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Disallowance u/s.14A r.w.r. 8D	Rs.1,08,17,711/-
2.	Disallowance out of interest expenses	Rs.13,652/-
3.	Disallowance out of festival & puja expenses	Rs.1,36,688/-
4.	Disallowance out of Ash handling expenses	Rs.5,17,200/-

5.	Disallowance u/s.40(a)(ia) of the Act	Rs.1,18,63,401/-

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the same in so far the additions /disallowances were concerned.

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

8. 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.

(A). Re: <u>Disallowance of Rs. 1,36,688/-</u> :

9. It transpires on a perusal of the orders of the lower authorities that the AO had disallowed the assessee's claim for deduction of certain expenses aggregating to Rs. 1,36,688/-, viz. (i) festival expenses: Rs.87,033/-; (ii) gift expenses: Rs.46,470/-; and (iii) Puja expenses: Rs. 3,185/-. On appeal, the CIT(Appeals) though upheld the disallowance of the assessee's claim for deduction of Puja expenses of Rs. 3,185/- but had vacated the remaining disallowances. At this stage, we may herein observe that though the CIT(Appeals) had vacated the disallowance of Rs. 1,33,503/- (out of Rs. 1,36,688/- made by the AO) while for had upheld the disallowance of "Puja

expenses" of Rs. 3,185/- but the department had in its grounds of appeal wrongly stated that the entire amount of disallowance was vacated by the CIT(Appeals).

10. Ld. DR has assailed before us the order of the CIT(Appeals) on the ground that he had wrongly vacated the disallowances made by the AO, viz. (i) festival expenses: Rs.87,033/-; and (ii) gift expenses: Rs.46,470/-.

11. The ld. AR controverted the aforesaid contention of the department. It was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee company that as the expenses incurred towards festival expenses and for giving gifts, distribution of sweets to staff etc. were incurred for maintaining good relations with its employees, customers etc., and for the purpose of smooth running of its business, thus the same were rightly claimed by the assessee company as a deduction u/s 37 of the Act. Ld. AR in support of her aforesaid contention had relied on the order of the Tribunal in the case of DCIT Vs. Gowawari Power and Ispat Ltd. (2022) 193 ITD 869 (Raipur).

12. Having given a thoughtful consideration to the issue in hand, we find that the CIT(Appeals), had observed, that the aforesaid expenses claimed by the assessee company were related to and incurred for the purpose of its business. It was further observed by CIT(Appeals) that the aforesaid expenses were duly reflected in the books of accounts of the assessee

company and the A.O had not pointed out any specific instance of defect in the vouchers supporting the aforesaid claim for deduction of expenses while making the disallowance. For the sake of clarity the relevant observation of the CIT(Appeals) is culled out as under:

> "6. I have considered the grounds of appeal, gone through the order of the AO and perused the submissions of the appellant. I find that the AO has not pointed out any specific instance of defect in the vouchers while making the disallowances. The expenses claimed are related with the business of the appellant company and have been incurred for business purposes. They are duly reflected in the books of accounts produced before the AO. It is also customary for the companies to incur expenses during festivals and offer gifts to their employees as a gesture of goodwill and to encourage and foster a sense of unity and belongingness towards the company. Hence the genuineness of the expenses and their admissibility cannot be doubted. However, it must be pointed out that the Hon'ble jurisdictional High court has held that Puja expenses are not an admissible expense hence respectfully following the decision Hon'ble jurisdictional High Court, the Puja expenses claimed of Rs.3,185 is confirmed and the balance amount is allowed. This ground of appeal is partly allowed."

We find that the Tribunal in the case of **DCIT Vs. Gowawari Power and Ispat Ltd. (2022) 193 ITD 869 (Raipur)** while vacating a similar disallowance had observed as under:

> "41. We have considered the rival arguments made by both the sides and perused the material available on record. We find identical issue had come up before the Tribunal in assessee's own case wherein the Tribunal, considering the CBDT Circular No.17(F.No.27(2)-IT/43) dated 06.05.1983 and another CBDT Circular No.13A/20/68-IT(A-II) dated 03.10.1968 wherein it has been held that the expenses incurred on the occasion of Deepawali and Mahurat are in the nature of business expenditure had allowed and granted relief to Rs.6,54,900/-. Since in the instant case such relief granted by Id. CIT(A) is only Rs.3,50,000/- towards purchase and distribution of sweets, therefore, following the order of the Tribunal in assessee's own case

> for the preceding assessment years 2009-10 and 2010-11 respectively, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the same is upheld and the ground raised by the Revenue is dismissed."

We, thus, finding no infirmity in the aforesaid view taken by the CIT(Appeals) wherein he had vacated the disallowance of the assessee's claim for deduction of the aforesaid expenses, viz. (i) festival expenses: Rs.87,033/-; and (ii) gift expenses: Rs.46,470/-, uphold the same. Thus, the **Ground of appeal No.1** raised by the revenue is dismissed in terms of our aforesaid observations.

