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.**284,285,286,287/RPR/2023**)
(Assessment Year:2013-14,2017-18,2018-19,2020-21)

Chhattisgarh Sahkari Sakh Samiti Maryadit, Chhattisgarh Bhawan, Sector-1, Bhilai Durg (491001), Chhattisgarh India	Vs	Income Tax Officer-Ward 1(2) Bhilai Chhattisgarh
PAN: AAAAK1188L		
(**अपीलार्थी/Appellant**)	..	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri M.C. Oswal, Adv.
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ **Date of Hearing**	:	29.11.2023
घोषणा की तारीख/Date of Pronouncement	:	30.11.2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeals are filed by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi under section 250 of the Income Tax Act, 1961 for AY2013-04 dated 21.06.2023, AY2017-18, AY2018-19 & AY2020-21 all dated 22.06.2023, against the order of Assessing Officer under section 143(3) of the I.T. Act dated 23.03.2016, 24.12.2019, 22.06.2021, 29.09.2022, respectively.

2. All the aforesaid four appeals are filed by the same assessee having identical issues involved therein, thus, for the sake of convenience and brevity these are heard together, thus are under consideration for adjudication under this common order.

3. To deal with the issues raised, we are taking the ITA No. 284/RPR/2023 as lead case which pertains to Assessment Year 2013-14. The Grounds of Appeal raised in the said appeal by the assessee are as under:

(1) That the assessee had gave computation of taxable income which is clear and the commercial bank where taken taxable and co-operative society bank interest is claimed u/s 80p(2)(d) and business income claimed u/s 80p(2)(l)(a) and 80c rupees 50,000. 80p (1) where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub section 2 there shall be deducted , in accordance with and subject to the provisions of this section, the sums specified in sub section (2) in computing the total income of the assessee .w.e.f. 1-4-1968.

(2) The matter has been examined in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar central co-operative bank ltd.(2007) 160 taxman 48 the apex court held that the investment made by a banking concern are part of the business of banking . therefore, the income arising from such investment is attributable to the business of banking falling under the head profit and gains of business and profession.

(3) That the assessee had many time given reply of notice from 31/08/2015 and order received in June 2023 and in appeal explain the detail of proportionate expenses as income exempted and taxable income were mixed.

(4) That the 25% of the net profit of the society is kept in reserve fund as well 5% of remaining net profit shell be kept for common interest of member hence the society kept fund in fixed deposit, recurring deposit and M.I.S.

(5) That in the appeal cases given on 80P(2)(d) The Case Law Ita No. 418& 419 /JP/2017 And 23 & 24 /JP 512,633,513 & 634 /JP/2019 of M/s Jaipur Jila Dugdh Utpadak Sahkari Sangh Ltd. Jaipur Vs. DCIT Jaipur copy of the above cited case law is enclosed here with for your ready reference. In sugar

mill Bundi case judgement in para 6.4 it is clearly decided that cooperative society for the purpose of the u/s 80p(2)(d).

(6) That the Hon'ble supreme court of India in civil appeal no. 8719/2022 decided that co-operative credit society shall be title to exemption u/s 80p(2) of the income tax act 1961.

(7) E.P.F. was paid in time hence addition made u/s. 36(1)(va) is wrong and be allowed.

4. The common issue involved is pertaining to disallowance of claim u/s 80P(2)(d) regarding interest income received by the assessee society from deposits in saving bank a/c maintained with commercial banks i.e., State Bank of India (SBI) and other banks, year wise details of such disallowance are as under:

AY	Amount (Rs.)
2013-14	2,22,700/-
2017-18	NIL
2018-19	75,31,489/-
2020-21	87,67,427/-

5. The written submission of the assessee, which is almost common in all the four appeals, therefore, one of them, i.e., written submission for AY 2013-14 in ITA No. 284/RPR/2023 is extracted are as under:

From,

Chhattisgarh Sakh Sahkari Samiti
Chhattisgarh Sadan Sec-I, Bhilai, Durg 491001

To,

The member income tax appellate tribunal
Raipur bench Raipur (C.G.)

