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

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

आयकर अपील सं. / ITA No. 272/RPR/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Padma Dhurway,
Near Pawan Kirana Store,
Sangram Chowk, Prem Nagar,
Sikola Bhata, Durg (C.G.)-491 001.

PAN : AARPD5814C

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.10.2023
घोषणा की तारीख / Date of Pronouncement : 25.10.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 07.06.2023, which in turn arises from the intimation issued by the Centralized Processing Center (CPC)/A.O under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 08.01.2020 for the assessment year 2018-19. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1) That order of CIT(A) is bad-in-law, illegal and void-ab-initio.
>
> 2) On facts and in the circumstances of the case, CIT(A) has erred in treating the assessee's case is covered by decision of the Hon'ble Supreme Court in the case of Check mate Services Pt. Ltd. Vs. CIT and hence, in confirming the disallowances made by CPC while processing return u/s 143(1).
>
> 3) On facts and in the circumstances of the case, CIT(A) has erred in dismissing appeal without adjudicating appeal on merit of the case in spite of mentioning submission of the assessee on the body of order.
>
> 4) Without prejudice to ground nos. 1 to 3, on the facts and in circumstances of the case CIT(A) has erred in confirming disallowance of Rs.56,44,834/- made for alleged delay in remittance of Employer's contribution towards "Employee Provident Fund (EPF)"though duly paid before due date of filing return u/s 139(1) as required by provisions of section 43B, without considering the facts and circumstances of the case properly and judicially. Hence, the assessee prays that the disallowance of Rs. 56,44,834/- be deleted.
>
> 5) Without prejudice to ground nos. 1 to 3, on the facts and in circumstances of the case CIT(A) has erred in confirming disallowance of Rs.19,87,679/- made for alleged delay in remittance of Employer's contribution towards "Employment State Insurance Act, 1948" though duly paid before due date of filing return u/s 139(1) as required by provisions of section 43B, without considering the facts and circumstances of the case properly and judicially.

> Hence, the assessee prays that the disallowance of Rs.19,87,679/- be deleted.
>
> 6) Without prejudice to ground nos. 1 to 3, on the facts and in circumstances of the case CIT(A) has erred in confirming disallowance of Rs.52,27,443/- made for alleged delay in remittance of employees contribution towards "Employee Provident Fund (EPF) "though deposited well within 15 days from the end of the month in which it was collected from the employees. Hence, the assessee prays that the addition of Rs. 52,27,443/- be deleted.
>
> 7) Without prejudice to ground nos. 1 to 3, on the facts and in circumstances of the case CIT(A) has erred in confirming disallowance of Rs.7,34,695/- made for alleged delay in remittance of employees contribution towards "Employment State Insurance Act, 1948" though deposited well within 15 days from the end of the month in which was collected from the employees. Hence, the assessee prays that the addition of Rs.7,34,695/- be deleted.
>
> 8) The assessee reserves the right to add, amend, or alter/withdraw any ground/grounds of appeal at the time of hearing."

2. Succinctly stated, the assessee, who is engaged in the business of contract work, had e-filed his return of income for A.Y. 2018-19 on 29.09.2018, declaring an income of Rs.21,03,320/-.

3. Thereafter, the return of income filed by the assessee was processed by the Centralized Processing Center (CPC), Bengaluru, vide an intimation issued u/s.143(1) of the Act dated 08.01.2020. As is discernible from the records, the CPC, while processing the return of income of the assessee, had triggered the provisions of Section 36(1)(va) of the Act and disallowed an amount of Rs.1,35,94,651/- [EPF: Rs.56,44,834/- & Rs.52,27,443/- AND ESI: Rs.19,87,679/- & Rs.7,34,695/-] qua the delayed deposit by the assessee of employee's share of contributions towards Provident Fund (PF) & Employees

State Insurance (ESI) as reported by his auditor in Column No. 20(b) of the "Audit report" in "Form No. 3CD".

4. Aggrieved the assessee assailed the intimation issued u/s. 143(1) of the Act dated 08.01.2020 before the CIT(Appeals) but without success. The CIT(Appeals) approved the addition made by the CPC, Bengaluru, vide its intimation u/s 143(1) of the Act, dated 08.01.2020, observing as under : (relevant extract):

> **"Analysis and Decision**
>
> I have considered the grounds of appeal and submissions made ay the appellant and seen 143(1) order. This issue already has attained finality by the order of the Hon'ble Supreme Court in the case of Check mate Services Pt. Ltd. v. Commissioner of Income tax -1 in Civil appeal no. 2833 of 2016. The Hon'ble Court held in para no. 51 to 55 as under:
>
> 51. The analysis of the various judgments cited on behalf of the assessee i.e., Commissioner of Income-Tax v. Aimil Ltd. 24; Commissioner of Income-Tax and another v. Sabari Enterprises25; Commissioner of Income Tax v. Pamwi Tissues Ltd. 26; Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd. 27 and Nipso Polyfabriks (supra) would reveal that in all these cases, the High Courts principally relied upon omission of second proviso to Section 43B (b). No doubt, many of these decisions also dealt with Section 36(va) with its explanation. However, the primary consideration in all the judgments, cited by the assessee, was that they adopted the approach indicated in the ruling in Alom Extrusions. As noticed previously, Alom Extrutions did not consider the fact of the introduction of Section 2(24)(x) or in fact the other provisions of the Act.
>
> 52. When Parliament introduced Section 43B, what was on the statute book, was only employer's contribution (Section 34(1)(iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting Section 36(1)(va) and simultaneously inserting the second proviso of Section 438, 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 438 - was

introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ES1, etc.) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24)(x) too, deems amount received from the employees (whether the amount is received from the employee or by 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 438 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.
>
> Respectfully following the decision of the Hon'ble Apex Court, the grounds of appeal w.r.t. employees' and employer's contribution to ESI/PF paid beyond the due date but before the due date of filing of return and hence claimed allowable is dismissed.
>
> In the result appeal is dismissed."

