

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

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

आयकर अपील सं. / ITA Nos. 2 & 3/RPR/2023
CO Nos. 19 & 20/RPR/2023
निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18

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

.....अपीलार्थी / Appellant

बनाम / V/s.

Chhattisgarh State Power Transmission Company Limited
2nd Floor, SLDC Building,
CSEB Office, Raipur (C.G.)
PAN : AADCC5773E

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri S.K Meena, CIT-DR

सुनवाई की तारीख / Date of Hearing : 29.11.2023

घोषणा की तारीख / Date of Pronouncement : 14.12.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the revenue are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 15.11.2022, which in turn arises from the orders passed by the A.O under Sec.271(1)(c) AND Sec. 270A of the Income-tax Act, 1961 (in short 'the Act') dated 29.01.2022 and 18.01.2022 for the assessment years 2016-17 and 2017-18, respectively. Also, the assessee company is before us as a cross-objector for both the aforementioned years. As the issues involved in the captioned appeals are inextricably interlinked or, in fact, interwoven, the same are being taken up and disposed of by way of a consolidated order.

2. We shall first take up the appeal filed by the revenue in ITA No.02/RPR/2023 for the assessment year 2016-17 wherein the impugned order has been assailed on the following grounds of appeal before us:

“(1) On the facts and circumstances of the case whether the Id. CIT(A), National Faceless Appeal Centre was justified in deleting the penalty amount of Rs.2,92,58,402/- made by the A.O for furnishing inaccurate particulars/concealment of income.

(2) The order of the Id. CIT(A), National Faceless Appeal Centre is erroneous both in law and on facts.

(3) Any other ground which may be adduced at the time of hearing.”

On the other hand, the assessee company, as a cross-objector, has assailed the impugned order of the CIT(Appeals) on the following grounds of cross-objection (CO No.19/RPR/2023):

“1. On facts and in the circumstances of the case, CIT(A) has erred in confirming penalty of Rs.16,20,646/- levied by the AO u/s 271(1)(c) on disallowance of Rs.49,01,692/- made u/s 36(1)(va).

2. That in any case and in any view of the matter, the action of CIT(A) in confirming the action of AO in imposing penalty of Rs.16,20,646/- u/s 271(1)(c) is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That CIT(A) was justified in cancelling penalty of Rs. 2,92,58,402/- levied by the AO u/s 271(1)(c) on account of addition of Rs. 8,84,92,885/-.”

3. Succinctly stated, the assessee company is a statutory body formed by the Government of Chhattisgarh under the Electricity (Supply) Act, 1948, on 19.05.2003 and is engaged in the business of extra high voltage power transmission services through its high voltage power substations and transmission lines throughout the State of Chhattisgarh. The assessee company had filed its return of income for A.Y.2016-17 on 29.11.2016 declaring an income of Rs. Nil [after setting off unabsorbed loss of Rs.14.64 crore (approx.)]. The “book profit” as per MAT provisions was disclosed by the assessee company at Rs.26.90 crore (approx.), Page 41-42 of APB. Thereafter, the assessee company came up with a revised return of income on 26.03.2018, wherein the income returned was disclosed at Rs. Nil [after setting off an unabsorbed loss of Rs.93.48 crore (approx.)]. The “book profit” u/s. 115JB of the Act as per the MAT provisions was disclosed in the revised return of income at Rs.26.89 crore (approx.), Page 43-44 of APB.

4. The A.O. framed the original assessment vide his order passed u/s. 143(3) dated 14.12.2019, wherein the income of the assessee company was assessed at Rs. Nil [after setting off the unabsorbed loss of Rs.102.82 crores (approx.)]. Elaborating on the reasons leading to the filing of the revised return, it was the claim of the assessee company that it had filed its original return of income on the basis of its provisional financial statements, which, thereafter, was revised due to the difference between the returned MAT income based on the final audited financial statements as against that disclosed in the original return of income. For the sake of clarity, the difference between the original returned income and the revised return of income along with the respective assessed incomes as had been filed by the assessee before us is culled out as follows:

1. Details of returned & assessed income: -

Particulars	As per original return (Rs.)	As per revised return (Rs.)	As assessed by AO	Remarks
Income as per normal computation	Nil (adjusting unabsorbed loss) (PN 41 of PB)	Nil (adjusting unabsorbed loss) (PN 43 of PB)	Nil (adjusting unabsorbed loss)	
Income as per MAT provisions	26,90,90,033/- (PN 41 of PB)	26,89,97,367/- (PN 43 of PB)	36,23,91,944/-	Addition Rs. 9,33,94,577/-
Income returned/assessed	26,90,90,033/- (MAT)	26,89,97,367/- (MAT)	36,23,91,944/- (MAT)	Difference between returned MAT income in original & revised return is due to the reason that the assessee company filed provisional return and after finalization of audit, revised return was filed.

5. During the assessment proceedings, the assessee company came up with certain revised expenses that were claimed to have surfaced due to mistakes in feeding expenses and income data in the revised return of income. For the sake of clarity, the bifurcated details of expenses which were revised by the assessee company in the assessment proceedings are culled out as follows:

Particulars which are debited in profit and loss account	As filed in (revised return of income) (in Rs.)	As disclosed during assessment proceedings (in Rs.)	Difference amount (In Rs.)
Any other rate, tax, duty or cess incl. STT and CTT	14,05,48,123/-	7,98,71,053/-	(+) 6,06,77,070/-
Electricity Expenses	8,89,71,315/-	8,71,00,455/-	(+) 18,71,082/-
Other expenses	46,71,61,966/-	44,12,17,233/-	(+) 2,59,44,733/-
		Total addition on books profit	8,84,92,885/-

The AO, based on the aforesaid revision in the expenses, made an addition of Rs.8,84,92,885/- to the “book profit” disclosed by the assessee company in its revised return of income. Apart from that, the A.O made a further addition /disallowance of the delayed deposit by the assessee company of the employee’s share of contribution towards labour welfare funds u/s. 36(1)(va) (sic.) of the Act amounting to Rs.49,01,692/-.

6. The A.O., at the time of culminating the assessment, initiated penalty proceedings u/s. 271(1)(c) of the Act with respect to the aforesaid additions/disallowance made in the hands of the assessee company.

7. The A.O., after concluding the assessment vide his order, passed u/s. 271(1)(c) dated 29.01.2022 imposed a penalty of Rs.2,72,92,117/- with respect to the aforesaid two-fold additions made in the hands of the assessee company.

8. Aggrieved the assessee company carried the matter in appeal before the CIT(Appeals), who found favor with the assessee company that no penalty was called for as regards the addition of Rs. 8.84 crore (supra), but at the same time, relying on the judgment of the Hon'ble Supreme Court in the case of Checkmate Servies Pvt. Ltd. Vs. CIT-1, Civil Appeal No.2833 of 2016 dated 12.10.2022, upheld the penalty imposed by the A.O with respect to the addition/disallowance made by the A.O u/s. 36(1)(va) of the Act. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

"The appellant has quoted various decisions in support of its claim. The appellant has argued that the income declared can be revised / modified before completion of the assessment. The Assessing Officer clearly brought out in the order passed u/s.271(1)(c) of the Act, dt.29/01/2022 that the mistakes crept in were accepted and offered for taxation by the assessee only when they were noticed by the Assessing Officer during the course of the assessment proceedings and levied penalty u/s.271(1)(c) stating that the explanation offered by the assessee were not acceptable and further, the details of the income / expenses was not disclosed in the return of income, but the same was unearthed during the assessment proceedings. But the appellant states that "return data was corrected on the basis of information already available with assessing officer in form of 3CA, 3CD report, form 29B and audited annual account." In the circumstances, it is clear that the mismatch between the data incorporated in the audited reports and the return of income; filed were set right during the course of the assessment

proceedings on agreed basis. Accordingly, it is inferred that no mala fide intention on the part of the assessee being an entity working under the State Government of Chhattisgarh, in hiding/concealing the income in not properly showing/reflecting the information once incorporated in the audited statements and submitted before the Department for examination.

It is worth to note the contention of the appellant that "return data was corrected on the basis of information already available with assessing officer in form of 3CA, 3CD report, form 29B and audited annual account.

On perusal of the assessment order dated 14.12.2019, page 3, based on the appellant's submission, the AO has made addition of Rs. 8,84,92,885/- for the reason that there is a difference in the MAT profit declared as there was a mistake on the part of the appellant while feeding expenses and income data in ITR. Also, it is seen from records that the appellant has filed Form No.29B on 21.10.2019 vide which in Row no.18 — Book profit as computed is shown at Rs. 35,84,30,033/-. Further, the appellant has filed the tax audit reports in Form 3CA and 3CD on 23.12.2016. So, all the data were already available in different reports / forms filed online by the appellant with the amount requested to be corrected during the scrutiny assessment proceedings. As submitted by the appellant, it can be construed as a data transmission error. It is observed that, there is true element of bonafideness in the conduct of the assessee.

The Hon'ble Apex Court in CIT Vs. Reliance Petro products 322ITR 158 (SC) has held that no penalty should be imposed when the assessee adopts a bona fide view and has declared all the necessary particulars concerning the income in dispute.

In the case of DCIT Vs. M/s. Mahalaxmi Realtors, ITAT 'B' Bench, Pune has observed that, 'penalty cannot be imposed in a methodological manner but it can only be imposed if it is required in the facts and circumstances of the case suggesting and confirming any concealment or furnishing of inaccurate particulars of income by the assessee.

Hence, I am of the opinion that the appellant did not have any malafide intention to evade taxes as the same was already disclosed much before the assessment was concluded and accordingly, penalty levied against the addition of Rs.8,84,92,885/- deserves to be deleted.

As regard to the addition made of Rs.49,01,692/- being the disallowance u/s 36(1)(iv) of the Act and penalty levied, in the light of the recent Supreme Court Judgement in the case of Checkmate Services P. Ltd., Vs. CIT-1 vide Civil Appeal No. 2833 of 2016 dated 12.10.2022, the addition made and the taxes levied by the AO is upheld. Hence, the penalty levied proportionate to the addition made / tax levied is also upheld and the ground of appeal specifically in respect of this addition / levy of penalty is 'dismissed'.

4.3 Ground No.1 is general in nature and no separate adjudication is required. Ground No.4 also doesn't need separate adjudication as the

appellant had not raised any such grounds/issues during the course of the appellate proceedings.

5. Accordingly, the appeal of the Appellant for AY 2016-17 stands partly allowed.”

9. The revenue being aggrieved with the order of the CIT(Appeals) to the extent he had vacated the penalty that the A.O. had imposed as regards the addition of Rs.8.84 crore (supra) has carried the matter in appeal before us.

10. We have heard the Id. 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 contentions.

11. At the threshold, we may herein refer to the peculiar facts involved in the present case before us. It is the claim of the Ld. Authorized Representative (for short 'AR') that as the accounts of the assessee company were not finalized as of the date of filing of the return of income; therefore, the same was filed on the basis of the provisional financial statements on 29.11.2016. As is discernible from the records the accounts of the assessee company were audited on 15.12.2016, Pages 51-104 of APB. Thereafter, the assessee company filed a revised return of income on 26.03.2018, which, as stated by the Ld. AR was prompted by the difference between the “book profit” under the MAT provisions that was disclosed based on the provisional financial statements in the original return of income as against that computed as per the final audited financial statements. The Ld. A.R had failed to come up with any explanation that now when the accounts of the assessee company

were finally audited on 15.12.2016 then why the filing of the revised return of income was kept in abeyance for a substantial period and was filed only as on 26.03.2018, i.e., after the lapse of one and half years. Apart from that, we find it incomprehensible that though the assessee company had filed a revised return of income on 26.03.2018, but after that, it had, on 06.12.2019, come up with a revision of certain expenses aggregating to Rs.8.84 crore (supra) for the reason that certain mistakes had crept while feeding the expenses in the revised return of income.

12. The Ld. AR on being specifically queried by the Bench that when the books of accounts of the assessee company were audited on 15.12.2016, then why the aforesaid discrepancies, i.e., revision of expenses of Rs.8.84 crore (approx.) was not considered while filing the revised return of income on 26.03.2018 and was kept in abeyance for the period as long as three years (approx.) and was filed before the A.O in the course of the assessment proceedings only on 06.12.2019, submitted that the moment the assessee company learned about the aforesaid discrepancies/ infirmities it immediately brought the same to the notice of the A.O.

13. We have thoughtfully considered the aforesaid issue and are unable to persuade ourselves to concur with the claim of the Ld. AR. For a better understanding of the issue, the sequence of events involved in the present case are culled out as follows:

Date	Particulars
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29.11.2016	The original return of income for AY 2016-17 was filed by the assessee company based on the provisional financial statements.
15.12.2016	The accounts of the assessee company were audited u/s 44AB of the Act.
26.03.2018	The revised return of income filed by the assessee company
06.12.2019	The assessee company, in the course of the assessment proceedings, revised certain expenses aggregating to Rs.8.84 crore (supra) for the reason that some mistakes had crept while feeding the expenses/income in the revised return of income and thus, disclosed its "book profit" under the MAT provisions at Rs.35,74,90,033/- as against that disclosed in its revised return of income at Rs.26,89,97,367/-

14. As is discernible from the order of the CIT(Appeals), we find that he was of the view that the mistakes that had crept into the revised return of income were accepted by the assessee company and were offered by it for tax during the assessment proceedings. The CIT(Appeals) further was of the view that as the mistakes regarding the expenses of Rs. 8.84 crores (supra) were discernible from the information that was already available with the A.O in Form 3CA, Form 3CD and 29B, the same, thus, was a mere mismatch between the data incorporated in the "audit report" and the revised return of income filed which was set right during the

assessment proceedings on an agreed basis. Accordingly, the CIT(Appeals) was of the view that there was no malafide intention of the assessee company, an entity working under the State Government of Chhattisgarh, in hiding/concealing its income and not properly disclosing the same. The CIT(Appeals), thus, was of the view that the A.O had made the addition of Rs.8.84 crore (supra) to the “book profit” disclosed by the assessee company in its revised return of income under the MAT provisions on account of certain bonafide mistakes of the latter that had crept in while feeding the data of income and expenditure in the return of income. Referring to the records, the CIT(Appeals) observed that the assessee company had filed Form 29B dated 21.10.2019, wherein it had, at Row No.18, disclosed the “book profit” at Rs.35.84 crore (approx.). Also, the CIT(Appeals) observed that the assessee company had filed its tax audit report in Form 3CA and Form 3CD on 23.12.2016. Considering the aforesaid facts, the CIT(Appeals) was of the view that now, when all the data was already available in different reports/forms that were filed online by the assessee company, disclosing the amounts that were requested to be corrected during scrutiny assessment proceedings, therefore, it could be concluded that the failure leading to the aforesaid mismatch was merely on account of a data transmission error. Accordingly, the CIT(Appeals), considering the bonafide conduct of the assessee company, vacated the penalty imposed by the A.O u/s 271(1)(c) with respect to the aforesaid addition of Rs.8.84 crore (supra.).

