आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(**ITA No.107/RPR/2021**)

(Assessment Year: 2019-20)

M/s Jai Enterprises, HIG-25, Shailendra Nagar, Raipur (C.G.)- 492001	V s	Assistant Director of Income Tax, Centralized Processing Center (CPC), Income Tax Department, Bangaluru (KAR)-560500
PAN: AAEFJ0514A		
(**अपीलार्थी/Appellant**)	:	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Nikhilesh Begani, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ **Date of Hearing**	:	23.11.2023
घोषणा की तारीख/Date of Pronouncement	:	28.11.2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned Appeal is filed by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2019-20 dated 17.12.2021, which in turn resulted from the order of Ld. Assistant Director of Income Tax, Centralized Processing Centre (CPC), under section 143(1) of the Income Tax Act, 1961 dated 11.05.2020.

2. The Grounds of Appeal raised by the assessee are as under:

GROUND NO. I

1. That the Appellate Order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ("*the Ld. CIT(A)"*) under section 250 of the Income Tax Act, 1961 "the Act") is highly unjustified, bad in law,

erroneous and not in accordance with the provisions of law. It is prayed that the Appellate Order passed under section 250 of the Act may please be cancelled/set aside on this ground alone.

GROUND NO. II

2. ***(a)*** On the facts and in the circumstances of the ca II as in law, the Ld.CIT(A) has grossly erred in confirming the action of the Learns Asst. Director of Income Tax (CPC) ("the Ld. CPC") in making the addition/disallowance of Rs.39,80,729/- Invoking the provisions of section 36(1)(va) of the Act on account of delayed deposit of employees' contribution to Employees Provident Fund (EPF) & Employees State Insurance Corporation (ESIC) beyond the due dates under the respective Acts however, deposited well before the due dates under the respective Act however, deposited well before the due date prescribed for filing of return of income under section 139(1) of the Act without taking into consideration the facts & circumstances of the case and the latest judicial precedents;

(b) That the Ld. CIT(A) has grossly erred in ignoring various judicial precedents including that of the Hon'ble Jurisdictional Tribunal and applying the judgments of non-jurisdictional High Courts thereby making the appellate order as erroneous, bad in law and liable to be quashed.

(c) That the Ld. CIT(A) has grossly erred in holding that the employees' contribution to EPF & ESIC are allowable as a deduction only when deposited by the employer within the due dates prescribed under the relevant Acts thereby ignoring the overriding effect of section 43B of the Act which applies with equal force in respect of employer & employee contribution as interpreted by various Hon'ble High Courts and the Hon'ble Jurisdictional Tribunal.

(d)That the Ld. CIT(A) has grossly erred in placing reliance on & erroneously applying the amended provisions of sections 36(1)(va) & 43B of the Act as inserted vide the Finance Act, 2021 to the assessment year under reference which were expressly intended to be applied prospectively with effect from the Assessment Years 2021-22 & onwards and thereby fallaciously holding that the amendments brought about are retrospective, clarificatory & declaratory in nature;

which is highly unjustified, unwarranted, unsustainable, not proper on facts and not in accordance with the provisions of law.

Hence, it is earnestly prayed that the addition/disallowance of Rs.39,80,729/- may please be deleted.

GROUND NO. III

3. In any case and without prejudice to the above, the Ld. CIT(A) has grossly erred in confirming the action of the Ld. CPC in making the disallowance under the provisions of section 143(1)(a) of the Act. He has failed to appreciate that the adjustment made was beyond the purview of the adjustments specified under section 143(1)(a) of the Act and further, the impugned issue being highly debatable, contentious, in respect of which conceivably two views/opinions are possible accordingly, beyond the scope of prima facie adjustments as per section 143(1)(a) hence, the addition/disallowance of Rs.39,80,729/- is highly unjustified, palpably illegal, bad in law, unsustainable and not in accordance with the provisions of law. Hence, it is earnestly prayed that the addition/disallowance of Rs.39,80,729/- may please be deleted.

GROUND NO. IV

4. That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal.

3. At the outset Ld. AR on behalf of the assessee has requested not to press ground no 1 and 2 of the appeal and has endorsed by signing against the said ground in the appeal memo. Such request of the assessee was allowed under no objection from the department.

4. Further, it is submitted that the issue in the present appeal raised in ground no 3 i.e. *the adjustment made u/s 143(1) was beyond the purview of the adjustments specified under section 143(1)(a)* and the same is covered by order of the coordinate bench of ITAT, Raipur in the case of ***Padma Dhurvey v. ITO-1(1), Bhilai in ITA No. 272/RPR/2023*** dated 25.10.2023, accordingly, the grounds

no. 3 raised in the instant appeal by the assessee may kindly be allowed, and the addition of Rs. 39,80,729/- may please to vacated.

5. On the contrary, Ld. Sr DR vehemently supported the order of the revenue authorities.

6. Having heard the rival contentions perused the material available on record and case law referred to by the Ld. AR, we observed that the issue involved in the present case is squarely covered by the view taken by the coordinate bench of ITAT, Raipur in the case of Padma Dhurvey (supra), wherein various judgments in the Raipur, as well as Hon'ble High Court have been discussed, deliberated, thus, an analogy from such judgments has been drawn and followed. The observations of the ITAT, Raipur in the case of Padma Dhurvey (supra) are as under:

> *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,.?*
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> *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) 43taxmann.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 inSection 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 theAct, 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 apparentfrom 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 offof 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 butnot taken into account in computing the total income in the return; (v) disallowanceof 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 Form16A 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) thuspermits the processing of the income tax return in the manner that the total incomeor 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, thereis a significant paradigm shift in the processing of income tax returns under section143(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 inthe matter, this is inherently a quasi-judicial function that he is performing, and, inperforming a quasi-judicial function, he has to set out his specific reasons for doingso. 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 effectthat "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 JusticeChandrachud, 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-judicialorder, 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 takeninto 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 undersection 143(1) by the CPC. It is nevertheless important to bear in mind the fact thata 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 howhighly 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 lessrelevant- 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 thisregard 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, innumerous 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 JusticeSubba 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 cannot 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 bindthe 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 ofpayment 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 adjudicationis 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 onmerits 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 beforeus. 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.

7. In view of the aforesaid observations, we are of the considered opinion in the present case having identical issue, covered by the aforesaid order in the case of Padma Dhurve (supra), considering no reason to take a different view, thus, direct to vacate the addition on account of delayed deposit to EPF / ESIC amounting to Rs. 39,80,729/- under the respective statutes but before the due date of filing of return u/s 139 of the

Act, made by the Ld. AO invoking the provisions of section 143(1), which in first appeal has confirmed by the Ld. CIT(A).

8. In the result the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 28/11/2023.

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

रायपुर/Raipur; दिनांक Dated 28/11/2023
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur