आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 649, 650/JP/2023
निर्धारणवर्ष/AssessmentYear : 2018-19 & 2019-20

Rajesh Motors (Cars) Private Ltd. A-1, Transport Nagar, Agra Road, Jaipur	बनाम Vs.	The ITO Ward- 5 (1) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCS 9710 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपील सं./ITA No. 651/JP/2023
निर्धारणवर्ष/AssessmentYear : 2018-19

Rajesh Motors (Rajasthan) Private Ltd. A-1, Transport Nagar, Agra Road, Jaipur	बनाम Vs.	The DCIT Ciecle-1 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACCR 7249 F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओरसे/Assesseeby : Shri P.C. Godha CA
राजस्व की ओरसे/Revenue by: Shri Anoop Singh. Runi Pal, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 13/02/2024
उदघोषणा की तारीख/Date of Pronouncement: 19 /02/2024

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are three appeals out of which two filed by the assessee namely Rajasthan Motors (Cars) Pvt. Ltd. (for the assessment year 2018-19 & 2019-20)

against two different orders of the ld. Addl. CIT(A)-5, Mumbai dated 14-09-2023 and 28-09-2023 and another appeal filed by the assessee namely Rajasthan Motors (Rajasthan) Pvt. Ltd. (for the assessment year 2018-19) against order of the ld Addl. CIT (A)-7, Mumbai dated 18-10-2023 raising following grounds in the respective appeals.

ITA NO. 649/JP/2023 – A.Y. 2018-19

''1 In the facts and circumstances of the case and in law, Id. AddI/JCIT (A)-5 Mumbai has erred in confirming the action of AO (CPC), Bangalore in passing order under section 143(1) of the Income Tax Act, 1961, without following the procedure as laid down under such section. The action of the Id. AddI/JCIT (A)-5 Mumbai and of the AO (CPC) Bangalore is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire such order, being illegal and void ab initio.

2 In the facts and circumstances of the case and in law, AddI/JCIT (A)-5 Mumbai has erred in confirming the action of the Id. AO(CPC), Bangalore in making addition of Rs. 1,87,456/-u/s 36(1)(va), w.r.t. PF/ESI, when the same was deposited by the assessee company, before the due date of filing the return of income. The action of the Id. Addl/JCIT (A)-5 Mumbai is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by ld. AO(CPC) andconfirmed by the Ld. Addl/JCIT (A)-5 Mumbai.''

ITA NO. 650/JP/2023 – A.Y. 2019-20

''1 In the facts and circumstances of the case and in law, Id. AddI/JCIT (A)-5 Mumbai has erred in confirming the action of AO (CPC), Bangalore in passing order under section 143(1) of the Income Tax Act, 1961, without following the procedure as laid down under such section. The action of the Id. AddI/JCIT (A)-5 Mumbai and of the AO (CPC) Bangalore is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire such order, being illegal and void ab initio.

2 In the facts and circumstances of the case and in law, AddI/JCIT (A)-5 Mumbai has erred in confirming the action of the Id. AO(CPC), Bangalore in making addition of Rs. 2,00,431/-u/s 36(1)(va), w.r.t. PF/ESI, when the same was deposited by the assessee company, before the due date of filing the return of income. The action of the Id. Addl/JCIT (A)-5 Mumbai is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by ld. AO(CPC) andconfirmed by the Ld. Addl/JCIT (A)-5 Mumbai.''

ITA NO. 651/JP/2023 – A.Y. 2018-19

''1 In the facts and circumstances of the case and in law, Id. AddI/JCIT (A)-7 Mumbai has erred in confirming the action of AO (CPC), Bangalore in passing order under section 143(1) of the Income Tax Act, 1961, without following the procedure as laid down under such section. The action of the Id. AddI/JCIT (A)-7 Mumbai and of the AO (CPC) Bangalore is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire such order, being illegal and void ab initio.

2 In the facts and circumstances of the case and in law, AddI/JCIT (A)-7 Mumbai has erred in confirming the action of the Id. AO(CPC), Bangalore in making addition of Rs. 11,02,860/-u/s 36(1)(va), w.r.t. PF/ESI, when the same was deposited by the assessee company, before the due date of filing the return of income. The action of the Id. Addl/JCIT (A)-7 Mumbai is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by ld. AO(CPC) andconfirmed by the Ld. Addl/JCIT (A)-7 Mumbai.''

2.1 First of all, we take up the appeal of the relating to ITA No. 649/JP/2023 of M/s. Rajaesh Motors (Cars) Pvt. Ltd. for the assessment year 2018-19 for adjudication as the remaining appeals of the assessee in ITA No. 650/JP/2023 of M/s. Rajaesh Motors (Cars) Pvt. Ltd for the assessment year 2019-20 and in ITA No.651/JP/2023 of M/s. Rajaesh Motors (Rajasthan) Pvt. Ltd for the assessment

year are having similar grounds of appeal except in change of the amount of addition which is disputed before us.

3.1 Apropos Ground No. 1and 2 of the assessee, the facts in brief are that the assessee had filed its return of income on 25-10-2018 declaring total income of Rs.68,13,750/- which was processed u/s 143(1) of the Act on 16-10-2023 determining total income at Rs.70,01,200/- against the returned income of Rs.68,13,750/-. It is noted that in the said intimation order u/s 143(1) of the Act, the CPC, Bengaluru made the disallowance of Rs.1,87,450/- u/s 36(1)(va) of the Act for the reason that the employees contribution was deposited after due date as mentioned in PF/ESI Act

3.2 In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee by holding as under:-

> ‘’5.1- H. Similar view has been taken by Hon'ble Mumbai tribunal in the case of Salasar Balaji Ship Breakers (P.) Ltd. vs. ACIT (2023) 151 taxmann.com 417 (Mumbai Trib.)(12-04-2023) herein it is held that once there is incorrect claim apparent from the return of income, then the section provides that adjustment has to be made. The auditor in the audited accounts only points out the date of payment and the due date prescribed under the respective Act (PF and EST Act) and it is incumbent upon the assessce that, while computing the income he has to disallow the said payment if it has been made beyond the due date. Thus, in view of the judgment of Apex Court, such claim cannot be allowed as it is an incorrect claim and therefore, it falls within scope of prima facie adjustment under section 143(1). Accordingly. the order of the Commissioner (Appeals) is confirmed holding that once the Apex Court has settled the issue, then that is the law which is applicable retrospectively and therefore, any such claim of payment

on account of employees' contribution to PF & ESI beyond the due dates given in the respective Acts as given in section 36(1)(va) is incorrect claim which needs to be disallowed/adjusted even within the scope of prima facie dispute under section 143(1). Therefore, disallowance has rightly been made.

✆ Similar view has been taken by Hon'ble Delhi ITAT in the case of Savleen Kaur Vis ITO in [2023] 147 taxmann.com 402 (Delhi - Trib.)(09-01-2023) wherein it has been held that If any narrow interpretation is given to the decisions of the Supreme Court in the case of Checkmate Services (P) Ltd. (supra), it would not only defeat the very purpose of the enactment of the provisions of section 143(1) but also defeat the very purpose of the legislators and the decision of the Supreme Court would be made redundant because there would be discrimination and chaos, in as much as, those returns which are processed by the CPC would go free even if the employees' contribution is deposited after the due date and insome cases the employer may not even deposit the employees' contribution and those whose returns have been scrutinized and assessed under section 143(3) would have to face the disallowance. This can neither be the intention of the legislators nor has the decision of the Supreme Court to be interpreted in such a way so as to create such discrimination amongst the tax payers. Such interpretation amounts to creation of class (tax payer) within the class (tax payer) meaning thereby that those tax payers who are assessed under section 143(3) would have to face disallowance because of the delay in deposit of contribution and those tax payers who have been processed and intimated under section 143(1) would go scot-free even if there is delay in deposit of contribution and even if they do not deposit the contribution. Thus it is opined that the ratio decidendi of the Supreme Court is equally applicable to the intimation under section 143(1). Therefore, respectfully following the binding decision of the Supreme Court (supra), all the appeals of the assessee are dismissed and that of the revenue is allowed.

J. Further, reliance is also placed on following judicial pronouncements:

- Diversified Services Vs Income Tax Officer (2023) 150 taxmann.com 384 (Gujarat High Court),

- Pravin Malshi Shah Vs Circle-23(1) (ITAT Mumbai)

- M/s.Electrical India Vs ADIT, CPC, Bengaluru in ITA No.789/Chny/2022 [Chennai]
- Premier Irrigation Adritec (P.) Ltd. Vs ACIT (2023) 146 taxmann.com 389 (Kolkata - Trib.)