5. Before proceeding any further, we may herein observe that the assessee had stated before the CIT(Appeals) that there was a mistake in reporting by the auditor in Column No. 20(b) (supra), wherein both the employer and employee's share of contributions towards ESI and EPF were inadvertently mentioned. The assessee had in his "Written submissions" filed before the CIT(Appeals) stated that the said aforesaid anomaly, i.e., wrong

reporting in Column 20(b) (supra) of the employer's share of contributions towards ESI and EPF, was thereafter removed by the auditor by filing a "Certificate" dated 03.05.2022 and a revised Annexure 'I.' For the sake of clarity, the "Written submission" (relevant extract) that the assessee had filed with the CIT(Appeals) is culled out as follows:

> "1. That while giving information in Point No. 20(b) of Form No. 3CD for the A.Y. 2018/19 in Annexure "I" due to clerical errors instead of mentioning monthly figures of "Employees Contribution to Provident Fund/ ESIC" and payments thereof in the columns "Sum Received from Employee" and "The actual amount paid" respectively auditor had mentioned monthly figures of challans, which consists of monthly Employees Contribution + Employer Contribution + Administration Charges, which ultimately results in disallowances of Rs. 56,44,8341 and 19,87,679/-, and similarly "Due Date of Payment" was wrongly mentioned on the basis of month in respect of which employees contributions was received instead of month in which employees contribution was recovered/received, i.e. the month of payments of wages/salary, which ultimately results in disallowances of Rs. 52,27,4431 and Rs. 7,34,695/-. That auditor himself has provided certificate dated 03.05.2022 and revised Annexure "I" for the A.Y. 2018/19 in this regard by removing above stated clerical errors. That by going through said certificate alongwith it's enclosures and revised Annexure "1" for the A.Y. 2018/19 as well as copies of relevant accounts in the books of account of the assessee enclosed herewith your honour will see that payments of monthly employees and employer contributions to "Employee Provident Fund (EPF)" was made on or before the due date specified in the "Employees' Provident Funds and Miscellaneous Provisions Act, 1952" and similarly payments of employees and employer contributions to "Employee State Insurance Corporation (ESIC)" was made on or before the due date specified in the "Employment State Insurance Act, 1948", thus, no disallowance is warranted in this case for the A.Y. 2018/19 either u/s 36(1)(va) r.w.s. 2(24)(x) or section 43B of the Income-tax Act' 1961.
>
> 2. In the tax audit report, there is a clause no. 20(b) which requires the tax auditor to furnish the following details: —
>
> "20(b) any sum received from the employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24)(x) and due date for payment and the actual date of payment to the concerned authorities under section 36(1)(va)."

6. Although the CIT(Appeals) remained well conversant of the aforesaid anomaly in reporting by the auditor in Column No. 20(b) of his audit report in "Form 3CD", wherein he had wrongly reported both the delayed deposit of the employers and employees share of contribution towards ESI/EPF, and the fact that the auditor had removed the same by filing a "Certificate" dated 03.05.2022 and a revised Annexure "I," however, proceeded with and upheld the disallowance of both the said amounts, observing as under:

> "**Respectfully following the decision of the Hon'ble Apex Court, the grounds of appeal w.r.t. employees' and employer's contribution to ESI/PF paid beyond the due date but before the due date of filing of return and hence claimed allowable is dismissed**.
>
> In the result appeal is dismissed."
>
> **(emphasis supplied by us)**

7. Considering the fact that the CIT(Appeals) had also approved the disallowance of the delayed deposit of the employer's share of contribution towards the labor welfare funds, viz. (i). ESI: Rs. 19,87,679/-; and (ii). EPF: Rs. 56,44,834/-, which, though were deposited by the assessee beyond the prescribed time period as provided in the said respective labor welfare enactments but before the "due date" of filing of his return of income u/s 139(1) of the Act, we are unable to persuade ourselves to concur with his said view. We, say so, for the reason that though as per Sub-section (b) of Section 43B of the Act, any sum payable by the assessee as an employer by way of

contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him, but the same comes with a rider that if the said amount is actually paid by the assessee on or before the "due date" applicable in his case for furnishing the return of income under sub-section (1) of Sec. 139 in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return, then, the same shall be allowed as a deduction in the said previous year itself in which liability to pay such sum was so incurred. To sum up, in case the employer's share of contribution is not deposited within the prescribed period specified under the labor welfare acts but is deposited before the "due date" prescribed for filing of the assessee's return of income under sub-section (1) of Sec. 139 of the Act, then, the same shall be allowed as a deduction in light of the "Proviso" to Sec.43B(b) of the Act. Also, the reliance placed by the CIT(Appeals) on the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT, Civil Appeal No. 2833 of 2016 for sustaining the disallowance of the delayed deposit of employer's share of contribution in ESI and EPF funds is found to