Sub- Submission in second appeal no.- ITA 284/RPR/2023
Assessment year 2013-14 PAN NO. - AAAAK1188L.

Sir,

1) *That The Assesse Is Co-Operative Society Under Registration No.- Ar/Drg2149 Dated 06/12/1976 And Books Of Accounts Maintain As Per Society Act And Audited By A.R. Audit And Tax Audit Where Complied By C.A., And WithOut Rejecting Books Of Accounts Are Giving Any Subsptencial Material Addittion Made Is Not Justified case law in annexure- A*

a *That In Appeal Main Question Is Deduction U/S 80p(2)(a)(i) And 80P(2)(d) For Claim Following Case Law and there main content is given here.*

A. *Kerala State Co-Operative Agricultural & Rural Devlopment Bank Ltd. Vs. Assessing Officer On 14 September 2023 (S.C. Case) please see page no.- 17 pr. 24.1 — That section 80-P of the IT act is a benevolent provision, which was enacted by parliament in order to encourage and prmote the growth of the co-operative sector generally in the economic life of the country and must, therefore be read liberally and in favour of assesse.*

Pr. 24.2 - That once the assesse is entitled to avail of deduction, the entire amount of profit and gains of business that are attributable to any one or more activities maintioned in sub-section (2) of section 80-P must be given by way of deduction.

B. *Commissioner Of Income Tax 17, Mumbai Appelant(S) Vs. M/S Anna Saheb Patil Mathadi Kamgar Sahkari Pathpedi Limited (S.C. Case) also decide of claim of s 80P(2).*

C. *Shree Keshorai Patan Sahakari ..... Vs. I.T.O. Bundi On 31 January 2018 please see page no.- 3*

pr. 6.1 As regards the claim u/s 80P(2)(d), we find that the only condition for availing the deduction under this provision is any income by way of interest or dividend derived by the Cooperative society from its investment with any other cooperative society, the whole of such income is allowable for deduction u/s 80P(1). Therefore, there is no condition for the assessee society toengaged in the activity of provide credits to the Members or banking business for availing the deduction u/s 80P(2)(d) read with Section 80P(1) of the Act. As regards the cooperative bank shall be treated as cooperative societies for the purpose of the interest income on investment in such cooperative bank u/s 80P(2)(d) the Mumbai Bench of this Tribunal in case of Lands End Co-operative Housing Society Ltd. vs. ITO (Supra), after considering the decision of the Hon'ble Supreme Court in case of Totagar's Co-operative Sale Society Ltd. Vs. ITO (Supra) has considered and decided this issue in.

D. *m/s the totgar's co-operative sale...Vs. income tax officer Karnataka on 08 feburary 2010 (S.C. Case) in which section 80P(2)(d) is not discussed and it is a case of 08 feburary 2010*

(3) that before 01/04/2007 co-operative bank where also assessed as co-operative society and deduction u/s 80P(2) is claimed and

allowed after amendment in section 80P sub-section 4 says as nder — the provision of this section shall not apply in relation to any co-operative bank other than a "primary agricultural credit society" or a primary co-operative agricultural and rural devlopement bank hence this was withdrawn hence intrest recived from co-operative bank claimed u/s 80P(2)(d) is justified, as before 01/04/2007 co-operative bank where also assessed as co-operative society and claimed deduction u/s 80P(2) of the I.T. act hence claim of intrest of co-operative bank is correctly claimed u/s 80P(2)(d).

Yours
Date- 03/11/2023 Milapchand Oswal
Advocate

6. On the basis of aforesaid submissions (though having certain spelling errors but have been extracted as it is for the sake of authenticity), it was the prayer of Ld. AR that the disallowance made by the Ld. AO and sustained by the Ld. CIT(A) was an erroneous application of law and against the instinct or mandate of law as explained and guided by Hon'ble Apex Court In the case of *Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. Vs. Assessing Officer dated 14 September 2023,* thus a liberal considerations shall be viewed and all such disallowances are deserves to be struck down.