(B). Re : <u>Dissallowance u/s 14A r.w Rule 8D: Rs. 1,08,17,711/-</u>

13. The AO while framing the assessment, observed that as the assessee company had failed to furnish necessary details/documents to substantiate that its investment of Rs.18,46,07,555/- in exempt dividend income yielding unquoted shares of various companies was made out of its own funds and not from interest bearing funds, thus disallowed its claim for deduction of interest expenses of Rs.1,08,17,711/- u/s 14A r.w Rule 8D(2)(ii) of the Income-tax Rules, 1963.

14. On appeal, the CIT(Appeals) vacated the aforesaid disallowance of Rs.1,08,17,711/- made by the A.O u/s.14A r.w.r. 8D for two fold reasons, viz. (i). that the assessee company was not in receipt of any exempt income

during the year; and (ii). that the investments in exempt income yielding assets were made by the assessee company out of its own funds.

15. Ld. DR assailed the deletion of the disallowance made by the AO u/s 14A r.w Rule 8D(2)(ii) of the interest expenses corresponding to the substantial investments in exempt income yielding shares by the CIT(Appeals). It was averred by the ld. DR that as the assessee company despite substantial investments in exempt dividend income yielding shares had not offered for disallowance any part of its claim for deduction of interest expenses, therefore, the A.O had rightly worked out the disallowance u/s 14A as per the mechanism provided in Rule 8D of the Income-tax Rules, 1963.

16. Per contra, the Ld. AR submitted that the assessee company was in receipt of exempt income of only Rs. 76,007/- during the year under consideration, a fact which was discernible from its profit & loss account, Page 25 of APB. Apart from that, the Ld. AR submitted that the said factual position could also be safely be gathered from the computation of income of the assessee company, Page 20-23 of APB. It was submitted by the Ld. AR that the CIT(Appeals) had vacated the disallowance made by the AO u/s 14A for two reasons, viz. (i). that as the assessee company had substantial amount of interest free funds available with it to make investments in exempt dividend income yielding unquoted equity shares, therefore, no

disallowance of assessee's claim for deduction of interest expenses was called for in its hands; and (ii). that the assessee had not earned any exempt income during the year. The Ld. AR in order to buttress her aforesaid contention that in case of availability of sufficient interest free funds with an assessee company which would justifiably explain its investment in exempt income yielding assets, no disallowance could be made u/s 14A of the Act, had drawn support from the following judicial pronouncements:

(i) PCIT Vs. Envestor Ventures Ltd. (2021) 431 ITR 221 (Mad.)

(ii) PCIT Vs. State Bank of Patiala (2017) 393 ITR 476 (P &H)

(iii) HDFC Bank Vs. DCIT (2016) 383 ITR 529 (Bom.)

(iv) South Indian Bank Ltd. Vs. CIT (2021) 438 ITR 1 (SC)

17. We have given a thoughtful consideration to the issue in hand, and find that the CIT(Appeals) had categorically observed that the facts and figures which were narrated in the assessee's balance sheet revealed, viz. (i) that its interest bearing funds were utilized for no other purpose other than the business of the assessee company; and (ii). that the investments in the exempt income yielding shares were made by the assessee company from its own funds. On a perusal of the records, it transpires, that as observed by the CIT(Appeals) and, rightly so, the assessee company had substantial interest free funds aggregating to Rs. 56.83 crore, i.e share capital of Rs.41 crore and reserves and surplus of Rs.15.83 crore which were more than the investments made by the assessee company in exempt dividend income

yielding unquoted equity shares. However, we find that a perversity had crept in the order of the CIT(Appeals) while observing that the assessee company had not earned any exempt income during the year. We, say so, for the reason that as observed by us hereinabove, a perusal of the profit & loss a/c a/w return of income of the assessee company reveals that it had during the year earned an exempt income of Rs. 76,007/-. The CIT(Appeals) while vacating the disallowance made by the A.O u/s.14A r.w. Rule 8D of Rs.1,08,17,711/- had observed, as under:

> "4. I have considered the grounds of appeal, gone through the submissions of the appellant and seen the order of the AO. From the financial statements it is seen that the loans taken by the appellant have been used for installation of plant and machinery, stock and work in progress. Interest paid on loans is for business purposes, and the loans have been invested mainly in the fixed assets. It is illogical to take the view that the loans obtained and sanctioned by the banks for business purpose has been invested by the appellant company for the purpose of investment in shares. It was brought to my notice that the company has 2.5 crores interest free unsecured loans. From the audited balance sheet, I observe that the appellant company has share capital of Rs. 41 crores and reserves and surplus of Rs 15.83 crores which is more than the investment of Rs 18.46 crores. On the liability side of the balance sheet loans are appearing which were taken from various banks such as term loans from the SBI which have been used for fixed assets and business purposes as stated earlier. It was demonstrated that the appellant company had non-interest bearing funds at its disposal which was more than that of interest bearing funds. The Hon'ble Bombay High court in the case of CIT v HDFC Bank in ITA 330 of 2012 held that no disallowance u/s. 14A can be made in respect of interest paid on borrowings if assessee's own funds and non interest bearing funds exceeds investments in tax free securities. The appellant company had produced audited books of accounts and tax audit reports which the AO has himself mentioned in the assessment order, which contained all the relevant details regarding the sources from where the investments have been made and hence the contentions of the AO that necessary details were not produced by the appellant or the investments made were not substantiated appears incorrect. A cursory glance at the balance sheet, whose facts and figures have been narrated above, would have made it clear to the A.O that interest bearing funds have been utilized for no purpose other than that of the business carried on by the appellant company and investments have been made from own funds whose sufficiency can be seen from the balance sheet. Moreover,

> no exempt income has been claimed and no expenses on the said income has been claimed. The disallowance u/s.14A read with rule 8D is unwarranted hence deleted. This ground of appeal is allowed."

In our considered view as observed by the CIT(Appeals) and, rightly so, now when the assessee company had substantial interest free funds available with it to justify the investments made in the exempt dividend income yielding unquoted equity shares, therefore, no disallowance of any part of its claim for deduction of interest expenditure was called for u/s 14A r.w Rule 8D(2)(ii) of the Income tax Rules, 1963. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Bombay** in the case of **HDFC Bank Vs. DCIT (2016) 383 ITR 529 (Bom.)**, wherein it was held that no disallowance u/s.14A can be made in respect of interest paid on borrowings if assessee's own funds and non-interest-bearing funds exceeded the amount of investments in tax free securities. We, thus, finding no infirmity in the view taken by the CIT(Appeals), uphold the same. Thus, the **Ground of appeal No. 2** raised by the revenue is dismissed in terms of our aforesaid observations.

(C). Re. Disallowance u/s 40(a)(ia) of transmission charges: Rs. 1,18,63,401.

18. It transpires on a perusal of the assessment order that the assessee company had debited an amount of Rs.1,18,63,401/- in its Profit & loss account towards transmission charges which, however, was disallowed by

the AO u/s 40(a)(ia) of the Act for the reason that the assessee company had failed to deduct tax at source on the said amount.

19. On appeal, the CIT(Appeals) after relying on a plethora of judicial pronouncements concluded that as no obligation was cast upon the assessee company under Section 194C or Section 194-I or Section 194J of the Act to deduct tax at source on transmission charges, therefore, no disallowance was called for in its hands u/s.40(a)(ia) of the Act.

20. The Ld. DR submitted that the CIT(Appeals) had erred in deleting the disallowance of Rs. 1,18,63,401/- made by the AO u/s.40(a)(ia) of the Act. It was submitted by the Ld. DR that as transmission charges/wheeling charges are subject to deduction of tax at source under Chapter XVII-B of the Act, and the assessee had failed to comply with the said statutory obligation, therefore, the A.O had rightly disallowed the said expenditure of Rs.1,18,63,401/- u/s 40(a)(ia) of the Act.

21. Per contra, the Ld. AR submitted that the A.O had not mentioned any section as to under which the assessee was required to make any deduction of tax at source. It was submitted by the Ld. AR that as observed by the CIT(Appeals) and, rightly so, as no TDS was required to be made on the transmission/wheeling charges under any of the sections, i.e u/s.194C or u/s.194I or u/s.194J of the Act, therefore, no disallowance was called for in

the hands of the assessee company u/s 40(a)(ia) of the Act. Ld. AR in support of his aforesaid contention relied on the following judicial pronouncements:

(i) CIT vs Delhi Transco Ltd. (2016) 380 ITR 398 (Del.)

(ii) CIT vs Maharashtra State Electricity Distribution Co. Ltd. (2015) 375 ITR 27 (Bom.)

(iii) Auro Mira Biopower India (P) Ltd. vs ITO (2014) 42 CCH 141 (Chen. Trib.), in ITA No. 2584 to 2590/Mds/2014 dt. 12.12.2014

(iv) Noida Power Co. Ltd. vs ACIT (2018) 52 CCH 196 (Del. Trib.); ITA No. 4878/Del/2016 dt. 19.03.2018

(v) GRIDCO Ltd. vs ACIT in ITA No. 404/Ctk./201 1 dt. 17.11.2011; (2011) 30 CCH 578 (Cuttack) (Trib.)

(vi) Chhattisgarh State Electricity Board vs ITO (2012) 143 TTJ 151 (Mum.) in ITA No. 20 to 23/BLPR/2010

(vii) DCIT vs Reliance Infrastructure Ltd. (2017) 50 CCH 78 (Mum. Trib.) ITA No. 1422/Mum/2015 and 1480/Mum/2015 dt. 02.06.2017.