be misconceived. As the observations of the Hon'ble Apex Court are in the context of the pre-conditions which are required to be satisfied so that the employee's share of contribution towards labor welfare funds u/s 36(1)(va) r.w.s 2(24)(x) of the Act be not treated as the income of the assessee, therefore, the CIT(Appeals) had wrongly stretched the applicability of the same to the employer's share of such contributions. On the contrary, we find that the Hon'ble Apex Court had, inter alia, in the context of the employer's share of contributions towards labor welfare funds, observed that 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 of income. We, thus, are of the considered view that the CIT(Appeals) had wrongly sustained the delayed deposit of the employer's share of contribution towards the labor welfare funds, viz. (i). ESI: Rs. 19,87,679/-; and (ii). EPF: Rs. 56,44,834/-, which, though were deposited by the assessee beyond the prescribed time period as provided in the respective labor welfare enactments but before the "due date" of filing of his return of income under sub-section (1) of Section 139 of the Act. Accordingly, the disallowance of the assessee's claim for deduction of the delayed deposit of the employer's share of contribution towards ESI/EPF of Rs. 76,32,513/- is vacated in terms of our aforesaid observations.

8. Apropos the disallowance of the assessee's claim for deduction of the delayed deposit of the employee's share of contribution towards, viz. (i). ESI: Rs. 7,34,695/-; and (ii). EPF: Rs. 56,44,834/- is concerned, which were deposited beyond the "due dates" specified under the said labor welfare fund acts but prior to the "due date" of filing of return of income by the assessee u/s 139(1) of the Act, it was submitted by the Ld. Authorized Representative (for short, 'AR') that as on the date of issuance of intimation u/s.143(1) of the Act dated 08.01.2020, there were divergent views as regards the said issue, i.e., as to whether the deposit of the employee's share of contribution towards labor welfare funds up to the "due date" of filing of return of income by the assessee was allowable as a deduction u/s.43B of the Act; or the same was liable to be disallowed as per the mandate of Section 36(1)(va) r.w.s. 2(24)(x) of the Act; therefore, the same could not have been summarily disallowed by the CPC, Bengaluru, while processing the return of income of the assessee u/s.143(1) of the Act. In support of his aforesaid contention, the Ld. AR had relied on the order of the **ITAT, SMC Bench, Raipur,** in the case of **Satpal Singh Sandhu Vs. DCIT, Circle-1(1), Raipur, ITA No.04/RPR/2023 dated 11.05.2023** and also, that of the "Division Bench" in the case of **Gurmeet Singh Hora Vs. ACIT, CPC, ITA No.45/RPR/2023, dated 03.08.2023**.

9. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities.

10. Controversy involved as regards the aforesaid issue at hand lies in a narrow compass, i.e., as to whether or not the delayed deposit by the assessee of the employee's share of contributions towards ESI and EPF could have been summarily disallowed by the AO prior to the judgment of the **Hon'ble Apex Court** in the case of **Checkmate Services P. Ltd. Vs. CIT (SC) 143 taxmann.com 178 (SC)** while processing his return of income vide intimation issued u/s.143(1)(a) of the Act dated 08.01.2020. As stated by the Ld. AR and, rightly so, the aforesaid issue had been looked into by the **ITAT, SMC, Raipur,** in the case of **Satpal Singh Sandhu Vs. DCIT, Circle-1(1), Raipur, ITA No.04/RPR/2023 dated 11.05.2023**. The Tribunal, while deliberating at length on the aforesaid issue had after drawing support from the orders of the **ITAT, Mumbai,** in the case of **Kalpesh Synthetics (P) Ltd. Vs. DCIT (2022) 137 taxmann.com 475 (Mumbai) and P.R. Packaging Service Vs. ACIT (2023) 148 taxmann.com 153 (Mumbai)** had held that prior to the judgment of the Hon'ble Apex Court in Checkmate Services P. Ltd., no such disallowance of the delayed deposit of the employee's share of contribution towards labor welfare fund could have been made in the hands of the assessee company while processing its return of income u/s. 143(1)(a) of

the Act. The Tribunal, while concluding as hereinabove, had observed as follows:

> "6. I have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.
>
> 7. Controversy involved in the present appeal lies in a narrow compass, i.e as to whether or not the delayed deposit of the employee's share of contributions towards ESI & EPF by the assessee-employer, could have summarily been held by the A.O, as the assessee's income under Section 36(1)(va) r.w.s 2(24)(x) of the Act while processing his return of income u/s.143(1) of the Act,.?
>
> 8. As is discernable from the records, it transpires that the assessee's chartered accountant in his audit report filed in "Form 3CD" r.w.r 6G(2) of the Income Tax Rules, 1962, had at Sr.No.20(b) of the said report furnished details of the delayed deposits by the assessee-employer of the employees share of contributions towards ESI & EPF, which reads as under:

	Description			Amount	
20 b	Details of contributions received from employees for various funds as referred to in section 36(1)(va):				
	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid	The actual date of payment to the concerned authorities
	Provident Fund	127808	15/05/2018	127808	13/06/2018
	Provident Fund	131172	15/06/2018	131172	03/07/2018
	Provident Fund	139760	15/07/2018	139760	02/08/2018
	Provident Fund	163140	15/08/2018	163140	06/09/2018
	Provident Fund	152631	15/09/2018	152631	03/10/2018
	Provident Fund	161641	15/10/2018	161641	03/11/2018
	Provident Fund	157574	15/11/2018	157574	28/11/2018
	Provident Fund	143465	15/12/2018	143465	12/01/2019
	Provident Fund	165475	15/01/2019	165475	04/02/2019
	Provident Fund	125441	15/02/2019	125441	02/03/2019
	Provident Fund	103116	15/03/2019	103116	30/03/2019
	Provident Fund	75998	15/04/2019	75998	09/05/2019
	Any Fund set up under the provisions of ESI Act,1948	29815	15/05/2018	29815	04/06/2018
	Any Fund set up under the provisions of ESI Act,1948	26668	15/06/2018	26668	02/07/2018
	Any Fund set up under the provisions of ESI Act,1948	26283	15/07/2018	26283	02/08/2018
	Any Fund set up under the provisions of ESI Act,1948	29663	15/08/2018	29663	06/09/2018
	Any Fund set up under the provisions of ESI Act,1948	26918	15/09/2018	26918	25/10/2018
	Any Fund set up under the provisions of ESI Act,1948	28998	15/10/2018	28998	03/11/2018
	Any Fund set up under the provisions of ESI Act,1948	27980	15/11/2018	27980	11/12/2018
	Any Fund set up under the provisions of ESI Act,1948	26993	15/12/2018	26993	12/01/2019
	Any Fund set up under the provisions of ESI Act,1948	29950	15/01/2019	29950	11/02/2019
	Any Fund set up under the provisions of ESI Act,1948	36626	15/02/2019	36626	18/03/2019
	Any Fund set up under the provisions of ESI Act,1948	30089	15/03/2019	30089	18/04/2019
	Any Fund set up under the provisions of ESI Act,1948	24114	15/04/2019	24114	24/05/2019

Ostensibly, as the aforementioned amounts received by the assessee-employer as employees share of contribution towards ESI & EPF were deposited by him beyond the stipulated time period prescribed under the said relevant Acts, therefore, the A.O while processing his return of income u/s.143(1) of the Act, had held the same as the income of the assessee u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act.

9. It is the claim of the Ld. A.R that the aforementioned addition could not have been made by the A.O in the garb of a *prima facie* adjustment u/s.143(1)(a) of the Act. Elaborating on his aforesaid contention, it was the claim of the Ld. AR that the assessee's chartered accountant as per the mandate of law had at Sr. No. 20(b) of his audit report only furnished details of the employees shares of contribution as referred to in Section 36(1)(va), i.e the respective amounts a/w. dates of deposit. It was submitted by the ld. A.R that the A.O merely on the basis of the aforesaid details provided by the auditor could not have made an addition of the same to the assessee's returned income u/s.143(1)(a) of the Act. Our attention was drawn by the Ld. AR to Sr. No.20(b) of the audit report in Form 3CD. Carrying his argument further, it was submitted by the Ld. AR, that, even otherwise, on the date when the return of income of the assessee was processed u/s. 143(1) of the Act, i.e. on 21.02.2020, the issue as to whether or not the delayed deposits of the employee's share of contributions towards labour welfare funds, which were though deposited by the assessee-employer beyond the due date prescribed under the relevant Acts but before the "due date" of filing of the return of income under sub-section (1) of Section 139 of the Act, could be held as the income of the assessee u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act, was highly debatable, therefore, the same clearly fell beyond the realm of a *prima-facie* adjustment under section 143(1) of the Act. The ld. A.R in order to buttress his aforesaid contention had drawn support from the following judicial pronouncements:

(i) CIT Vs. M/s. Alom Extrusions Ltd. (2009) 185 Taxman 416 (SC)

(ii) CIT Vs. Vinay Cement Ltd. (2007) 213 CTR 268(SC)

(iii) Pr. CIT, Jaipur Vs. Rajasthan State Beverages Corporation Ltd. (2017) 84 taxmann.com 185(SC)

(iv) CIT Vs. State Bank of Bikaner & Jaipur (2014) 43 taxmann.com 411 (Rajasthan)

(v) Sagun Foundry Pvt. Ltd. Vs. CIT (Kanpur) (2017) 78 taxmann.com 47 (Allahabad)

(vi) CIT Vs. Aimil Limited (2010) 188 TaXMAN 265 (Delhi)

It was submitted by the Ld. AR, that now when the department on the one hand was of the view that the delayed deposit of the employee's share of contributions towards ESI & EPF were to be disallowed u/s. 36(1)(va) r.w.s. 2(24)(x); while for the courts on the other hand had accepted the assessee's claim that such delayed deposits which were made by the assessee not later than the "due date" of filing of its return of income under sub section (1) of Section 139 of the Act were saved by the provisions of Section 43B of the Act, therefore, the said delayed deposits could not have been summarily held by the A.O as the income of the assessee u/s.143(1) of the Act. Ld. A.R in support of his aforesaid contention had relied on the orders of the ITAT, Mumbai in the case of Kalpesh Synthetics (P) Ltd. Vs. DCIT (2022) 137 taxmann.com 475 (Mumbai) and that of P.R Packaging Service Vs. ACIT (2023) 148 taxmann.com 153 (Mumbai). It was averred by the Ld. AR, that the addition of the delayed deposit of employee's share of contribution of Rs. 19,91,318/- made u/s. 36(1)(va) of the Act by the A.O, vide his intimation issued u/s.143(1) of the Act could not be sustained and was liable to be vacated.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee's auditor had categorically qualified his audit report and furnished details of the delayed deposit of employees share of contributions towards ESI and EPF as referred in Section 36(1)(va) of the Act, therefore, no infirmity did emerge from the order of the A.O, who while processing the return of income u/s.143(1) of the Act had rightly held the said amount as the income of the assessee.