7. Per contra, Ld. Sr DR has vehemently supported orders of the revenue authorities.

8. We have considered the rival submission perused the material available on record and the case laws furnished before us for our consideration. Admittedly, the issues raised in the aforesaid appeals are squarely covered by the decisions of the coordinate Bench in the case of Gramin Seva Sahkari Samiti Maryadit in ITA no 114/RPR/2016 & others dated 23.02.2022, reported in [2022] 138 taxmann.com 476 (Raipur - Trib.). Accordingly, interest received on the

surplus fund parked by way of deposits in the Bank is eligible for deduction 80(P)(2)(a)(i). Observations of the ITAT, Raipur are extracted as under:-

> ***12.*** *We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his aforesaid contentions.*
>
> ***13.*** *We shall first advert to the assessee's grievance that the lower authorities had erred in declining its claim for deduction u/s. 80P(2)(a)(i) of the Act, i.e, as regards the interest income that was earned on the surplus funds which were deposited by it with Jila Sahakari Kendriya Bank, i.e, a co-operative bank. After deliberating at length on the issue in hand, we find that the aforesaid claim of the assessee hinges around the aspect that as to whether or not the interest income earned by it on its surplus funds which were parked as deposits in the normal course of its business of providing credit facilities to its members, i.e., at the point of time when there were no takers for the said funds, was eligible for deduction u/s. 80P(2)(a)(i) of the Act. We have given a thoughtful consideration to the contentions advanced by the Ld. Authorized representatives for both the parties. Before proceeding any further, we deem it fit to cull out the provisions of section 80P(2)(a)(i) of the Act, the scope and gamut of which is the primary bone of contention before us, which reads as under :*
>
> *"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*
> *(2) The sums referred to in sub-section (1) shall be the following, namely :—*
> *(a) in the case of a co-operative society engaged in—*
> *(i). carrying on the business of banking or providing credit facilities to its members, or*
> *(ii) to (iii)……"*
>
> *(Emphasis by underlining supplied by us)*
>
> *On a perusal of the aforesaid statutory provision, we find that the same, contemplates, that the income of a co-operative society from its business of banking or providing credit facilities to its members is eligible for deduction u/s. 80P(2)(a)(i) of the Act. Our indulgence in the present appeal is confined to the limited aspect, i.e, as to whether or not the interest income earned by the assessee-society by depositing its surplus funds with a bank can be brought within the meaning of "income from carrying on the business of banking or providing credit facilities to its members", and thus, would fall within the realm of the deduction contemplated in section 80P(2)(a)(i) of the Act. At this stage, we may herein observe, that it is the claim of the assessee, that as depositing of its surplus funds, i.e, the funds for which there were no takers at the relevant point of time, in the course of its business of providing credit facilities to its members, is inextricably interlinked; or in fact interwoven with its said stream of its business activity, therefore, the interest income received on such short-term deposits was duly eligible for deduction under the aforesaid statutory provision, i.e., sec. 80P(2)(a)(i) of the Act. We may herein observe, that though the assessee-society in addition to its business of providing credit facilities to its members was also engaged in other multiple activities for its members, viz. business of paddy procurement, sale of fertilizers, seeds, manures and pesticides and sale of controlled items under Public Distribution System (PDS), however, it is neither the case of the revenue nor a fact discernible from the record that the funds deposited by*

the assessee-society with the bank, viz.Jila Sahakari Kendriya Bank (supra) were the amounts that were payable by the society to its members, and the same having being retained were for the time being invested as a short-term deposit/security with the bank. If that would have been so, then, the interest income earned on such short-term deposit/security with the bank would not have been eligible for deduction u/s.80P(2)(a)(i) of the Act. But then, as the amount deposited by the assessee-society with the bank, viz.Jila SahakariKendriya Bank (supra) was in the nature of simpliciter surplus or idle funds of the assessee society, for which there were no takers for the time being in course of its business of providing credit facilities to its members, therefore, depositing of the same by way of short-term deposits with the aforesaid bank, as stated by the ld. A.R, and rightly so, would clearly be inextricably interlinked, or in fact interwoven with its aforesaid primary business activity, i.e., providing of credit facilities to its members. At this stage, we may herein observe, that the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra), had held, that in a case where the assessee-cooperative society apart from providing credit facilities to its members was also in the business of marketing of agricultural produce grown by its members, and the sale consideration of the agricultural produce due towards its members was thereafter retained and invested as a short-term deposit/security with the bank, then, the interest income therein earned to the said extent could not be said to be attributable to its activity of providing credit facilities to its members. As is discernible from the aforesaid judicial pronouncement of the Hon'ble Supreme Court, we find the Hon'ble Apex Court had clarified beyond doubt that they have confined the judgment to the facts of the case before them, and the same was not to be considered as laying down of any law. Be that as it may, the aforesaid judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra) had thereafter been considered by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd. (supra), wherein the Hon'ble High Court had after exhaustive deliberations held as under :