(viii) ITO vs Hindustan Zinc Ltd. (2013) 37 CCH 522 (Jodh. Trib.); ITA No. 488 to 491/Jodh/2010 dt. 30.08.2013.

22. We have given a thoughtful consideration to the issue in hand in the backdrop of the aforesaid judicial pronouncements as well as the observations of the CIT(Appeals). As observed by us hereinabove, the CIT(Appeals) after relying on a plethora of judicial pronouncements, had observed that as no obligation was cast upon the assessee company to deduct tax at source on the transmission/wheeling charges under Section 194C or 194-I or u/s.194J of the Act, therefore, no disallowance u/s 40(a)(ia)

of the Act on the said count could have been made in its hands. For the sake of clarity the observations of the CIT(Appeals) are culled out as under:

> "I have considered the grounds of appeal, gone through the submissions of the appellant and read the findings of the AO on treating the wheeling charges as a TDS deductible payment. Though the AO has held that TDS is deductible he has not specified under which section of the Act the appellant is liable to make a TDS for the payments so made. He has only quoted Chapter XVII-B of the Act without going into any specific section. It is important to take a look at the arrangements and mechanism of making payments of wheeling/transmission charges and the tax liability for such payments in the light of judicial pronouncements.
>
> As per the Electricity Act 2003 state utility (Electricity Board or Electricity Company of the Government) owning the transmission line is required to provide access to private producers for transmission of power. The electricity board of the state is a State Government utility organization that regulates the supply and distribution of electricity in the state including those of the private companies for transmission of power generated by them. In state where restructuring of State Electricity Boards has been done, like in Chhattisgarh, the transmission company owns all high voltage transmission lines in the state and when private power producer sells electricity to the respective buyers the electricity is transmitted through the transmission lines owned by the transmission company for which it has to pay certain charges to the company which is called wheeling charges. The charge is payment for using of infrastructure set up of the transmission company which is a state govt undertaking. Whether this charge is similar to the rent paid for renting house property has been decided in quite a few cases. Sec 194-I puts obligation of person paying rent to make TDS from the rent payment. Rent in the impugned provision is defined as payment by whatever name called under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any machinery, plant or equipment, fitting etc. The transmission lines are not taken under lease or tenancy by private generators from state govt. who own all the high voltage transmission lines. This aspect is explained in the case of GRIDCO Ltd. vs ACIT in ITA No.404/CTK/2011. In this decision the Hon'ble Cuttack tribunal after analyzing the teem 'equipment' and facility created by the service provider and its use by private parties, came to the conclusion that no TDS can be made out of transmission charges. It was just a service obtained from the govt. electricity company which had got infrastructure in the form of equipment and transmission lines and hence section 194-I was not applicable for transmission and wheeling charges.

> Similarly in the case of Bangalore Electricity Supply Company vs ITO(TDS) which the counsels have placed reliance on, the issue was payment by the assessee to State Load Dispatch Centre (SLDC) and it was held that no deduction could be made for such charges. In case of CIT(TDS) v Maharashtra State Electricity Distribution Company Ltd reported in 58 taxmann.com 339 the Hon'ble High Court of Bombay held that the wheeling charges would neither be rent nor fees for technical services. The SLP preferred against the impugned decision of the Hon'ble Bombay High Court with respect to wheeling charges being tax deductible payments u/s 194-I and 194J was dismissed by the Hon'ble Supreme Court in Commissioner of Income Tax (TDS)-1 Mumbai v Maharashtra State Electricity Distribution Company Ltd (2016) 242 taxman 369 (SC).
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> Thus on the above facts and judicial pronouncements the disallowances made by the AO for failure to make TDS on wheeling charges is not sustainable, hence the disallowance u/s 40 (a)(ia) of the Act is deleted and this ground of appeal is allowed."

We find that the aforesaid view of the CIT(Appeals) is supported by the order of the **ITAT, Mumbai** in the case of **Chhattisgarh State Electricity Board Vs. Income Tax Officer, (2011) 30 CCH 611 (Mum-Trib),** wherein it was held by the Tribunal that as payment made by the assessee company, viz. Chhattisgarh State Electricity Board to PGCIL, for transmission of power purchased by it from NTPC, was for the services of transmission of electricity and not for the use of transmission wires, per se, in as much as these transmission lines were used not only for transmission of electricity to the assessee but also for transmission of electricity to various other entities, and the assessee had no say in the manner in which such transmission lines could be controlled or used by PGCIL, therefore, Section 194-I had no

application. For the sake of clarity, the relevant observations of the Tribunal are culled out as under:

> "14. The core issue that we must deal with is whether the present arrangement under the Bulk Power Transmission Agreement can be termed can be covered by the scope of expression any other agreement or arrangement 'for the use of' appearing in Explanation (i) to Section 194 I.
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> 15. Explanation (i) to Section 194 I, as we have noted above, defines rent as any payment, by whatever name called, under any lease, sublease, or tenancy or any other agreement or arrangement "for the use of" land, building, plant, machinery or equipment etc. As evident from a plain reading of the agreements under which impugned payments have been made, the payments have been made for the services of transmission of electricity and not the use of transmission wires per se. It is a significant fact that these transmission lines are not only being used for transmission of electricity to the assessee but also for transmission to electricity to various other entities. The transmission lines continue to be not only under control and possession of the PGCIL in legal terms, but, what is more important, these transmission lines are effectively in the control of PGCIL, without any involvement of the assessee in actual operations of the same. On these facts, in our humble understanding, the assessee has made the payments for transmission of electricity in which transmission lines have been used rather than for the use of transmission lines per se. The payments could be said to have been made for "the use of transmission lines" in a case in which the object of consideration for which payments are made was the use of transmission lines simplictor , and such a use by the assessee does not extend beyond the transmission of electricity through such lines in the sense that the same transmission lines continue to be in the control of PGCIL for transmission of electricity for other entities and for all practical purposes. Even as electricity purchased by the assessee is transmitted to the assessee from the NTPC busbar to its landing points, the same transmission lines continue to be engaged in similar transmission of electricity for other entities and the assessee has no say in the manner in which such transmission lines can be controlled and used by the PGCIL. Undoubtedly, for the purpose of an arrangement being termed as in the nature of rent for the purpose of Section 194 I, the 'control' and 'possession', in legal terms, of an asset may not needed to be with the person benefiting from the asset in question, it is a condition precedent for invoking Section 194 I that the asset, for the use of which the payment in question is made, should have some element of its control by the assessee. Here is a case in which the assessee has no control over the operations of the transmission lines, and all that he gets from the arrangements is that he can draw the electrical power purchased from PGCIL's transmission lines in an agreed manner.
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> 16. While on the issue of distinction between use of an asset and benefit from an asset, we may usefully refer to the following distinction brought out by the

Karnataka High Court between leasing out of equipment and the use of equipment by its customer. This was done in the case of Lakshmi Audio Visual Inc. vs. Asstt. Commr. of Commercial Taxes (124 STC 426), which has been followed by Hon'ble Delhi High Court in the case of Asia Satellite Telecommunications Ltd (332 ITR 340), in the following terms:

> "9. Thus if the transaction is one of leasing/hiring/letting simpliciter under which the possession of the goods, i.e., effective and general control of the goods is to be given to the customer and the customer has the freedom and choice of selecting the manner, time and nature of use and enjoyment , though within the framework of the agreement , then it would be a transfer of the right to use the goods and fall under the extended definition of "sale". On the other hand, if the customer entrusts to the assessee the work of achieving a certain desired result and that involves the use of goods belonging to the assessee and rendering of several other services and the goods used by the assessee to achieve the desired result continue to be in the effective and general control of the assessee, then, the transaction will not be a transfer of the right to use goods falling within the extended definition of "sale". Let me now clarify the position further, with an illustration which is a variation of the illustration used by the Andhra Pradesh High Court in the case of Rashtriya Ispat Nigam Ltd. vs. CTO.
>
> > (i) A customer engages a carrier (transport operator) to transport one consignment (a full lorry load) from place A to B, for an agreed consideration which is called freight charges or lorry hire. The carrier sends its lorry to the customer's depot, picks up the consignment and proceeds to the destination for delivery of the consignment . The lorry is used exclusively for the customer's consignment from the time of loading, to the time of unloading at destination. Can it be said that right to use of the lorry has been transferred by the carrier to the customer? The answer is obviously in the negative, as there is no transfer of the "use of the lorry" for the following reasons : (i) The lorry is never in the control, let alone effective control of the customer; (ii) the carrier decides how, when and where the lorry moves to the destination, and continues to be in effective control of the lorry; (iii) the carrier can at any point (of time or place) transfer the consignment in the lorry to another lorry; or the carrier may unload the consignment en route in any of his godowns, to be picked up later by some other lorry assigned by the carrier for further transportation and delivery at destination.
> >
> > (ii) On the other hand, let us consider the case of a customer (say a factory) entering into a contract with the transport operator, under which the transport operator has to provide a lorry to the customer, between the hours 8 a.m. to 8 p.m. at the customer's factory for its

> use, at a fixed hire per day or hire per km. subject to an assured minimum, for a period of one month or one week or even one day; and under the contract , the transport operator is responsible for making repairs apart from providing a driver to drive the lorry and filling the vehicle with diesel for running the lorry. The transaction involves an identified vehicle belonging to the transport operator being delivered to the customer and the customer is given the exclusive and effective control of the vehicle to be used in any manner as it deems fit; and during the period when the lorry is with the customer, the transport operator has no control over it . The transport operator renders no other service to the customer. ……."
>
> 17. It is thus clear that in a situation in which the payment in made for the use of an asset simpliciter, whether with control and possession in its legal sense or not, the payment could be said to be for the use of an asset. However, in a situation in which the payment is made only for the purpose a specific act, i.e. power transmission in this case, and even if an asset is used in the said process, the payment cannot be said to be for the use of an asset. When control of the asset (transmission lines in the present case) always remains with the PGCIL, any payment made to the PGCIL for transmission of power on the transmission lines and infrastructure owned controlled and in physical possession of PGCIL can be said to have been made for 'the use of these transmission lines or other related infrastructure. Viewed in this perspective, Section 194 I has no application so far as the impugned payments for transmission of electricity is concerned. For this short reason alone the impugned demands must be held to unsustainable in law."

Also, we find that similar view had been taken by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Maharashtra State Electricity Distribution Co. Ltd. (2015) 375 ITR 23 (Bom.)** wherein, it was observed by the Hon'ble High Court that as the transmission charges and/or Wheeling charges were not amounts paid under any arrangement for use of land, building, plan machinery, equipment, furniture, fitting etc. and therefore, could not be brought within the meaning of rent. Equally, it was observed that the payments were not fees for technical services. It was also held by the Hon'ble High Court that the expression of Transmission charges and/or Wheeling charges entails distribution of electricity in the area of the

Corporation and they could not be subject to provisions of Section 194-I of the Act. Also, we find that similar issue had been adjudicated by the Tribunals in favour of the assessee in the case of **GRIDCO Limited Vs. ACIT, ITA No.404/CTK/2011** and that of **Noida Power Company Ltd. Vs. Assistant Commissioner of Income Tax, (2018) 52 CCH 196 (Del-Trib)**. We, thus, on the basis of our aforesaid deliberations, finding no infirmity in the view taken by the CIT(Appeals), uphold the same. Thus, the **Ground of appeal No.3** raised by the revenue is dismissed in terms of our aforesaid observations.

(D). Re : <u>Disallowance out of ash handling expenses : Rs. 5,17,200/-</u>

23. It transpires on a perusal of the assessment order that the assessee had debited an amount of Rs.51,71,997/- in its Profit & loss account towards “ash handling expenses”. As observed by the AO, as the assessee company could not justify its aforesaid claim of deduction by producing supporting bills, therefore, 10% of the said expenditure was disallowed leading to a consequential addition of Rs. 5,17,200/- in its hands.

24. On appeal, the CIT(Appeals) vacated the aforesaid disallowance.

25. Assailing the order of the CIT(Appeals), it was submitted by ld. DR that as the aforesaid expenses which were incurred in cash by the assessee company were only supported by self-drawn vouchers and not open for verification in the course of the assessment proceedings, therefore, the A.O

had on an ad-hoc basis disallowed 10% of the assessee's claim for deduction of the aforesaid expenditure.

26. Per contra, the Ld. AR submitted that the assessee company had produced its books of accounts a/w. supporting bills in the course of the assessment proceedings which was apparent from Page 1-2 of assessment order. It was averred by the Ld. AR that all the documents were verified by the A.O and he had not pointed out any specific defect. It was submitted by the Ld. AR that the disallowance could not have been made on a presumptive basis by the AO. Ld. AR in support of her aforesaid contention had relied on the following judicial pronouncements:

> (i) ITO Vs. Adhunik Khanan Va Parivahan Theka Sahkari Samiti Ld. (2014) 41 CCH 86 (Jodh.)
>
> (ii) M/s. Porwal Industries Vs. Income Tax Officer-3(3), ITA No. 258/RPR/2017 dated 05.04.2022.

27. We have given a thoughtful consideration to the issue in hand and find substance in the claim of the Ld. AR. We find that the A.O had not pointed out any specific bill or voucher which as per him was not verifiable. Also, the AO had not given any reason as to why the assessee's claim for deduction of the aforesaid expenditure was not admissible. As is discernible from the records, the expenses were incurred by the assessee company for its business purposes and were duly recorded in the books of account. The CIT(Appeals) had deleted the ad-hoc disallowance of ash handling expenses

of Rs.5,17,200/- after relying upon a host of judicial pronouncements, observing as under:

> "I have considered the grounds of appeal, gone through the submissions of the appellant and seen the order of the AO. I agree with the Ld. counsel that the disallowances have been made without bringing any cogent material on record. It has not been pointed out by the AO as to which of the vouchers and bills were not verifiable and how such expenses claimed are not admissible to the appellant company. When the business expenses claimed are related with the business of the appellant and have been incurred for business purposes and are recorded in the books of accounts I see no justification for the disallowances, as has been made by the AO. In the case of Ashok Kumar Haria reported in 16 TTJ 493 the tribunal held that just for the absence of vouchers the claims could not be disallowed. Further, in the case of Lahoti Medicare reported in 33 ITC 76 it was held that disallowances of expenses claimed by self made vouchers and defects pointed out were general in nature and such disallowances are to be deleted. The Hon'ble Apex court in the case of Dhakeshwari cotton mills held that "the AO is not entitled to make a pure guess work and make assessment without reference to any evidence or material at all. There must be something more than bare suspicion to support the assessments to be made as per law." In view of the above facts and decisions of the court the disallowances made are not sustainable and deleted. This ground of appeal is allowed."