14. We have thoughtfully considered the issue in the backdrop of the contentions of the Ld. Authorized Representatives of both parties. We are unable to concur with

the view taken by the CIT(Appeals) that as the “book profit” of Rs.35.84 Crore (supra), which the assessee company had sought to get corrected in the assessment proceedings was already disclosed in its tax “audit report” in Form 3CA and Form 3CD on 23.12.2016, thus, the fact that it had not tried to hide/suppress its income was established. As observed by us hereinabove, the CIT(Appeals), based on his aforesaid conviction as regards the bonafide conduct of the assessee company had vacated the penalty imposed by the AO u/s 271(1)(c) of the Act. The Ld. AR on being specifically queried as to why, after obtaining the “audit report” on 15.12.2016, the assessee company had delayed filing the “revised return of income” till 26.03.2018, failed to come forth with any plausible explanation. Apart from that, the Ld. AR on being queried that now when the assessee company, based on its finally audited financial statements dated 15.12.2016, had revised its return of income on 26.03.2018, then why the aforesaid mistakes in the expenses of Rs. 8.84 crores (supra) were not incorporated in the said revised return of income, submitted that the moment the assessee company learned about the said mistake it had immediately brought the same to the notice of the AO vide its letter dated 06.12.2019. We are unable to persuade ourselves to subscribe to the aforesaid claim of the assessee/ Ld. AR. It is incomprehensible that the assessee company, a State government undertaking, would be so naïve in not bringing its return of income in conformity with its audited financial statements dated 15.12.2016. As the assessee company, in its “revised return of income,” had based on inflated expenses of Rs. 8.84 crores (supra) suppressed its “book profit” for computing the tax liability under

the MAT provisions; therefore, we find no infirmity in the view taken by the A.O who had rightly saddled it with penalty u/s. 271(1)(c) of the Act. Although it is the claim of the assessee company that it had vide its letter dated 06.12.2019 filed in the course of the assessment proceedings sought for correction of its “book profit” under the MAT provisions and, thus, had brought to the notice of the AO that by mistake certain expenses aggregating to Rs. 8.84 crores (supra) were wrongly claimed in the “revised return of income” on the higher side, we are afraid that the said unsubstantiated claim of the assessee would not carry its case any further. We say so for the reason that the very claim of the assessee company that it had, due to a bonafide mistake, not disclosed its “book profit” for computing its tax liability under the MAT provisions in its “revised return of income,” dated 26.03.2018 is in itself incomprehensible. Although the assessee company had in its finally audited financial statements dated 15.12.2016, Page 79 of APB disclosed its “Net profit” at Rs. 3,574.90 lacs but strangely it had while computing the “book profit” under the MAT provisions taken the same in its “revised return of income”, dated 26.03.2018 at Rs. 2,689.97 lacs, Page 43-44 of APB, which, thus had resulted to a difference in the “book profit” of Rs. 8.84 crores (supra). We are not only unable to comprehend where from and on what basis the assessee company had picked up the figure of Rs. 2,689.97 lac (supra), but also fail to fathom why the amount of “Net profit” of Rs. 3,574.90 lacs (supra) duly disclosed by the assessee company in its audited financial statements dated 15.12.2016 was not considered in the “revised return of income” filed on 26.03.2018. Rather, it transpires from a perusal of the record that though the

assessee company had in its original return of income filed on 29.11.2016, Page 41-42 of APB disclosed its correct profit at Rs. 3,574.90 lacs (supra) but thereafter had in its revised return of income filed on 26.03.2018 revised the same at Rs. 2,689.97 lacs (supra), Page 43-44 of APB. Accordingly, based on the aforesaid facts it can safely be concluded that the assessee company had purposively scaled down its income in the revised return of income; which, thereafter, on being confronted by the AO was sought to be corrected and offered for tax vide its letter dated 06.12.2019 filed in the course of the assessment proceedings. The fact that the assessee company had sought for correction of its profit only on being confronted by the AO is discernible from the latter's observations in the order passed u/s 271(1)(c) of the Act, dated 29.01.2002, which reads as under (relevant extract):

“It is pertinent to note that during the course of assessment proceedings the assessee agreed to the addition made by the AO, once the same was raised by the AO. Further, the details of the income/expenses was not disclosed in the return of income, but the same was unearthed during the assessment proceedings and the same has duly been accepted by the assessee.”

(emphasis supplied by us)

We, thus, based on our aforesaid observations, are of the view that as the assessee company had not only failed to come up with any bonafide explanation for having raised in its revised return of income filed on 26.03.2018 a wrong claim for deduction of inflated expenses, which was contrary to its audited financial statements, dated 15.12.2016; thus, are of the view that the disallowance by the AO of the said inflated expenses clearly falls within the realm of the “Explanation 1” r.w. “Explanation 4” (for

quantification) of Section 271(1)(c) of the Act. Apart from that, we are of the view that as the assessee company could have only revised its claim for deduction of expense by filing a revised return of income, which, it had failed to do; therefore, its letter dated 06.12.2019 (supra) wherein it had after being confronted by the AO sought to correct its wrong claim would not assist its case. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC)**. The Hon'ble Apex Court, in its aforesaid order, had observed that an assessee is not vested with any right to raise a claim before the AO otherwise than by filing a revised return of income. In case the assessee company before us intended to seek a further correction of the "book profit" disclosed by it in its revised return of income by an amount of Rs. 8.84 crore (supra), then, the only remedy available with it was to have further filed a revised return of income, which, we find it had failed to do.