'6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short term deposits and from savings bank account. The assessee is a cooperative society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law i.e. section 80P(2)(a)(i):

"80P. Deduction in respect of income of cooperative societies.—(1) Where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:—
(a) in the case of a co-operative society engaged in—
(i) carrying on the business of banking or providing credit facilities to its members, or
*(ii) to (vii)** ** ***

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT, Gujarat-II reported in ITR Vol.113 (1978) Page 842 at Page 93 as under:

As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in s. 80J. In our view since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A cooperative society which is carrying on the business providing credit facilities to its members, earns profit and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd, on which reliance is placed, the Supreme Court was dealing with a case where the assessee co-operative society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. Therefore, in the facts of the said case, the Apex Court held the Assessing Officer was right in taxing the interest income indicated above under section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore, it is clear, Supreme Court was not laying down any law.

> ***10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore, it is liable to be deducted in terms of section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME TAX III HYDERABAD v. ANDHRA PRADESH STATE COOPERATIVE BANK LTD. Reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:***
>
> *Appeal is allowed.*
>
> *The impugned order is hereby set aside. Parties to bear their own cost.'*
>
> *In the backdrop of the aforesaid observations of the Hon'ble High Court, we are of a considered view, that as in the case of the assessee before us the surplus funds parked by way of short-term deposit with the co-operative bank, viz. Jila Sahakari Kendriya Bank are inextricably interlinked, or in fact interwoven with its business of providing credit facilities to its members, therefore, the same as claimed by the Ld. AR, and rightly so, would duly be eligible for deduction u/s. 80P(2)(a)(i) of the Act. We, thus, in terms of our aforesaid observations, direct the Assessing Officer to allow deduction of Rs. 7,98,705/- u/s. 80P(2)(a)(i) of the Act on the interest income earned by the assessee society on its deposits with the co-operative bank. Thus, the Ground of appeal No. 1 raised before us is allowed in terms of our aforesaid observations.*

9. In terms of aforesaid observations of the tribunal following the various judgments of the Hon’ble High courts (supra), specifically as observed by *Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd. (supra) following the similar view taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME TAX III HYDERABAD v. ANDHRA PRADESH STATE COOPERATIVE BANK LTD. (supra),* respectfully following the same, we hold that the interest income received on amounts deposited by the assessee society in commercial / nationalised banks shall be eligible for deduction u/s 80P(2)(a)(i) of the Act.

Consequently, ground pertaining to impugned controversy is decided in favour of the assessee.

10. Another issue raised by the assess in ITA 285/RPR/2023 is regarding disallowance made by in the AY 2017-18 on account of delayed payment of PF-ESI. On this issue Ld. AR of the assessee has submitted that all the payments of EPF were made in time considering the extended grace period of 5 days available to the assessee. Such facts were not considered by the Ld. AO as well as Ld. CIT(A), thus no disallowance on this count is called for.

11. Per contra, Ld. Sr DR has vehemently supported orders of the revenue authorities.

12. After going through the facts and on a thoughtful consideration of submissions and explanations, it is observed that the aforesaid issues has been dealt with coordinate bench of the ITAT, Raipur in ITA No.78/RPR/2023 in the case of Dilip Construction Company Vs. DCIT, 1(1), Bhilai (CG) dated 01.06.2023, wherein regarding delay and grace period it has been observed that:

> *10. Controversy involved in the present appeal lies in a narrow compass, i.e. as to whether or not, the employees share of contribution towards EPF deposited by the assessee within the extended/grace period under the EPF Act, 1952 is to be construed as a payment made on or before the due date within the meaning of section 36(1)(va) of the Act?*
>
> *11. Before proceeding any further, I may herein observe that the*

grace/extended period of 5 days that was available to the assessee for depositing other dues had been withdrawn w.e.f. February 2016. As the deposits in the case of the assessee were made much prior to the aforesaid cutoff date, i.e., February 2016, therefore, the grace period for making respective payments was duly available to the assessee during the year under consideration.