Further, we find that a co-ordinate bench of the Tribunal in the case of **M/s. Porwal Industries Vs. Income Tax Officer-3(3), ITA No.258/RPR/2017 dated 05.04.2022** had adjudicated an identical issue in favour of the assessee by observing as under:

> "7. We have given a thoughtful consideration to the aforesaid issue in hand, and are unable to persuade ourselves to subscribe to incongruous basis adopted by the lower authorities for disallowing the assessee's claim for deduction of commission expenses. As is discernible from the record, the assessee in the course of the proceedings before the CIT(Appeals) had placed on record confirmations of the commission agents as 'additional evidence', which were admitted by him. On a perusal of the orders of the lower authorities, we find that the genesis of the disallowance by the lower authorities of the assessee's claim for deduction of commission expenses is that the increase in the said expenditure did not satisfy the "benefit test" i.e, is not accompanied with a corresponding increase in the sales. At

> this stage, we may herein observe, that as per the mandate of law the allowability of an assessee's claim for deduction of an expenditure which may had witnessed an increase as in comparison to that of the preceding year is not dependant upon a corresponding increase in the sales/profits during the year, but solely on the fact that as to whether or not the same had been incurred by the assessee wholly and exclusively for the purpose of its business and; that the same is not in the nature of a capital expenditure; nor an expenditure incurred in the personal field; nor an expenditure incurred for any purpose which is an offence or prohibited by law. Interestingly, we find that not only both the lower authorities had by erroneously referring to the "benefit test" disallowed the assessee's claim for expenditure, but most surprisingly and rather beyond comprehension had restricted the said claim for deduction in the same ratio i.e., 5.44% in which sales for the year under consideration had witnessed an increase as in comparison to that of the immediately preceding year. We are unable to comprehend much the less subscribe to the aforesaid novel method adopted/subscribed to by the lower authorities, which we would not hesitate to observe is nothing short of an arithmetical formula adopted by the Assessing Officer for partly declining the assessee's claim for deduction of commission expenses. Although a steep rise of an expenditure during a year would raise serious doubts as regards the genuineness of the claim for deduction of the same by the assessee, but then, as observed by us hereinabove, the allowability or not of the same has to be tested as per the mandate of Section 37 of the Act; and not on the touchstone of satisfaction of the "benefit test" as had been done by the A.O in the present case. Backed by our aforesaid observations, we are of the considered view that as the disallowance of the assessee's claim for deduction of commission expenses is not based on any material or observations which would lead to an irrefutable conclusion that the said expenditure was either not genuine or; was not incurred wholly and exclusively for the purpose of assessee's business within the meaning of section 37(1) of the Act, therefore, we set-aside the order of the CIT(Appeals) and delete the addition of Rs.8,29,120/- (supra) made by the Assessing Officer."

We, thus, on the basis of our aforesaid deliberations, finding no infirmity in the view taken by the CIT(Appeals), uphold the same. Thus, the **Ground of appeal No.4** raised by the revenue is dismissed in terms of our aforesaid observations.

28. In the result, appeal of the revenue in ITA No.91/RPR/2020 for A.Y. 2012-13 is dismissed in terms of our aforesaid observations.

ITA No.92/RPR/2020
A.Y. 2012-13

29. Now we shall take up the appeal filed by the revenue in ITA No.92/RPR/2020 for A.Y.2013-14 wherein the impugned order has been assailed by the assessee company on the following grounds of appeal before us:

> "1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.1,48,041/- made by the Assessing Officer on account of violation of the provisions of section 36(1)(va) of the Income Tax Act, 1961.
>
> 2. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.65,59,256/- made by the Assessing Officer on account of disallowance u/s 14A of the Income Tax Act r.w.r 8D of the Income Tax Rules.
>
> 3. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.1,54,13,599/- made by the Assessing Officer on account of disallowance u/s. 40(a)(ia) of the Income Tax Act r.w.r 8D of the Income Tax Rules."

(A). Disallowance of the delayed deposit by the assessee of employees contributions towards EPF : Rs. 1,48,041/-

30. It transpires from a perusal of the orders of the lower authorities that the AO had disallowed the assessee's claim for deduction of the delayed deposit of employees share of contribution towards Employees Provident Fund (EPF) of Rs. 1,48,041/- which, however, was on appeal vacated by the CIT(Appeals).

31. We have heard the ld. Authorized representatives of both the parties in the backdrop of the orders of the lower authorities. Admittedly, it is a

matter of fact borne from record that the **Hon'ble Supreme 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.