11. We have given a thoughtful consideration to the aforesaid contentions of the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities, and have also considered the judicial pronouncements that have been pressed into service by them.

12. Admittedly, the issue as to whether or not, the delayed deposits of employees share of contribution towards labour welfare funds, i.e. ESI and EPF by the assessee-employer were liable to be held as the income of the assessee u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act, as was the view of the department; or the same were saved by the provisions of Section 43B of the Act, i.e to the extent such deposits were made not later than the "due date" of filing of the return of income of the assessee as prescribed under sub-section (1) of Section 139 of the Act, was a highly debatable and had finally only recently been settled by the judgment of the Hon'ble Apex Court in the case of Checkmate Services (P) Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC). On the date on which the return of income of the assessee was processed by

the A.O u/s.143(1) of the Act, i.e. on 21.02.2020, the aforesaid issue, as observed by us hereinabove, was highly debatable. Apart from that, we find substance in the claim of the Ld. AR that the assessee's auditor in his audit report in Form 3CD r.w.s. 6G(2), as per the statutorily required, had only furnished the details of the contributions towards employee's share of contributions towards various funds as referred to in Section 36(1)(va) of the Act, and at no stage had offered the same as the income of the assessee.

13. On a conjoint perusal of the aforesaid facts, viz. (i). the issue as to whether the delayed deposit of employees share of contribution towards labour welfare funds, i.e. ESI and EPF by the assessee-employer were liable to be held as the income of the assessee u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act, as was the view of the department; or the same were saved by the provisions of Section 43B of the Act, i.e to the extent such deposits were made not later than the "due date" of filing of the return of income of the assessee as prescribed under sub-section (1) of Section 139 of the Act, was a highly debatable; AND (ii). that the assessee's chartered account had only furnished the details of such delayed deposits in column 20(b) of his audit report in Form 3CD and had not offered the same as disallowance; I am of the considered view, that there could have been no justification for the A.O at the time of processing the return of income of the assessee u/s.143(1) of the Act on 21.02.2020 to have summarily held such delayed deposit of the employees share of contributions towards labour welfare funds i.e ESI & EPF by the assessee-employer, as the income of the assessee. My said view is supported by the judgment of the Hon'ble High Court of Bombay in the case of Khatau Junkar Ltd. vs. K.S Pathania (1992) 196 ITR 157 (Bom). It was observed by the Hon'ble High Court that where a claim has been made which requires further inquiry, it cannot be disallowed without hearing the parties and/or giving the party an opportunity to submit proof of its claim. It was further observed that in absence of Sec. 143(1)(a) being read in the above manner, i.e debatable issues cannot be adjusted by way of intimation under section 143(1)(a), would lead to arbitrary and unreasonable intimations being issued, leading to chaos. In fact, I find that the aforesaid issue in hand had been deliberated at length by the ITAT, Mumbai in the case of Kalpesh Synthetics (P) Ltd. Vs. DCIT (supra). The Tribunal while dealing with the various facets of the aforesaid issue, had held, that no such addition of the delayed deposits of the employee's share of contribution towards labour welfare funds could have been made in the hands of the assessee while summarily processing its return of income u/s.143(1)(a) of the Act, observing as under:

"4. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

5. In our considered view, it is quite evident, from a careful look at the related statutory provisions, that there is a material difference in the scheme of processing the income tax return under section 143(1)(a) as it stands now vis-à-vis as it stood at the point of time when Khatau Junkar judgment (supra) by Hon'ble jurisdictional High Court was delivered. That was the time when incorrect claims could be disallowed only when such a deduction was "on the basis of information available in such return, accounts or documents is prima facie inadmissible" [see Section 143(1)(a)(iii) as it then stood] and it was in this context that the connotations of the expression "prima facie inadmissible" came up for consideration before Hon'ble Courts above. While the expression used in section 143(1)(a)(i) is materially similar inasmuch as its wordings are "an incorrect claim, if such incorrect claim is apparent from any information in the return", there are two important things that one must bear in mind- (a) firstly, the expression "an incorrect claim, if such incorrect claim is apparent from any information in the return" is well defined in Explanation to Section 143(1), and; (b) secondly, and perhaps much more importantly, that is just one of the permissible types of adjustments, denying a deduction, under section 143(1)(a) which goes well beyond such adjustments and includes the cases such as "(iii) disallowance of loss claimed, if the return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139; (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return". So far as the first point is concerned, it must be noted that the expression "incorrect claim apparent from any information in the return", for the purpose of Section 143(1)(a), is further defined, under Explanation to Section 143(1), and it means that a claim, on the basis of an entry, in the return,—(i) of an item, which is inconsistent with another entry of the same or some other item in such return; (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction. On the second point, it is useful to bear in mind the fact that the scheme of Section 143(1)(a) thus permits the processing of the income tax return in the manner that the total income or loss of the assessee is computed after making the adjustments for (i) any arithmetical error in the return; (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return; (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139; (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or (vi) addition

of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return". The adjustments under clause (vi) above are no longer permissible after 1st April 2018. Clearly, thus, there is a significant paradigm shift in the processing of income tax returns under section 143(1), and the decisions rendered in the context of old Section 143(1)(a) cease to be relevant. Learned counsel thus derives no advantage from the judgments rendered in the context of old Section 143(1)(a)- such as Hon'ble jurisdictional High Court's judgment in the case of Khatau Junkar (supra). To that extent, we must uphold the plea of the learned Departmental Representative.