- Ms.NalinaDyave Gowda Vs Assistant Director of Income Tax [2023] 146 taxmann.com 420 (Bangalore - Trib.)

- Cemetile Industries Vs ITO (2022) 145 taxmann.com 209 (Pune - Trib.)

- Kwality Motel Shiraz 1 Vs ITO (2023] 149 taxmann.com 490 (Indore Trib.) Ocean Exim India (P) Ltd Vs ITO [2023] 148 taxmann.com 80 (Jaipur-Trib.)

- Anjani Kumar Dwivedi Vs ADIT CPC [2023] 150 taxmann.com 144 (Raipur- Trib.)

- Suresh Electricals Vs DCIT [2023] 146 taxmann.com 102 (Bangalore-Trib.)

- Emson Tools Mfg. Corp. Ltd. Vs. DCIT, Ludhiana' (ITA No.1/Chd/2022)

- Sushil Kumar Gupta & Co Vs ITO (ITAT Chandigarh) ITA No. 412/CHD/2022

K. Subject to above discussion and in view of the CBDT circular No. 22/2015, in the light of the interpretation of section 36(1)(va) made by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (Supra) and the decision of various ITAT regarding applicability of the Apex court decision

to 143(1), the CPC, Bangalore has rightly made the disallowance u/s 36(1)(va) of the Act on account of employees contribution which was deposited after the due date as mentioned in the respective Acts. Therefore, this ground of appeal is dismissed.''

3.3 During the course of hearing, the ld. AR of the assessee filed following written submission praying therein to allow the appeal of the assessee.

''The Appellant is a private limited company. Its accounts are duly audited under the provisions of the Companies Act, 2013 and also under the provisions of section 44AB of the Income Tax Act, 1961. The source of income of the Appellant company is business from running the authorized dealership of automobiles. Though the employees contribution to ESI/PF was regularly deducted and deposited in time in the accounts of respective funds but sometimes due to some technical issues such as linking with AADHAR No. etc. some delay happened in depositing the same. But, in any case deposited on or before the due date of filing the return of incomeu/s 139(1) of the Income Tax Act, 1961.

Further, the Appellant company has also e-filed a Stay Application on 02.11.2023, vide Acknowledgement No. 1698811648 for stay of balance demand of Rs. 118281 /- with interest till the disposal of this appeal. We wish to bring it to your kind notice that the Appellant had already paid a sum of Rs. 19714/-, being 20% of the original demand on 31.10.2019 before filing of the first appeal in this case, as being the issue involved in this appeal is already covered by the judgements of I.T.A.T., Jaipur Bench, Jaipur and Others.

Grounds of Appeal:

1. In the facts and circumstances of the case and in law, Id. AddI/JCIT (A)-5 Mumbai has erred in confirming the action of AO (CPC), Bangalore in passing order under section 143(1) of the Income Tax Act, 1961, without following the procedure as laid down under such

section. The action of the Id. Addi/JCIT (A)- 5 Mumbai and of the AO (CPC) Bangalore is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire such order, being illegal and void ab initio.

This ground of appeal is duly supported and covered by the various judgements of Hon'ble 1.T.A.T., including the judgements of Hon'ble 1. T ,A.T., Jaipur Bench, Jaipur, particularly the detailed judgement in the case of ITA No. 357/JPR/2022 (A.Y. 2018-19) Paris Elysees India Private Limited, Jaipur Vs. Dy. C.I.T., Circle-7, Jaipur (copy attached), which was pronounced on 20.02.2023, in which the judgement of Hon'ble Supreme Court of India in the case of Checkmate Services P. Ltd. Vs. CIT Appeal No. 2833 of 2016 dated 12.10.2022and various other judgements were also discussed and taken into consideration. The Hon'ble I.T.A.T., Jaipur Bench, Jaipur in it's above referred judgement in the case of ITA No. 357/JPR/2022 (A.Y. 2018-19) Paris Elysees India Private Limited, Jaipur Vs. Dy. C.I.T., Circle-7, Jaipur by respectfully following the following views of the coordinate Delhi Bench's decision in the case of Garg Heart Center & Nursing Home Private Limited in ITANo. 1700/Del/2022 has allowed this ground of appeal:-

"(C.2) In view of the foregoing discussion, we come to the following conclusions:-

a) The fact that payments by way of employees' contribution to Provident Fund and ESI were made by the respective assesses after stipulated date prescribed under the relevant laws governing provident fund and E51, but before the due date of filing of return of of income in prescribed u/s 139(1) of Income Tax Act; is not in dispute.