32. 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 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 which was 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 Poly fabriks (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 in the case of Checkmate Services P. Ltd. Vs. Commissioner of Income Tax-I (supra),, therefore, in terms of our aforesaid observations we respectfully follow the same and uphold the view taken by the AO and sustain the disallowance of the delayed deposit of employees share of contribution towards EPF of Rs.1,48,041/-. Thus, the **Ground of appeal No. 1** raised by the revenue is allowed in terms of our aforesaid observations.

(B). Re : <u>Disallowance u/s 14A r.w Rule 8D : Rs. 65,59,256/-</u>

33. We shall now deal with the grievance of the revenue that the CIT(Appeal) had erred in deleting the disallowance of Rs.65,59,256/- made by the A.O u/s.14A r.w Rule 8D.

34. At the threshold it was averred by the ld. AR that as the assessee company had not earned any exempt income during the year under consideration, therefore, no disallowance was called for in its hands u/s 14A of the Act. It was submitted by the Ld. AR that in absence of any exempt income the provisions of Section 14A could not be triggered. Ld. AR in support of her aforesaid contention had placed reliance on the decision of the **ITAT, Raipur Bench** in the case of **Ind Synergy Ltd. Vs. DCIT, ITA No.312/RPR/2016 dated 30.03.2022**. It was also submitted by the Ld. AR that as the assessee had interest free funds aggregating to Rs. 46.96 crore,

viz. (i). share capital of Rs.41 crore; and (ii). reserves & surplus of Rs.5.95, which was more than the investments made in exempt dividend income yielding investments, therefore no disallowance of any part of the assessee's claim for deduction of interest expenditure was called for in its case u/s 14A of the Act. The Ld. AR in support of her aforesaid contention had relied on the following decisions:

(i) South India Bank Ltd. Vs. CIT (2021) 438 ITR 1 (SC)

(ii) HDFC Bank Vs. DCIT (2016) 383 ITR 529 (Bom.)

35. After having given a thoughtful consideration to the contentions advanced by the Ld. Authorized Representative of both the parties, we find substantial force in the claim of the Ld. AR that now when the assessee company had admittedly not received any exempt income during the year under consideration, therefore, no disallowance u/s.14A of the Act was called for in its hand. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC)** and also of the **Hon'ble High Court of Delhi** in the case of **Cheminvest Limited Vs. CIT, (2015) 378 ITR 33 (Delhi)**. Backed by the aforesaid judicial pronouncements, it was submitted by the Ld. AR that as per the settled position of law no disallowance u/s.14A in absence of any exempt income could have been made in the hands of the assessee company. We, thus, In the backdrop of the facts involved in the case before us r/w. the aforesaid settled position of law find substance in

the claim of the Ld. AR that now when the assessee company had not received any exempt dividend income during the year under consideration, therefore, no disallowance u/s.14A of the Act was warranted in its case. Accordingly, in terms of our aforesaid observations, finding no infirmity in the view taken by the CIT(Appeals), we uphold the same. Thus, the **Ground of Appeal No.2** raised by the revenue is dismissed in terms of our aforesaid observations.

(C). Re. Disallowance u/s 40(a)(ia) of transmission/wheeling charges : Rs. 1,54,13,599/-.

36. We shall now take up the grievance of the revenue that the CIT(Appeals) had erred in deleting the disallowance u/s 40(a)(ia) of the Act of the assessee's claim for deduction of transmission charges of Rs.1,54,13,599/-.

37. As it was admitted by both the parties that the facts involved as regards the aforesaid issue i.e disallowance of transmission charges u/s.40(a)(ia) of the Act remains the same as were there before us in the revenues appeal for the immediately preceding year i.e AY 2012-13 in ITA No.91/RPR/2020, therefore, adopting the same reasoning as was recorded by us in ITA No.91/RPR/2020 while adjudicating the Ground of appeal No.3, the present issue is disposed off on the same terms. Accordingly, finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the

disallowance u/s 40(a)(ia) of the Act of transmission charges of Rs. 1,54,13,599/- (supra), we uphold the same. Thus, the **Ground of appeal No.3** raised by the revenue is dismissed in similar terms as were recorded by us in ITA No.91/RPR/2020 while adjudicating the Ground of appeal No.3.

38. In the result, appeal of the revenue in ITA No.92/RPR/2020 for A.Y. 2013-14 is partly allowed in terms of our aforesaid observations.

39. In the combined result, while for both the appeal of the revenue in ITA No. 91/Rpr/2020 for AY 2012-13 is dismissed while for that in ITA No. 92/Rpr/2020 for AY 2013-14 is partly allowed.

Order pronounced in open court on 18th day of July, 2023.

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

रायपुर/ RAIPUR ; दिनांक / Dated : 18th July, 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, Raipur-1 (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.