6. Coming to the mechanism of application of Section 143(1), we find that the first proviso to Section 143 (1) mandates that "no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode" and, under the second proviso to Section 143(1), "the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made". The scope of permissible adjustments under section 143(1)(a) now is thus much broader, and, as long as an adjustment fits the description under section 143(1)(a) (i) to (v), read with Explanation to Section 143(1), such an adjustment, subject to compliance with first and second proviso to Section 143(1), is indeed permissible. It is, however, important to take note of the fact that unlike the old scheme of 'prima facie adjustments' under section 143(1)(a), the scheme of present section 143(1) does not involve a unilateral exercise. The very fact that an opportunity of the assessee being provided with an intimation of 'such adjustments' [as proposed under section 143(1)], in writing or by electronic mode, and "the response received from the assessee, if any" to be "considered before making any adjustment" makes the process of making adjustments under section 143(1), under the present legal position, an interactive and cerebral process. When an assessee raises objections to proposed adjustments under section 143(1), the Assessing Officer CPC has to dispose of such objections before proceeding further in the matter- one way or the other, and such disposal of objections is a quasi-judicial function. Clearly, the Assessing Officer CPC has the discretion to go ahead with the proposed adjustment or to drop the same. The call that the Assessing Officer CPC has to take on such objections has to be essentially a judicious call, appropriate to facts and circumstances and in accordance with the law, and the Assessing Officer CPC has to set out the reasons for the same. Whether there is a provision for further hearing or not, once objections are raised before the Assessing Officer CPC and the Assessing Officer CPC has to dispose of the objections before proceeding further in the matter, this is inherently a quasi-judicial function that he is performing, and, in performing a quasi-judicial function, he has to set out his specific reasons for doing so. Disposal of objections cannot be such an empty formality or meaningless ritual that he can do so without application of mind and without setting out specific reasons for rejecting the same. Let us, in this light, set out the reasons for rejecting the objections. The Assessing Officer- CPC has used a standard reason to the effect that "As there has been no response/the response given is not acceptable, the

adjustment(s) as mentioned below are being made to the total income as per provisions of Section 143(1)(a)", and has not even struck off the portion inapplicable. To put a question to ourselves, can such casually assigned reasons, which are purely on a standard template, can be said to be sufficient justifications for a quasi-judicial decision that the disposal of objections inherently is? The answer must be emphatically in negative. It is important to bear in mind the fact that intimation under section 143(1) is an appealable order, and when consideration of objections raised by the assessee is an integral part of the process of finalizing the intimation under section 143(1) unless the reasons for such rejection are known, a meaningful appellate exercise can hardly be carried out. When the first appellate authority has no clue about the reasons which prevailed with the Assessing Officer-CPC, in rejecting the submissions of the assessee, because no such reasons are indicated by the Assessing Officer CPC anyway, it is difficult to understand on what basis the first appellate authority sits in judgment over correctness or otherwise of such a rejection of submissions. Whether the statute specifically provides for it or not, in our considered view, the need for disposal of objections by way of a speaking order has to be read into it as the Assessing Officer CPC, while disposing of the objections raised by the assessee, is performing a quasi-judicial function, and the soul of a quasijudicial decision making is in the reasoning for coming to the decision taken by the quasi-judicial officer. While on this aspect of the matter, we may usefully refer to the observations made by the Hon'ble Supreme Court, in the case of Union Public Service Commission v. Bibhu Prasad Sarangi and Ors., [2021] 4 SCC 516. While these observations are in the context of the judicial officers, these observations will be equally applicable to the decisions by the quasi-judicial officers like us as indeed the Assessing Officer CPC. In the inimitable words of Hon'ble Justice Chandrachud, Hon'ble Supreme Court has made the following observations: …..

> ……Reasons constitute the soul of a judicial decision. Without them, one is left with a shell. The shell provides neither solace nor satisfaction to the litigant. We are constrained to make these observations since what we have encountered in this case is no longer an isolated aberration. This has become a recurring phenomenon. ……How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary.

7. These observations of Their Lordships apply equally, and in fact with much greater vigour, to the quasi-judicial functionaries as well. Viewed thus, reasons in a quasi-judicial order constitute the soul of the quasi-judicial decision. A quasi-judicial order, without giving reasons for arriving at such a decision, is contrary to the way the functioning of the quasi-judicial authorities is envisaged. A quasi-judicial order, as a rejection of the objections against the proposed adjustments under section 143(1) inherently is, can hardly meet any judicial approval when it is devoid of the cogent and specific reasons, and when it is in a standard template text format with clear indications that there has not been any application of mind as even the inapplicable portion of the template text, i.e whether there was no response or