(b) Whether the aforesaid amendments to Income Tax Act by way of Finance Act, 2021 are retrospective or prospective, is debatable and controversial.

(c) Adjustments made by Revenue u/s 143(1) of Income Tax Act, whereby aforesaid additions were made to the income of the respective assessee, were unfair, unjust and bad in law.

(d) Addition by way of adjustment and intimation u/s 143(1) of Income Tax Act on debatable and controversial Issues is beyond the scope of Section 143(1) of Income Tax Act. Revenue was clearly in error in making the aforesaid adjustments.

(e) Addition by way of adjustment and intimation u/s 143(1) of Income Tax Act, on the basis of retrospective amendment to Income Tax Act is beyond the scope of Section 143(1) of Income Tax Act.

(f) In the present appeals before us, additions of aforesaid amount have been made by way of adjustments and intimation u/s 143(1) of Income Tax Act, on a debatable and controversial issue. (C.2.1) in the light of the foregoing conclusions in paragraph (C.2) of this order and the preceding discussion, we are of the view that the aforesaid additions by way of adjustment and intimation u/s 143(1) of the Income Tax Act, were beyond the scope of Section 143(1) of the Income Tax Act. Accordingly, we set aside the Impugned appellate orders of Ld. CIT (A) in the case of Garg Heart Centre &Nursingh Home Private Limited, Global Groupware Solutions Limited, Publix Realtors and Facilitators Private Limited, M/s Samrpit Suraksha Private Limited, Ritu Mukherji, Manmohan Raizada, Girdhari Yadav, Dharamjit Singh, Virendra Pratap Singh and Ansal API Infrastructure Limited respectively and direct the Assessing Officer to delete the additions made by way of adjustments/intimation u/s 143(1) of IT Act. For the same reasons, we uphold the impugned appellate order of Ld. CIT (A) in the case of M/s Jagatjit Industries Ltd."

For brevity sake, we are not reproducing herein the full judgement of the Hon'ble I.T.A.T., Jaipur Bench, Jaipur in ITA No. 357/JPR/2022 (A.Y. 2018-19) Paris Elysees India Private Limited, Jaipur Vs. Dy. C.I.T., Circle-7, Jaipur and also the facts and findings given in Appeal Order u/s 250 of Income Tax Act, 1961 in Appelant's case, which is the subject matter in this Appeal.

It is therefore very humbly prayed to allow this ground of appeal.
2. In the facts and circumstances of the case and in law, AddI/JCIT (A)-5 Mumbai has erred in confirming the action of the Id. AO (CPC), Bangalore in making addition of 2s * 0.187456 / (- u) / s * 0.36f

1)(va), w.r.t. PF/ESI, when the same was deposited by the assessee company, before the due date of filing the return of income. The action of the Id. AddI/JCIT (A)-5 Mumbai is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by the Id. AO (CPC) and confirmed by the Id. AddI/JCIT (A)-5 Mumbai.

The facts and legal position in this ground of appeal are same as mentioned in the above ground of appeal No.1, therefore for brevity sake the same are not being reproduced herein. But, it is humbly requested and prayed to allow this ground of appeal as well, after considering the facts and legal provisions in this regard.''

It is also noteworthy to mention that the written submission in respect of the above-mentioned appeals are stereo-typed except change in the amount of addition.

3.4 On the other hand, the ld.DR supported the order of the ld. CIT(A) and submitted that the contentions raised by the assessee after the decision of the apex court has no place to stand and the appeal of the assessee devoid of any merits and are required to be dismissed.