15. Apropos the view taken by the CIT(Appeals) that as the information that was sought by the assessee company to be corrected in the assessment proceedings vide its letter dated 06.12.2019 (supra) was already available with the AO in Form No. 3CA, Form No. 3CB report, Form 29B and audited financial statements; therefore, it could safely be inferred that it had no malafide intention in hiding/concealing its income, the same does not find favor with us. Rather, the fact that the assessee company had duly disclosed the correct amount of expenses in its final audited financial statements/forms/report but had failed to disclose the same in its revised return of income filed on 26.03.2018, which in turn was based on the

audited financial statements, dated 15.12.2016 therein supports the penalty imposed by the AO u/s 271(1)(c) of the Act. As stated by the Ld. DR, and rightly so, if the case of the assessee company had not been selected for scrutiny assessment, then its aforesaid wrong claim of inflated expenses would have gone unchecked with a consequential loss to the revenue. If an AO who comes across an assessee who had raised a wrong/false claim of expenses in his return of income but a correct disclosure of the same in his audited financial statements/forms/reports, does not visit such assessee with penalty u/s 271(1)(c) for admittedly having raised a wrong/false claim for deduction of expenses in the return of income with an attempt to suppress its income, then, it would send a wrong message and may lead to the adoption of such nefarious practice by certain assessee's who would though correctly disclose their claim for deduction of expenses in the audited financial statements/forms/reports but knowingly raise an inflated/wrong claim of such expenditure in the return of income, which, in case, on being confronted would be offered by them for tax without being subjected to any penalty. We, thus, in terms of our aforesaid observations are of a firm conviction that the AO had rightly saddled the assessee company with penalty u/s 271(1)(c) of the Act w.r.t the inflated/false claim of expenses raised by it in the revised return of income.

16. Apropos the judgment of the **Hon'ble Supreme Court** in the case of **Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (2012) 348 ITR 306 (SC)** as had been pressed into service by the Ld. AR, the same being distinguishable on facts, would not carry the case of the assessee company any further. We say so for the reason

that the Hon'ble Apex Court had observed that where the assessee had committed an inadvertent and bonafide error and not intended to or attempted to conceal its income or furnished inaccurate particulars of income, penalty u/s. 271(1)(c) could not be imposed. As in the present case before us, it is not a case of bonafide mistake in raising a wrong claim of inflated expenses, i.e., not in conformity with those disclosed by the assessee company in its audited financial statements; therefore, the aforesaid judicial pronouncement would not assist the case of the assessee company.

17. Apropos the order of the **ITAT, Mumbai**, in the case of **DCIT Vs. Reliance General Insurance Company Ltd. (2018) 52 CCH 375 (Mum)** as had been relied upon by the Ld. AR, we find that the same, too, being distinguishable on facts, would not carry the case of the assessee any further. In the aforesaid case as the return of income filed by the assessee u/s. 148 of the Act was accepted by the A.O., who did not make any further disallowance; therefore, it was in the backdrop of the said facts, that the Tribunal had held that no penalty u/s. 271(1)(c) of the Act could be imposed on the assessee. On a similar footing, the order of the ITAT, Bilaspur, in the case of **ACIT Vs. Agrawal Round Rolling Mills Ltd., ITA No.133/BLPR/2009 dated 14.07.2010**, being distinguishable on facts would not assist the case of the assessee company. In the case before the Tribunal, as the assessee due to negligence of its staff, was unable to produce the necessary papers to substantiate the authenticity of the share application money of Rs.61 lacs that was received from 12 share applicants, therefore, it had in order to buy peace on a suo motto basis offered the

said amount as its income with a request not to initiate any penal action as regards the said amount. At this stage, we are reminded of the judgment of the Hon'ble **Supreme Court** in the case of **Mak Data P. Ltd. v. CIT (2013) 358 ITR 593 (SC)**, wherein the Hon'ble Apex Court had observed that a voluntary disclosure does not absolve the assessee from the mischief of penal proceedings u/s 271(1)(c) of the Act. The Hon'ble Apex Court observed that the law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty. It was further observed that the Assessing Officer should not be carried away by the plea of the assessee, such as "voluntary disclosure," "buy peace," "avoid litigation," or "amicable settlement," to explain away its conduct. The Hon'ble Court observed that what is material is whether or not the assessee had offered any explanation for the concealment of particulars of income or furnishing inaccurate particulars of income.

18. As the assessee company had failed to come forth with any explanation as regards its claim of inflated expenses of Rs. 8.84 crores (supra) in its "revised return of income," which claim of it is not borne out from its final audited financials, dated 15.12.2016; therefore, we find no infirmity in the view taken by the AO who vide his order dated 29.01.2022 had rightly saddled it with penalty u/s 271(1)(c) of the Act. We, thus, set aside the order of the CIT(Appeals) and uphold the penalty imposed by the AO u/s 271(1)(c) to the extent it pertains to the variance in the "book profit" under the MAT provisions arising on account of claim of deduction of false/inflated

expenses of Rs. 8.84 crore (supra) in the revised return of income by the assessee company.

19. In the result, the appeal of the revenue in ITA No.02/RPR/2023 for A.Y.2016-17 is allowed in terms of our aforesaid observations.

CO No.19/RPR/2023
A.Y.2016-17

20. We shall now deal with the captioned cross-objection filed by the assessee before us. As regards the addition/disallowance of Rs.49,01,692/- made by the A.O u/s. 36(1)(va)(sic) of the delayed deposit of employees' share of contribution towards labor welfare funds; we find substance in the claim of the Ld. AR that the assessee company was not liable to be visited with penalty u/s. 271(1)(c) of the Act as regards the aforesaid addition/disallowance.

21. Admittedly, as on the relevant point of time, i.e., at the stage of filing return of income/revised return of income by the assessee company, the allowability of the assessee's claim for deduction of delayed deposit of employee's share of contribution towards labor welfare funds there was a judgment of the **Hon'ble Supreme Court** in the case of **Commissioner of Income Tax Vs. Alom Extrusions Limited, [2009] 319 ITR 306 (SC)** [reversing the judgment of the Hon'ble High Court of Bombay in CIT Vs. Pamwi Tissues Ltd. (2009) 313 ITR 137 (Bom)] favoring the assessee. Also, there were certain Hon'ble High Courts that took a view in favor of the assessee's on the aforesaid issue. As the claim of the assessee company for deduction of the delayed deposit of the employees share of

contributions towards labour welfare funds, as long as the same was made within the “due date” prescribed under sub-section (1) of Sec.139 for filing of the assessee’s return of income, was at the stage of filing of the return of income/revised return of income by the assessee company a possible and plausible view, thus, the same in our view would not attract penalty u/s. 271(1)(c) of the Act.

22. We, thus, not being able to persuade ourselves to subscribe to the view taken by the CIT(Appeals) to the extent he had upheld the penalty imposed by the A.O u/s. 271(1)(c) of the Act w.r.t the delayed deposit by the assessee company of the employees share of contributions towards labour welfare funds, set aside the same.

23. In the result, the cross-objection filed by the assessee in CO No.19/RPR/2023 for A.Y.2016-17 is allowed in terms of our aforesaid observations.

24. Resultantly, both the appeal of the revenue and cross-objection filed by the assessee company for A.Y.2016-17 are allowed in terms of our aforesaid observations.

ITA No.3/RPR/2023
CO No.20/RPR/2023
AY 2017-18

25. We shall first take up the appeal filed by the revenue in ITA No.03/RPR/2023 for assessment year 2017-18 wherein the revenue has assailed the impugned order on the following grounds of appeal before us:

“(1). On the facts and circumstances of the case whether the Ld. CIT(A), National Faceless Appeal Centre was justified in deleting the

penalty amount of Rs.2,17,52,866/- made by the A.O for furnishing inaccurate particulars/concealment of income.

(2) The order of the Id. CIT(A), National Faceless Appeal Centre is erroneous both in law and on facts.

(3) Any other ground which may be adduced at the time of hearing.”