whether the response is unacceptable, has not been removed from the reasons assigned for going ahead with the proposed adjustment under section 143(1). In any event, there is no dispute that the precise and proximate reasons for disallowance in all these cases admittedly are the inputs based on the tax audit report. The question then arises about the status and significance of the tax audit report. Can the observations in a tax audit report, by themselves, be justifications enough for any disallowance of expenditure under the Act? As we deal with this question, we are alive to the fact section 143(1)(a)(iv) specifically an adjustment in respect of "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return". It does proceed on the basis that when a tax auditor indicates a disallowance in the tax audit report, for this indication alone, the expense must be disallowed while processing under section 143(1) by the CPC. It is nevertheless important to bear in mind the fact that a tax audit report is prepared by an independent professional. The fact that the tax auditor is appointed by the assessee himself does not dilute the independence of the tax auditor. The fact remains that the tax auditor is a third party, and his opinions cannot bind the auditee in any manner. As a matter of fact, no matter how highly placed an auditor is, and even within the Government mechanism and with respect to CAG audits, the audit observations are seldom taken an accepted position by the auditee- even when the auditor is appointed by the auditee himself. These are mere opinions and at best these opinions flag the issues which are required to be considered by the stakeholders. On such fine point of law, as the nuances about the manner in which Hon'ble Courts have interpreted the legal provisions of the Income Tax Act in one way or the other, these audit reports are inherently even less relevant- more so when the related audit report requires reporting of a factual position rather than express an opinion about legal implication of that position. In the light of this ground reality, an auditee being presumed to have accepted, and concurred with, the audit observations, just because the appointment of auditor is done by the assessee himself, is too unrealistic and incompatible with the very conceptual foundation of independence of an auditor. On the one hand, the position of the auditor is treated so subservient to the assessee that the views expressed by the auditor are treated as a reflection of the stand of the assessee, and, on the other hand, the views of the auditor are treated as so sacrosanct that these views, by themselves, are taken as justification enough for a disallowance under the scheme of the Act. There is no meeting ground in this inherently contradictory approach. Elevating the status of a tax auditor to such a level that when he gives an opinion which is not in harmony with the law laid down by the Hon'ble Courts above- as indeed in this case, the law, on the face of it, requires such audit opinion to be implemented by forcing the disallowance under section 143(1), does seem incongruous. Learned Departmental Representative's contentions in this regard that the observations made in the tax audit report, in the light of the specific provisions of Section 143(1)(a)(iv), must prevail- more so when the tax auditor is appointed by the assessee himself, is clearly unsustainable in law. While Section 143(1)(a)(iv) does provide for a disallowance based purely on the "indication" in the tax audit report, inasmuch as it permits "disallowance of expenditure indicated in

the audit report but not taken into account in computing the total income in the return", and it is for the Hon'ble Constitutional Courts above to take a call on the vires of this provision, we are nevertheless required to interpret this provision in a manner to give it a sensible and workable interpretation. When the opinion expressed by the tax auditor is contrary to the correct legal position, the tax audit report has to make way for the correct legal position. The reason is simple. Under Article 141 of the Constitution of India, the law laid down by the Hon'ble Supreme Court unquestionably binds all of us, and the Hon'ble Supreme Court has, in numerous cases- including, for example, in the case of East India Commercial Co. Ltd. v. Collector of Customs 1962 taxmann.com 5, speaking through Hon'ble Justice Subba Rao observed, inter alia, as follows:

> ……Under article 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under article 227 it has jurisdiction over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of the Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer

8. When the law enacted by the legislature has been construed in a particular manner by the Hon'ble jurisdictional High Court, it cannot be open to anyone in the jurisdiction of that Hon'ble High Court to read it in any other manner than as read by the Hon'ble jurisdictional High Court. The views expressed by the tax auditor, in such a situation, cannot be reason enough to disregard the binding views of the Hon'ble jurisdictional High Court. To that extent, the provisions of Section 143(1)(a)(iv) must be read down. What essentially follows is that the adjustments under section 143(1)(a) in respect of "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return" is to be read as, for example, subject to the rider "except in a situation in which the audit report has taken a stand contrary to the law laid down by Hon'ble Courts above". That is where the quasi-judicial exercise of dealing with the objections of the assessee, against proposed adjustments under section 143(1), assumes critical importance in the processing of returns. It is also important to bear in mind the fact that what constitutes jurisdictional High Court will essentially depend upon the

location of the jurisdictional Assessing Officer. While dealing with jurisdiction for the appeals, Rule 11(i) of the Central Processing of Returns Scheme 2011 states that "Where a return is processed at the Centre, the appeal proceedings relating to the processing of the return shall lie with Commissioner of Income-tax (Appeals) [CIT(A)] having jurisdiction over the jurisdictional Assessing Officer". Then situs of the CPC or the Assessing Office CPC is thus irrelevant for the purpose of ascertaining the jurisdictional High Court. Therefore, in the present case, whether the CPC is within the jurisdiction of Hon'ble Bombay High Court or not, as long as the regular Assessing Officer of the assessee and the assessee are located in the jurisdiction of Hon'ble Bombay High Court, the jurisdictional High Court, for all matters pertaining to the assessee, will be Hon'ble Bombay High Court. In our considered view, it cannot be open to the Assessing Officer CPC to take a view contrary to the view taken by the Hon'ble jurisdictional High Court- more so when his attention was specifically invited to the binding judicial precedents in this regard. For this reason also, the inputs in question in the tax audit report can not be reason enough to make the impugned disallowance. The assessee must succeed for this reason as well.