12. As can be gathered from "Explanation 1" to Section 36(1)(va) of the Act, the term "due date" has been explained as under:

> *"[Explanation 1]-For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise."*

Although the assessee as an employer is obligated to credit an employee's share of contribution to the employee's account in the relevant fund under the EPF Act within 15 days from closure of every month, but as stated by the Ld. AR, and, rightly so, a further the grace period of 5 days to remit the contribution had been allowed under the said Act. The issue as to whether or not the grace period would fall within the meaning of the term "due date" as contemplated in Section 36(1)(va) of the Act, had come up Section 43on'ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (2018) 90 taxmann.com 51(Bom.). Thus, Hon'ble High Court in its said aforesaid order had, inter alia, observed that payments having been made within the grace period were to be held as having been made within the period prescribed by law. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as under:

> *"7. In the present case, the Tribunal found that the assessee had deposited the contribution within the grace period and having done so, even assuming applicability of Section 43B, the requirement of law is deemed to have been complied.*

Furthermore, the payment having been made within grace period, the same was held to have been made within the period prescribed by law. On this ground also the order of CIT(A) was upheld by the Tribunal. The order of the CIT(A) noted that the due date of the amount was 21st September, 2008 and the actual date of payment was 29th September, 2008. The CIT(A) also had found that the addition made by the Assessing Officer was not justified and the same was deleted. The only ground on which the Assessing Officer sought to make addition was apparently default in payment before the due date and the amount of Rs.9,770/- was required to be treated as income of the assessee in accordance with Section 2(24)(x), however, it was admittedly deposited in the ESIC account before expiry of the grace period which was not considered by the Assessing Officer.

8. xxxxxxxxx

9. xxxxxxxxx

10. xxxxxxxx

11. In our view the decision of the Tribunal in upholding the order of the CIT(A) in the case at hand cannot be faulted. The assessee was found to have deposited the amount within grace period and hence there is no substance in the grievance of the Revenue. Thus, even the third question does not require any further consideration."

As the assessee firm in the case before me had deposited the employees share of contribution towards EPF of Rs.1,88,346/- (supra) within the grace period under the EPF Act, 1952, therefore, respectfully following the judgment of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (supra), I am of the view that the said amount could not have been disallowed u/s.36(1)(va) r.w.s 2(24)(x) of the Act.

13. At this stage, I may herein observe that the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) had held that employees share of contribution towards the

welfare enactment had to be deposited by the assessee in terms of those enactments and on or before the due dates mandated by such concerned law. For the sake of clarity, the observation of the Hon'ble Apex Court is culled out as under:

"…….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."

14. Considering the facts involved in the case of the assessee before me r.w the settled position of law, I am unable to persuade myself to subscribe to the disallowance of employees share of contribution of Rs.1,88,346/- made by the A.O u/s.36(1)(va) r.w.s 2(24)(x) of the Act. Accordingly, the disallowance of Rs.1,88,346/- made by the A.O u/s.36(1)(va) r.w.s 2(24)(x) of the Act is herein vacated.

13. The contention raised by the assessee regarding grace period is found to be acceptable, but subject to verification of the fact that the payments were made in prescribed time including the time available with grace period. Under such facts and circumstances, we direct the Ld. AO to verify the payment details of EPF qua the disallowance made and vacate the same if

the same are paid within stipulated time, on the contrary sustain the same if not paid in time, as described herein above.

14. In the result, appeals filed by the assessee in ITA No 284, 286 & 287/RPR/2023 are allowed and ITA No 285/RPR/2023 is partly allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 30/11/2023.

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

रायपुर/Raipur; दिनांक Dated 30/11/2023
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