On the other hand the assessee company as a cross-objector has assailed the impugned order of the CIT(Appeals) on the following grounds of cross-objection (CO No.20/RPR/2023):

“1. On facts and in the circumstances of the case, CIT(A) has erred in confirming penalty of Rs.55,39,257/- levied by the AO u/s. 270A on disallowance of Rs. 83,76,816/- made u/s 36(1)(va).

2. That in any case and in any view of the matter, the action of CIT(A) in confirming the action of AO in imposing penalty of Rs.55,39,257/- u/s.270A is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That CIT(A) was justified in cancelling penalty of Rs.2,17,52.860/- levied by the AO u/s. 270A on account of addition of Rs.3,28,96,087/-.”

26. Succinctly stated, the assessee company had e-filed its return of income for A.Y.2017-18 on 30.10.2017 declaring an income of Rs. Nil. Subsequently, the return of income was revised by the assessee company on 09.01.2018 at Rs. Nil. Once again, the assessee company filed a revised return of income on 31.03.2018 declaring an income of Rs. Nil. Thereafter, the case of the assessee company was selected for scrutiny assessment under CASS.

27. During the assessment proceedings, the A.O observed that the assessee company had filed its original return of income before completion of the audit, which,

thereafter, was followed by various revised returns of income. The A.O further observed that the total gross receipts originally reported by the assessee company in its return of income was Rs.9,91,25,36,835/- but the same was, thereafter, in the assessment proceedings offered at Rs.9,94,09,89,590/-. Also, the A.O observed that the “book profit” for MAT purpose that was earlier disclosed by the assessee company vide its revised return of income filed on 31.03.2018 was raised to Rs.67,38,09,917/- in the subsequently revised return of income that was filed on 29.03.2019. Accordingly, the A.O noticed that the difference between the “book profit” for MAT as per the revised return of income filed on 31.03.2018 and the subsequently revised return of income filed on 29.03.2019 worked out at Rs.3,28,96,087/- [Rs.67,38,09,917/- (-) Rs.64,09,13,830/-]. Based on the aforesaid facts, the A.O. held a conviction that the assessee company had not disclosed the true and correct figure of “book profit” while filing its return of income, and thus, initiated penalty proceedings u/s. 270A of the Act for misreporting of income.

28. Also, the A.O. observed that though the assessee company, in its original return of income, had not offered for disallowance the amount of delayed deposit of employees share of contributions towards ESI/EPF u/s. 36(1)(va) of Rs.83,76,816/- but had disallowed the same and offered it for tax in the assessment proceedings. Also, the A.O with respect to the aforesaid disallowance of the assessee’s claim for deduction of delayed deposit of employee share of contribution towards ESI/EPF initiated penalty proceedings u/s.270A of the Act for misreporting of income.

29. The A.O., after making the aforesaid addition/disallowance assessed the income of the assessee company at Rs.4,12,72,903/-, which, after setting off the brought forward losses was scaled down to an amount of Rs. Nil.

30. Also, the A.O., after the culmination of the assessment, issued notice u/s. 274 r.w.s. 270A of the Act dated 24.12.2019, wherein the assessee company was called upon to put forth an explanation as to why penalty u/s. 270A of the Act may not be imposed on it for underreporting/misreporting of income, Page 129 of APB. After the culmination of the assessment proceedings, the assessee company was again issued a "Show Cause Notice" (SCN) dated 16.10.2020 u/s. 274 r.w.s. 270A of the Act, wherein it was called upon to explain why penalty u/s. 270A of the Act may not be imposed on it for underreporting/misreporting income, Page 130 of APB. After that, the assessee company received a "SCN" u/s. 270A of the Act dated 27.07.2021, wherein the A.O. referred to the penalty proceedings which were earlier initiated u/s. 270A of the Act vide his notice dated 24.12.2019 and, thus, called upon it to show cause as to why penalty may not be imposed u/s. 270A of the Act as was initiated in the "SCN" dated 24.12.2019.

31. The assessee company in compliance to the SCNs that were issued u/s. 274 r.w.s. 270A of the Act, filed its reply vide letter dated 03.01.2021 and 14.08.2021, wherein it tried to impress upon the A.O that no penalty under the aforesaid statutory provision was called for in its case with respect to both the issues, viz., (i) increase in the "book profit" for MAT purpose: Rs.3,28,96,087/-; and (ii) disallowance of its

claim for deduction of belated deposit of employees share of contribution towards labor welfare funds: Rs.83,76,816/-. For the sake of clarity, the reply filed by the assessee company before the A.O is culled out as under (extract from the order u/s. 270A of the Act) :

“In this case the assessee has filed the original return of income before the completion of audit and therefore the assessee has filed various revised returns. The total gross receipt reported in the return of income was Rs.9,91,25,835/- but during the course of assessment proceeding the assessee has offered me gross receipt of Rs. 9,94,09,89,590/-. As per assessee submission the book profit increased by Rs.3,28,96,087/- i.e. Rs. 67,38,09,917/-.

2. Further, on going through the return of income filed, it is found that the assessee has not offered the amount debited to the profit and loss account, to the extent of disallowance under section 36(1)(iv) of the Act at Rs.83,76,816/-in his original return of income but during the course of assessment proceeding the same has been offered for taxation.”

As the reply filed by the assessee company did not find favor with the A.O., therefore, he vide his order passed u/s. 270A of the Act dated 18.01.2022 saddled it with penalty of Rs. 2,72,92,117/-,i.e, @200%. For clarity, the observation of the A.O. based on which he had imposed penalty u/s. 270A of the Act is culled out as under:

“4. Before discussing the issue of levy of penalty in the case of assessee, it is necessary to take into consideration the extant provisions of Section 270A. The same are re-produced hereunder for ready reference:

270A. (1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) A person shall be considered to have under-reported his income, if—

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished [or where return has been furnished for the first time under section 148];

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where [no return of income has been furnished or where return has been furnished for the first time under section 148];

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

.....

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

5. The reply of the assessee has been carefully perused, however the same is not acceptable. It is pertinent to note that the assessee agreed to the addition made by the AO, once the same was raised by the AO during the course of assessment proceedings. Further, the details of the income/ expenses was not disclosed in the return of income, but the same was unearthed during the assessment proceedings and the same has been duly

accepted by the assessee. The reply of assessee is considered but not found to be tenable.

6. From the facts of the case, it can be clearly seen that the assessee has tried to misreport particulars of income by showing less gross receipts thereby reducing the profit of the company impacting the tax liability. Further the assessee also failed to add back the amount which had been debited in the profit and loss account, to the extent of disallowance u/s.36(1)(iv) of the Act as the same had ought to be added back as disallowance u/s.36(1)(iv) of the Act. As the discrepancy has been observed during the course of assessment proceedings, the assessee then offered the same for taxation. In this instance, also it clearly states that the assessee had been trying to evade tax, which should have been done by the assessee as per law.