9. What a tax auditor states in his report are his opinion and his opinion cannot bind the auditee at all. In this light, when one considers what has been reported to be 'due date' in column 20 (b) in respect of contributions received from employees for various funds as referred to in Section 36(1)(va) and the fact that the expression 'due date' has been defined under Explanation (now Explanation 1) to Section 36(1)(va) provides that "For the purposes of this clause, 'due date' means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise", one cannot find fault in what has been reported in the tax audit report. It is not even an expression of opinion about the allowability of deduction or otherwise; it is just a factual report about the fact of payments and the fact of the due date as per the Explanation to Section 36(1)(va). This due date, however, has not been found to be decisive in the light of the law laid down by Hon'ble Courts above, and it cannot, therefore, be said that the reporting of payment beyond this due date in the tax audit report constituted "disallowance of expenditure indicated in the audit report but not taking into account in the computation of total income in the return" as is sine qua non for disallowance of Section 143(1)(a)(iv). When the due date under Explanation to Section 36(1)(va) is judicially held to be not decisive for determining the disallowance in the computation of total income, there is no good reason to proceed on the basis that the payments having been made after this due date is "indicative" of the disallowance of expenditure in question. While preparing the tax audit report, the auditor is expected to report the information as per the provisions of the Act, and the tax auditor has done that, but that information ceases to be relevant because, in terms of the law laid down by Hon'ble Courts, which binds all of us as much as the enacted legislation does, the said disallowance does not come into play when the payment is made well before the due date of filing the income tax return under

section 139(1). Viewed thus also, the impugned adjustment is vitiated in law, and we must delete the same for this short reason as well.

10. In view of the detailed discussions above, we are of the considered view that the impugned adjustment in the course of processing of return under section 143(1) is vitiated in law, and we delete the same. As we hold so, we make it clear that our observations remain confined to the peculiar facts before us, that our adjudication is confined to the limited scope of adjustments which can be carried out under section 143(1) and that we see no need to deal with the question, which is rather academic in the present context, as to whether if such an adjustment was to be permissible in the scheme of Section 143(1), whether the insertion of Explanation 2 to Section 36(1)(va), with effect from 1st April 2021, must mean that so far as the assessment years prior to the assessment years 2021-22 are concerned, the provisions of Section 43B cannot be applied for determining the due date under Explanation (now Explanation 1) to Section 36(1)(va). That question, in our humble understanding, can be relevant, for example, when a call is required to be taken on merits in respect of an assessment under section 143(3) or under section 143(3) r.w.s. 147 of the Act, or when no findings were to be given on the scope of permissible adjustments under section 143(1)(a)(iv). That is not the situation before us. We, therefore, see no need to deal with that aspect of the matter at this stage.

11. In a result, this appeal is allowed."

14. Also, I find that a similar view had been taken by the ITAT, Mumbai in the case of P.R Packaging Service Vs. ACIT (supra). In the aforesaid case, the Tribunal after drawing support from its earlier order in the case of Kalpesh Synthetics (P) Ltd. Vs. DCIT (supra), had, further observed, that as in the subsequent judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. Vs. CIT (supra) assessment was framed u/s.143(3) of the Act and not u/s. 143(1)(a) of the Act, therefore, the same would not assist the case of the department before them, wherein the assessee had assailed the validity of the addition of the delayed deposit of the employee's share of contributions towards labour welfare funds, i.e. ESI & EPF that were made by the A.O u/s. 143(1)(a) of the Act. Further, I find that similar view had been taken by the ITAT, Jaipur in the case of Paris Elysees India Private Limited Vs. DCIT, ITA No.357/JPR/2022 dated 20.02.2023; and ITAT, Delhi in the case of M/s. 360 Realtors LLP Vs. ADIT, CPC in ITA No.303/Del/2022 and Garg Heart Centre & Nursing Home Private Limited, ITA No.1700/Del/2022.

15. On the basis of my aforesaid observations, I am of the considered view that as the issue involved in the present appeal is squarely covered by the order of the ITAT Mumbai in the case of Kalpesh Synthetics (P) Ltd. Vs. DCIT (supra), therefore, I respectfully follow the same and vacate the addition of Rs.19,91,318/- that was summarily made by the A.O, CPC u/s.143(1)(a) of the Act.

> Accordingly, I set-aside the order of the CIT(Appeals) and vacate the addition of Rs.19,91,318/- made by the A.O u/s.143(1)(a) of the Act."

11. As the facts and issue involved in the present appeal remain the same as were there before the **ITAT, SMC Bench, Raipur** in the aforesaid case, i.e., **Satpal Singh Sandhu Vs. DCIT, Circle-1(1), Raipur (supra)** and that in the case of **Gurmeet Singh Hora Vs. ACIT, CPC (supra)**; therefore, we respectfully follow the same. Accordingly, we set aside the order of the CIT(Appeals) and vacate the addition of the delayed deposit of the employee's share of contributions towards labor welfare funds of Rs.63,79,529/-, viz. (i). EPF: Rs.52,27,443/- AND (ii). ESI: Rs.7,34,695/- made by the A.O.

12. Resultantly, both the addition/disallowance of the delayed deposit of the employer's and employees' share of contributions towards ESI/EPF of Rs. 1,35,94,651/- are vacated in terms of our aforesaid observations.

Order pronounced in open court on 25th day of October, 2023.

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

रायपुर/ RAIPUR ; दिनांक / Dated : 25th October, 2023
**#SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)

4. The Pr. CIT, 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.