7. Therefore, the penalty should be levied on the assessee because of following facts:

i. The contribution received from employees' is not expenditure in the real sense of the term. Such amounts, when received from employees' is treated as income u/s 2(24)(x) of the Act and when paid in time, are allowed as deduction u/s 36(1)(va) of the Act. The items covered u/s 43B of the Act is actual expenditure which is allowed only on actual payment, irrespective of the method of accounting followed. In the present case, when the assessee received the contributions from their employees', the same constituted income as per Section 2(24)(x) of the Act. Since it was not paid in time, no deduction is allowable u/s 36(1)(va) of the Act.

ii. Not levying penalty would lead to injustice for other honest tax payers. There is also possibility of repetition of offence by the assessee in case, penalty is not levied.

iii. The assessee has not preferred an appeal against the assessment order u/s 143(3) dated 30.12.2019 i.e. the assessee has accepted its misreporting of income.

iv. Mens rea —bad intention is not prerequisite for levy of penalty and ignorance of provisions of law is not an excuse.

8. In view of the above discussion, it is justified that the assessee has misreported its income for the year under consideration, i.e., A.Y. 2017-18. Therefore, as per provisions of section 270A(9) of the Act, the penalty for misreporting of income shall be a sum equal to 200% of the amount of tax payable on mis-reported income of Rs.4,12,72,903/-. In this case such amount of tax payable is Rs.1,36,46,058/-. The amount of penalty has been computed as under:-

The amount of income under-misreported	4,12,72,903/-.
Tax on under-misreported income	1,23,81,870/-
Surcharge(7%)	8,66,730/-
Edu. Cess (@3% of tax + surcharge)	3,97,458/-
Tax sought to be evaded	1,36,46,058/-
Mis-reporting penalty @ 200%	2,72,92,117/-

9. Accordingly, a penalty of Rs.2,72,92,117/- of the tax sought to be evaded is, therefore, hereby imposed u/s. 270A of the Income Tax Act, 1961 for A.Y.2017-18.”

32. The assessee company being aggrieved with the penalty imposed u/s. 270A of the Act carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) was of the view that as the assessee company had revised and modified its return of income before completion of the assessment and had, after accepting the mistakes that had earlier crept in, offered the resulting amount for tax therefore, there was no justification for the A.O to have imposed penalty u/s. 270A of the Act. Also, the CIT(Appeals) finding favor with the claim of the assessee company was of the view that as the returned data was already available with the A.O in Form 3CA, 3CD report, Form 29B, and audited financial accounts; therefore, the said fact in itself dispelled all doubts as regards the bonafide of the assessee with respect to the mistakes in its original return of income. As such, the CIT(Appeals) was of the view that as there was no malafide intention on the part of the assessee company, an

entity working under the State government of Chhattisgarh, in hiding/concealing its income, no penalty could have been imposed u/s. 270A of the Act. The CIT(Appeals), while concluding as hereinabove, had drawn support from the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro products, 322 ITR 158 (SC). At the same time, the CIT(Appeals) did not find favor with the claim of the assessee company that the disallowance made by the A.O u/s. 36(1)(va) of Rs.83,76,816/- was not liable to be visited with penalty u/s. 270A of the Act. Accordingly, the CIT(Appeals), drawing support from the judgment of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. Vs. CIT-1, Civil Appeal No.2833 of 2016 dated 12.10.2022 upheld the penalty to the said extent as was imposed by the A.O u/s. 270A of the Act. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:-

"The appellant has quoted various decisions in support of its claim. The appellant has argued that the income declared can be revised/ modified before completion of the assessment.

The Assessing Officer brought out in the order passed u/s.270A of the Act, dt.18/01/2022 that the mistakes crept in were accepted and offered for taxation by the assessee only when they were noticed by the Assessing Officer during the course of the assessment proceedings and levied Penalty u/s. 270A stating that the explanation offered by the assessee were not acceptable and further the details of the income / expense s was not disclosed in the return of income, but the same was unearthed during the assessment proceedings. But the appellant states that "return data was corrected on the basis of information already available with assessing officer in form of 3CA, 3CD report, form 29B and audited annual account." In the circumstances, it is clear that the mismatch between the data incorporated in the audited reports and the return of income filed were set right during the course of the assessment proceedings on agreed basis. Accordingly, it is inferred that no mala fide intention on the part of the assessee being an entity working under the State Government of Chhattisgarh, in hiding/concealing the income in not properly showing/reflecting the information once incorporated in the audited statements and submitted before the Department for examination.

It is worth to note the contention of the appellant that "return data was corrected on the basis of information already available with assessing officer in form of 3CA, 3CD report, form 29B and audited annual account.

On perusal of the assessment order dated 24.12.2019, page 2, the AO has made addition of Rs.3,28,96,087/- for the reason that the assessee had not disclosed the true and correct figure during filing of ROI. However, it is seen from records that the appellant has filed Form No.29B on 31.12.2018 vide which in Row no.18 — Book profit as computed is shown at Rs.67,38,09,917/-. Further, in the revised ROI filed on 29.03.2019, in the computation of total income the appellant has reflected the same amount against — Deemed total income u/s.115JB. It is observed that, there is true element of bonafideness in the conduct of the assessee.

The Hon'ble Apex Court in CIT Vs. Reliance Petro products 322ITR 158 (SC) has held that no penalty should be imposed when the assessee adopts a bona fide view and has declared all the necessary particulars concerning the income in dispute.

In the case of DCIT Vs. M/s. Mahalaxmi Realtors, ITAT `13' Bench, Pune has observed that, 'penalty cannot be imposed in a methodological manner but it can only be imposed if it is required in the facts and circumstances of the case suggesting and confirming any concealment or furnishing of inaccurate particulars of income by the assessee.

Hence, I am of the opinion that the appellant did not have any malafide intention to evade taxes as the same was already disclosed much before the assessment was concluded and accordingly, penalty levied against the addition of Rs.3,28,96,087/- deserves to be deleted.

As regard to the addition made of Rs.83,76,816/- being the disallowance u/s 36(1)(iv) of the Act and penalty levied, in the light of the recent Supreme Court Judgement in the case of Checkmate Services P. Ltd., Vs. CIT-1 vide Civil Appeal No. 2833 of 2016 dated 12.10.2022, the addition made and the taxes levied by the AO is upheld. Hence, the penalty levied proportionate to the addition made / tax levied is also upheld and the ground of appeal specifically in respect of this addition / levy of penalty is 'dismissed'.

4.3 Ground No.1 is general in nature and no separate adjudication is required. Ground No.4 also doesn't need se crate adjudication as the appellant had not raised any such grounds/issues-during the course of the appellate proceedings.

5. Accordingly, the appeal of the Appellant for AY 2017-18 stands 'partly allowed'."

33. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. Also, the assessee company has assailed the validity

of the jurisdiction assumed by the A.O. for imposing penalty u/s. 270A of the Act by filing a cross-objection.

34. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee company at the threshold of hearing of the appeal has assailed the validity of the jurisdiction assumed by the A.O. based on which penalty u/s. 270A of the Act was imposed on the assessee company. Elaborating on his aforesaid contention, the Ld. AR submitted that as the A.O. had failed to spell out in the body of the SCNs as to whether the penalty u/s. 270A of the Act was being initiated for "underreporting" or "misreporting" of income; therefore, he had wrongly assumed jurisdiction and imposed the same. The Ld. AR, to fortify his aforesaid contention, took us through the respective SCNs that were issued by the A.O u/w. 274 r.w.s. 270A of the Act, viz. (i) SCN dated 24.12.2019, Page 129 of APB; (ii) SCN dated 16.10.2020, Page 130 of APB; and (iii) SCN/reminder letter dated 27.07.2021, Page 131 of APB. The Ld. AR, referring to the aforesaid SCNs (supra), submitted that in the aforesaid notices, the A.O. had failed to specify the limb for which penalty u/s. 270A of the Act was sought to be imposed on the assessee company, viz., "under-reporting" or "misreporting" of income. The Ld. AR submitted that as there was no whisper in the aforesaid SCNs as to on which limb Section 270A of the Act was being triggered and as to how sub-section (9) of Section 270A was satisfied, thus, the A.O had wrongly assumed jurisdiction and saddled the assessee company with penalty under the aforesaid statutory provision. The Ld. AR, to fortify his aforesaid claim, had drawn support from the judgment of the Hon'ble Supreme Court in the case of Schneider

Electric South East Asia (HQ) PTE Vs. ACIT (2022) 443 ITR 186 (Delhi) and orders of the Co-ordinate Benches of the Tribunals, viz., (i) M/s. Alrameez Construction Pvt. Ltd. Vs. CIT (NFAC) (2023) 202 ITD 379 (Mum); (ii) Kishor Digambar Patil Vs. ITO, ITA Nos,54 & 55/PUN/2023 dated 30.03.2023; and (iii) Saltwater Studio LLP Vs. NFAC (2023) 68 CCH 113 (Mum). The Ld. AR took us through the relevant observations of the Courts/Tribunal in the aforementioned judicial pronouncements, based on which penalty u/s. 270A of the Act was quashed in the respective cases for want of valid assumption of jurisdiction by the A.O.

35. Alternatively, the Ld. AR submitted that as the total income of the assessee company that was disclosed under the MAT provision at Rs.67,38,09,917/- vide its revised return of income that was validly filed under sub-section (5) of Sec. 139 of the Act on 29.03.2019, was assessed at the same amount u/s.115JB of the Act by the A.O vide his order u/s. 144 of the Act dated 24.12.2019 r.w order u/ss. 154/144 of the Act dated 09.03.2023, Page 126 of APB; therefore, on the said count itself, in the absence of there being any difference/variance in the deemed total income assessed as per the provisions of Section 115JB as against that determined in its return of income filed u/s.139(5) of the Act, no penalty under the said statutory provision was called for in the hands of the assessee company.

36. Apropos the levy of penalty u/s. 270A of the Act based on the addition /disallowance made by the AO in the backdrop of the general provisions of the Act, the Ld. AR submitted that as the assessee company had, in its revised return of income filed on 29.03.2019, Page 39 of APB, revised its gross receipts at Rs.

994,09,89,590/- as against that as was originally returned in its return of income at Rs.991,25,36,835/-; therefore, no penalty as per the mandate of clause (a) of Section (2) to Section 270A of the Act was called for in the hands of the assessee company. The Ld. AR, to fortify his claim that the assessee company had in its revised return of income dated 29.03.2019 revised its gross receipts at Rs.994.09 crore (approx.), drawn our attention to the "Profit and loss account" (revised) of the assessee company that was filed alongwith the aforesaid return of income, Page 70 of APB. Carrying out a conjoint reading of the "Profit and loss account" (revised), Page 70 of APB, r.w. computation of income (revised), Page 39 of APB, the Ld. AR submitted that it stood established beyond doubt that the net profit of Rs.67.38 crore (approx.) disclosed by the assessee company in its revised return of income (supra) was, in turn, based on the gross receipts (revised) of Rs.994.09 crore (approx.). Based on the aforesaid facts, the Ld. AR submitted that even as per the general provisions of the Act the assessee company could not be visited with penalty as per the mandate of clause (a) of sub-section (2) to Section 270A of the Act.

37. Apropos the disallowance of the assessee's claim for deduction of delayed deposit of the employee share of contribution towards labor welfare funds of Rs.83,76,816/-, the Ld. AR submitted that as of the date of filing of revised return of income dated 29.03.2019, the issue was highly debatable, wherein, as per the department, such delayed deposit of employees' share of contributions were liable to be disallowed u/s. 36(1)(va) of the Act, while the assessee's were of the view that as long as the said amounts were paid /deposited before the "due date" of filing of

the return of income as prescribed in sub-section (1) of Section 139 of the Act, the same was allowable u/s. 43B(b) of the Act. The Ld. AR submitted that the view of the assessee company at the time of filing the original/revised return of income was duly supported by the judgment of the **Hon'ble Supreme Court** in the case of **Commissioner Of Income Tax Vs. Alom Extrusions Limited (supra)**, as well as a host of judicial pronouncements, which did hold the ground at the relevant point of time. Carrying his contention further, the Ld. AR submitted that as the judgment of the **Hon'ble Supreme Court** in the case of **Checkmate Servies Pvt. Ltd. Vs. CIT-1 (supra)** was delivered on 12.10.2022; therefore, the bonafide of the assessee company for not having offered the aforesaid amount as a disallowance while filing its return of income/revised return of income stood duly established. Elaborating further on his contention, the Ld. AR submitted that as the aforesaid view of the assessee company was subsequently found to conflict with the judgment of the Hon'ble Supreme Court in the case of **Checkmate Servies Pvt. Ltd. Vs. CIT-1 (supra)**; therefore, the assessee company, in the course of the assessment proceedings had voluntarily offered the aforesaid amount for tax. Accordingly, the Ld. AR submitted that now when the explanation of the assessee company for having not disallowed its claim for deduction of delayed deposit of employee's share of contributions towards labor welfare funds at the stage of filing of return of income/revised return of income was due to bonafide reasons; thus, both the lower authorities had grossly erred in making/sustaining the penalty u/s 271(1)(c) with respect to the said amount.

38. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the A.O.

39. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record and considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

40. Apropos the contention of the Ld. AR that no penalty u/s. 270A of the Act was called for in the hands of the assessee as regards its claim for deduction of the delayed deposit of employees' share of contributions towards labor welfare funds; we find substance in the same. Admittedly, at the stage of filing the revised return of income by the assessee company on 29.03.2019, the delayed deposit of the employees share of contribution towards labor welfare funds as per the judgment of the **Hon'ble Apex Court** in the case of **Commissioner Of Income Tax Vs. Alom Extrusions Limited (supra)** and other judicial pronouncements were not liable for disallowance u/s. 36(1)(VA) of the Act, and were allowable as a deduction as long as the same was deposited by the assessee before the "due date" of filing of its return of income as prescribed in sub-section (1) of Section 139 of the Act. As the aforesaid position of law was dislodged only pursuant to the judgment of the Hon'ble Supreme Court in the case of **Checkmate Servies Pvt. Ltd. Vs. CIT-1 (supra)** dated 12.10.2022, as per which the delayed deposit by an assessee of the employee's share of contribution towards labor welfare funds was liable for disallowance u/s. 36(1)(va) of the Act; therefore, we find substance in the claim of the Ld. AR that as

at the relevant point of time, i.e., on 29.03.2019, the assessee's claim for deduction was supported by the judgment of the **Hon'ble Apex Court** in the case of **Commissioner Of Income Tax Vs. Alom Extrusions Limited (supra)** and a host of other judicial pronouncements of various Hon'ble High Courts, its explanation for not having offered the same as a disallowance at the time of filing of the revised return of income could not have been summarily discarded. Also, we cannot remain oblivious of the fact that the assessee respectfully following the judgment of the **Hon'ble Supreme Court** in the case of **Checkmate Servies Pvt. Ltd. Vs. CIT-1 (supra)**, had thereafter, in the assessment proceedings offered the aforementioned delayed deposit of employees share of contributions towards labor welfare funds as its income and subjected the same to tax.

41. We, thus, in terms of our aforesaid deliberations, are of a strong conviction that as the assessee company had come up with a bonafide explanation with respect to the aforesaid issue, the same, thus, could not have been construed as an under-reporting of income by the assessee company within the meaning of Clause (a) to sub-section (6) of Section 270A of the Act. We, thus, based on our aforesaid observations vacate the penalty imposed by the A.O u/s. 270A of the Act on the aforementioned amount of Rs.83,76,816/- (supra), which, thereafter, had been upheld by the CIT(Appeals). Thus, the **Grounds of cross-objection Nos.1 & 2** raised by the assessee company are allowed in terms of our aforesaid observations.

42. In the result, Cross-objection filed by the assessee company in CO No.20/RPR/2023 for A.Y.2017-18 is allowed in terms of our aforesaid observations.

ITA No.03/RPR/2023
A.Y.2017-18

43. We shall now deal with the grievance of the department that the CIT(Appeals) had erred in vacating the penalty imposed by the A.O u/s. 270A of the Act as regards the underreporting of income by the assessee amounting to Rs.3,28,96,087/- (supra).

44. As observed by us hereinabove, the assessee company had vide its revised return of income that was filed on 23.03.2019, Page 38-39 of APB, revised its gross receipts at Rs.994.09 crore (supra) as against that as was earlier recorded in its original return of income at Rs.991.25 crore (approx.), Page 70 of APB. Also, the assessee company, vide its revised return of income filed on 29.03.2019, Page 38-39 of APB, had revised its "book profit" at Rs. 67.38 crores (supra) as against that as was earlier disclosed in its return of income filed on 31.03.2018 at Rs. 64.09 crores (supra), Page 36-37 of APB. Accordingly, the difference of Rs.3,28,96,087/- [Rs. 67,38,09,917/- (-) Rs. 64,09,13,830/-] was duly considered by the assessee company and offered for tax in its revised return of income filed on 29.03.2019. As observed hereinabove, a conjoint reading of the "Profit and loss account" (revised), Page 70 of APB and the return of income (revised) on 29.03.2019, reveals that the "book profit" of Rs.67.38 crore (approx.) disclosed by the assessee company in its return of income (revised on 29.03.2019) included the additional gross receipt of Rs.3,28,96,087/- (supra). As is discernible from the order u/s. 144 of the Act, dated 24.12.2019, the A.O had failed to take cognizance of the return of income that the

assessee company had revised on 29.03.2019, wherein the gross receipts were already raised to an amount of Rs.994.09 Crore (supra). The aforesaid factual position can also be gathered from the fact that the A.O. vide his order u/ss. 154/144 of the Act dated 09.03.2023 had categorically admitted that a perusal of the records revealed that though the assessee company had filed its return of income disclosing normal income at Rs. Nil and “book profit” under the MAT income Rs.67.38 Crore (supra), but the A.O while framing the assessment, had wrongly taken the total income as per the MAT provisions at Rs.64.09 crore (approx.) as against that disclosed by the assessee company in its return of income. Accordingly, for the said limited purpose, the A.O vide his aforesaid order of rectification had revised the MAT income of the assessee at Rs.67.38 crore (supra), i.e., as was disclosed by the assessee company by filing the revised return of income on 29.03.2019. For the sake of clarity, the observations of the A.O. vide his order u/s. 154 r.w.s. 144 dated 09.03.2023 are culled out as under:

“02. The application of assessee has been duly considered. On perusal of record, it is found that the assessee filed return of income showing normal income at Rs. Nil and MAT income at Rs.67,38,09,917/-. Verification reveals that total income as per MAT was taken at Rs. 64,09,13,8301.- in earlier orders whereas the same should have been taken at Rs. 67,38,09,917/- (as evident from ROI filed). Thus computation of tax was made at reduced income of Rs.64,09,13,830/- and the mistake is apparent from record. A letter has been issued to assessee on 28.02.2023 to submit its reply on above issues on or before 03.03.2022. The assessee submits its reply 07.03.2023 and agreed to the fact and rectification.

03. In view of the above, rectification order u/s 154 is hereby passed rectifying the MAT income at Rs. 67,38,09,917/-. Prepaid taxes as per 26AS and e-TDS database has been given after verification. Charge interest u/s 234A, 234B, 234C, 234D as applicable. Issue demand notice/Challan accordingly.”

Based on the aforesaid facts, we are of the view that now, when the “book profit” that was earlier disclosed by the assessee company in its return of income (revised) on 31.03.2018, Page 36 of APB at Rs.64.09 crore (approx.) was, thereafter, increased by an amount of Rs.3.28 crore (approx.) and disclosed in its return of income (revised) on 29.03.2019 at Rs.67.38 Crore (supra), which, the A.O had thereafter assessed/determined vide his order u/s. 144 of the Act dated 24.12.2019; therefore, no penalty u/s 270A of the Act for the aforesaid amount of Rs. 3.28 crore (supra), i.e., increase in the amount of “book profit” which inadvertently had remained omitted to be considered by the A.O in his order passed u/s.144 of the Act, dated 24.12.2019 could have been imposed on the assessee company.

45. We, thus, in terms of our aforesaid observation, approve the view taken by the CIT(Appeals), who had rightly vacated the penalty imposed by the A.O u/s. 270A of the Act as regards the addition of Rs.3,28,96,087/- (supra) made by the A.O. Thus, the **Grounds of appeal No.1** raised by the revenue is dismissed in terms of our aforesaid observations.

46. **Ground of appeal Nos. 2 and 3**, being general in nature, are dismissed as not pressed.

47. As we have dismissed the appeal of the revenue and allowed the cross-objection of the assessee company; therefore, we refrain from dealing with the contentions advanced by the Ld. AR as regards the validity of the jurisdiction

assumed by the AO for imposing penalty u/s 270A of the Act, which, thus, are left open.

48. In the result, the appeal of the revenue in ITA No.03/RPR/2023 for A.Y.2017-18 is dismissed in terms of our aforesaid observations.

49. Accordingly, the appeal filed by the revenue is dismissed, while the cross-objection filed by the assessee company is allowed.

50. Resultantly, both the appeal of the revenue, i.e., ITA No. 2/RPR/2023, and cross-objection of the assessee company, i.e, CO No. 19/RPR/2023 for AY 2016-17 are allowed, while for the appeal of the revenue, i.e., ITA No. 3/RPR/2023 is dismissed and cross-objection of the assessee company, i.e., CO. No. 20/RPR/2023 for AY 2017-18 is allowed in terms of our aforesaid observations.

Order pronounced in open court on 14th day of December, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 14th December, 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.