3.5 We have heard both the parties and perused the materials available on record and also the written submission of the assessee.. In this case, it is noted that the AO disallowed the amount of Rs.1,87,450/- u/s 36(1)(va) of the Act on the ground that the assessee failed to deposit the same on or before the due date as specified under Employees State Insurance Act, 1948 and Employees Provident Funds Act, 1952 which has been confirmed by the ld. CIT(A). It is not imperative to repeat the facts of the case and the case laws cited by both the parties as it has already been

discussed hereinabove by the ld.CIT(A). The Bench has observed that the recently the Hon'ble Supreme Court has opined in the case of Checkmate Services Pvt. Ltd. vs CIT-1, 143 Taxmann.com 178 (SC)/Civil Appeal No. 2833 of 2016 held that the provision of Section 43B of the Act shall not apply to employee's contribution to PF/ESI and the due date specified u/s 36(1)(va) of the Act shall apply for determination of deductibility of employee's contribution to PF/ESI. The relevant portion of the Judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT-1 (supra) is reproduced as under:-

> ''53. The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.
>
> 54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to

deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For

these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed.''

Similar issue has also been decided by the Hon'ble Supreme Court in the case of PCIT vs Strides Arcolab Ltd. vide its order dated 29-11-2022 (Civil Appeal No.9009 of 2021 [2023] 147 taxmann.com 202 SC)]. The relevant head note is reproduced as under:-

> Section 36(1)(va), read with section 2(24) and 43B of the Income Tax Act – Employee's contributions (PF/ESI) – High Court by impugned order held that Tribunal was correct in deleting disallowance made under section 36(1)(va) being employee's contribution to Provident Fund and ESI even though same were not deposited in respective fund within stipulated time – Apex Court in case of Checkmate Services (P) Ltd. vs CIT [2022] 143 taxmann.com 178/ [2023] 290 Taxman 19/[2022] 448 ITR 518/2022 SCC Online Sc 1423, held that non obstante clause under section 43B could not apply in case of employee's contribution which were deducted from their income and was not part of assessee-employer's income and, thus, said clause would not absolve assessee-employer from its liability to deposit employee's contribution on or before due date as a condition for deduction. – Whether in view of the said judgement of Supreme Court, impugned order of High Court was to be set aside – Held , yes [Para 4) [In favour of Revenue]

For the sake of convenience and brevity of the case, the order passed by the Supreme Court in the case of PCIT vs Strides Arcolab Ltd. (supra) is also reproduced as under:-

''1.Leave granted.

2. As per the Office record, Service is complete on the sole respondent but none has entered appearance on behalf of the Respondnet Assessee.

3. Mr. Balbir Sharma, learned Additional Solicitor General appearing for the appellant submits that the issue involved in this appeal is squarely answered in favour of the Revenue by a Three-Judge Bench of this Court vide judgement dated 12-10-2022 in Checkmate Services (P) Ltd. vs CIT [2022] 143 taxmann.com 178/[2023] 290 Taxman 19/[2022] 448 ITR 518/2022 SCC Online SC 1423

4. In view of the above, the impunged judgement dated 22-03-2019 passed by the High Court of Judicature at Bombay is set aside and the appeal is allowed in terms of the cited decision.''

It may be mentioned that similar issue has also been decided by the ITAT Delhi Bench in favour of the Revenue in the case of Salveen Kaur Vs Income Tax Officer vide its order darted 9th January 2023 (in IT Appeal Nos. 2197,2249, 2250 and 2293 (Delhi) of 2022 – A.Y. 2017-18 to 2019-20 [2023] 147 taxmann.co. 402 (Delhi-Trib) by observing as under:-

''4. The undisputed fact in the captioned appeals is that there was a delay in depositing the employees' contribution and the contribution has been deposited beyond the date stipulated under the relevantFund Act.

5. Though the quarrel is no more res integra, as it has been settledby the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd 143 Taxmann.com 178. But, before us, the decision ofthe co-ordinate bench at Mumbai has been placed in the case of PRPackaging Service in ITA No. 2376/MUM/2022 and it has been seriouslyargued that the co-ordinate bench has considered the decision of theHon'ble Supreme Court and yet decided the quarrel in favour of theassessee and against the Revenue.

6. Another argument taken before us is that the disallowance made by the CPC Bengaluru while processing the return u/s 143(1) of the Act is beyond the scope of provisions of section 143(1(a) of the Act and,therefore, cannot be sustained.

7. We have carefully perused the decision of the co-ordinate bench in the case of M/s P R Packaging Services [supra]. We find that the co-ordinate bench has not given any independent finding but has simply relied upon another decision of the co-ordinate bench in the case of Kalpesh Synthetics Pvt Ltd 195 ITD 142 wherein the co-ordinate bench has based its decision on the interpretation and binding decision of the Hon'ble Jurisdictional High Court. In the case of Kalpesh Synthetics Pvt Ltd [supra], the Tribunal has held that the CPC Bengaluru cannot override the binding decision of the Hon'ble Bombay High Court while making the impugned disallowance on account of delay in the deposit of employees' contribution to PF/ESI.

8. It would be apt to refer to the relevant part of the decision of the Tribunal in the case of Kalpesh Synthetics [supra] followed in P R Packaging Service [supra] wherein it has been held as under:-

> *"8. When the law enacted by the legislature has beenconstrued in a particular manner by the Hon'ble jurisdictional High Court, it cannot be open to anyone in the jurisdiction of that Hon'ble High Court to read any other manner than as read by the Hon'ble jurisdictional High Court. The views expressed by the tax auditor in sucha situation, cannot be reason enough to disregard the binding views of the Hon'ble jurisdictional Court. To that extent, the provisions of section 143(1)(a)(iv) must be read down. What essentially follows is the adjustments under section 143(1)(a) in respect of" disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return" is to be read as, for example, subject to the rider "except in a situation in which the audit report has taken a stand contrary to the law laid down by Hon'ble Courts above". That is where the quasi judicial exercise of dealing with the objections of the assessee against proposed adjustments under section 143(1), assumes critical importance in the processing of returns, also important to bear in mind the fact that what constitutes jurisdictionalHigh Court will essentially depend upon the location of the jurisdictional Assessing Officer. While dealing with jurisdiction for the appeals, rule 11(1) of the Central Processing of Returns Scheme, 2011 states that "Where a return is processed at the Centre, the appeal proceedings relating*

to the processing of the return shall lie with Commissioner of Income Tax (Appeals) [CIT(A)] having jurisdiction over the jurisdictional Assessing Officer" Thensitus of the CPC or the Assessing Office CPC is thus irrelevant for the purpose of ascertaining the jurisdictional High Court. Therefore, in the present case, whether theCPC is within the jurisdiction of Hon'ble Bombay High Court or not, as for the regular Assessing Officer of the assesseeand the assessee are located in the jurisdiction of Hon'bleBombay High Court, the jurisdictional High Court, for all matters pertaining to the assessee, will be Hon'ble Bombay High Court. In our considered view, it cannot be open tothe Assessing Officer CPC to take a view contrary to the view taken by the Hon'ble jurisdictional High Court- moreso when his attention was specifically invited to bindingjudicial precedents in this regard. For this reason also, the inputs in question in the tax audit report cannot be reason enough to make the impugned disallowance. The assesseemust succeed for this reason as well."

9. With our utmost respect to the findings of the co-ordinate bench [supra], we are of the considered view that the co-ordinate bench has ignored the binding ratio decidendi of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd [supra]. It would be pertinent to refer to the most relevant observations of the Hon'ble Supreme Court on the impugned quarrel which read as under:-

"32. The scheme of the provisions relating to deductions, such as Sections 32 - 37, on the other hand, deal primarily with business, commercial or professional expenditure, under various heads (including depreciation). Each of these deductions, has its contours, depending upon the expressions used, and the conditions that are to be met. It is therefore necessary to bear in mind that specific enumeration of deductions, dependent upon fulfillment of particular conditions, would qualify as allowable deductions: failure by the assessee to comply with those conditions, would render the claim vulnerable to rejection.

In this scheme the deduction made by employers to approved provident fund schemes, is the subject matter of Section 36 (iv). It is noteworthy, that this provision was part of the original IT Act; it has largely remained unaltered. On the other hand, Section 36(1)(va) was specifically inserted by the Finance Act,1987, w.e.f. 01-04-1988. Through the same amendment, by Section 3(b), Section 2(24) – which defines various kinds of "income" – inserted clause (x). This is a significant amendment, because Parliament intended that amounts not earned by the assessee, but received by it, - whether in the form of deductions,or otherwise, as receipts, were to be treated as income. The inclusion of a class of receipt, i.e., amounts received (or deducted from the employees) were to be part of the employer/assessee's income. Since these amounts were not receipts that belonged to the assessee, but were held by it, as trustees, as it were, Section 36(1)(va) was inserted specifically to ensure that if these receipts were deposited in the EPF/ESI accounts of the

employees concerned, they could be treated as deductions. Section 36(1)(va) was hedged with the condition that the amounts/receipts had to be deposited by the employer, with the EPF/ESI, on or before the due date. The last expression "due date" was dealt with in the explanation as the date by which such amounts had to be credited by the employer, in the concerned enactments such as EPF/ESI Acts. Importantly, such a condition (i.e., depositing the amount on or before the due date) has not been enacted in relation to the employer's contribution (i.e., Section 36(1)(iv)).

33. The significance of this is that Parliament treated contributions under Section 36(1)(va) differently from those under Section 36(1)(iv). The latter (hereinafter, "employers'contribution") is described as "sum paid by the assessee as an employer by way of contribution towards a recognized provident fund". However, the phraseology of Section 36(1)(va) differs from Section 36(1)(iv). It enacts that "any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date." The essential character of an employees' contribution, i.e., that it is part of the employees' income, held in trust by the employer is underlined by the condition that it has to be deposited on or before the due date.

34. It is therefore, manifest that the definition of contribution in Section 2 (c) is used in entirely different senses, in the relevant deduction clauses. The differentiation is also evident from the fact that each of these contributions is separately dealt with in different clauses of Section 36 (1). All these establish that Parliament, while introducing Section 36(1)(va) along with Section 2(24)(x), was aware of the distinction between the two types of contributions. There was a statutory classification under the IT Act, between the two.

35. It is instructive in this context to note that the Finance Act,1987, introduced to Section 2(24), the definition clause (x), with effect from 1 April 1988; it also brought in Section 36(1)(va). The memorandum explaining these provisions, in the Finance Bill,1987, presented to the Parliament, is extracted below:

"Measures of penalising employers mis-utilising contributions to the provident fund or any funds set upunder the provisions of the Employees State Insurance Act, 1948, or any other fund for the welfare of employees

12.1. The existing provisions provide for a deduction in respect of any payment by way of contribution to the provident fund or a superannuation fund or any other fund for welfare of employees in the year in which the liabilities are actually discharged (Section 43B).The effect of the amendment brought about by the Finance act, is that no deduction will be allowed in the assessment of the employer, unless such contribution is paid into the fund on or before the due date. "Due date"means the date by which an employer is required to credit the contribution to the employees account in the relevant fund or under the relevant provisions of any law or term of the contract of service or otherwise.

(Explanation to Section 36 (1) of the Finance Act)

12.2. In addition, contribution of the employees to the various funds which are deducted by the employer from the salaries and wages of the employees will be taxed as income within brackets insertion of new [clause (x) in clause (24) of Section 2] of the employer, if such contribution is not credited by the employer in the account of the employee in the relevant fund by the due date. Where such income is not chargeable to tax under the head "profits and gains of business or profession" it will be assessed under the head "income from other sources."

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44. There is no doubt that in Alom Extrusions, this court did consider the impact of deletion of second proviso to Section 43B,which mandated that unless the amount of employers'contribution was deposited with the authorities, the deduction otherwise permissible in law, would not be available. This court was of the opinion that the omission was curative, and that as long as the employer deposited the dues, before filing the return of income tax, the deduction was available.

45. A reading of the judgment in Alom Extrusions, would reveal that this court, did not consider Sections 2(24)(x) and 36(1)(va).Furthermore, the separate provisions in Section 36(1) foremployers' contribution and employees' contribution, too went unnoticed. The court observed inter alia, that:

"15. …It is important to note once again that, by Finance Act, 2003, not only the second proviso is deleted but even the first proviso is sought to be amended by bringing about an uniformity in tax, duty, cess and fee on the one hand vis-a-vis contributions to welfare funds of employee(s) on the other. This is one more reason whywe hold that the Finance Act, 2003, is retrospective in operation. Moreover, the judgement in Allied Motors (P)Limited (supra) is delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that Finance Act, 2003 will operate retrospectively with effectfrom 1st April, 1988 [when the first proviso stoodinserted]. Lastly, we may point out the hardship and the invidious discrimination which would be caused to theassessee(s) if the contention of the Department is to be accepted that Finance Act, 2003, 2003, to the above extent, operated prospectively. Take an example - in the present case, the respondents have deposited the contributions with the R.P.F.C. after 31st March [end of accounting year] but before filing of the Returns under the Income Tax Act and the date of payment falls after the due date under the Employees' Provident Fund Act,they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under Section 43B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April,2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under Section 43B of the Act. In our view, therefore, Finance Act, 2003,to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated that Finance Act, 2003, will operate with effect from 1st April,2004. However, the matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003".

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48. One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with. Eagle Flask Industries Ltd Vs. Commissioner of Central Exercise 2004Supp (4) SCR 35. This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations.

49. That deductions are to be granted only when the conditions which govern them are strictly complied with. This has been laid down in State of Jharkhand v Ambay Cements as follows:
"23…. In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood changed onaccount of any subsequent event the exemption would not operate.

24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.

25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule
must be strictly observed, substantial compliance might suffice in the case of a directory rule.

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."
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53. The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer.

54. 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."

10. In our understanding, the aforementioned binding observations of the Hon'ble Supreme Court cannot be brushed aside simply because the decision was rendered in the context where the assessment was framed u/s 143(3) and not u/s 143(1)(a) of the Act. In our considered opinion, the decision of the Hon'ble Supreme Court is in the context of allowability of deposit of PF/ESI after due date specified in the relevant Act.

11. The Hon'ble Supreme Court has categorically held that the employees' contribution deposited after respective due date cannot be allowed as deduction, and, therefore, it would be incorrect to say that the decision of the Hon'ble Supreme Court is applicable only in the case of an assessment farmed u/s 143(3) of the Act. In our considered view, the ratio decidendi is equally applicable for the intimation framed u/s 143(1) of the Act.

12. Now coming to the challenge that the impugned adjustment is beyond the powers of the CPC Bengaluru u/s 143(1) of the Act is also not correct. In light of the aforementioned decision of the Hon'ble Supreme Court [supra], as mentioned elsewhere, it cannot be stated that the impugned adjustment u/s 143(1) of the Act is beyond the powers of the CPC, Bengaluru.

13. The provisions of section 143(1)(a) read as under:-

"143(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of Section143, such return shall be processed in the following manner, namely;-
(a) The total income or loss shall be computed after making the following adjustments, namely;-
(i) Any arithmetical error in the return;
(ii) An incorrect claim, if such incorrect claim is apparent from any information in the return;
(iii) Disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) Disallowance of expenditure [or increase in income]indicated in the audit report but not taken into account in computing the total income in the return;

(v) Disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain income", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) Addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return;"

13.1 A perusal of the afore-stated provisions show that at every stage in sub-section (1) of the Act, the return submitted by the assessee forms the foundation, with respect to which, if any of the inconsistencies referred to in various sub-clauses are found,appropriate adjustments are to be made. It is an open secret that hardly 3 to 5% of the returns are selected for scrutiny assessment, out of which, more than 50% are because of AIR Information under CASS and the Assessing Officer cannot go beyond the reasons for scrutiny selection and such cases are called Limited Scrutiny cases and only the remaining returns are taken up for complete scrutiny u/s 143(3) of the Act.

13.2 Meaning thereby, that exercise of power under sub-section (2) of section 143 of the Act leading to the passing of an order under sub-section (3) thereof, is to be undertaken where it is considered necessary or expedient to ensure that the assessee has not understated income or has not computed excessive loss, or has not under paid the tax in any manner.

14. If any narrow interpretation is given to the decisions of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd [supra], it would not only defeat the very purpose of the enactment of the provisions of section 143(1) of the Act but also defeat the very purpose of the Legislators and the decision of the Hon'ble Supreme Court would be made redundant because there would be discrimination and chaos, in as much as, those returns which are processed by the CPC would go free even if the employees' contribution is deposited after the due date and in some cases the employer may not even deposit the employees' contribution and those whose returns have been scrutinized and assessed u/s 143(3) of the Act would have to face the disallowance.

15. This can neither be the intention of the Legislators nor the decision of the Hon'ble Supreme Court has to be interpreted in such a way so as to create such discrimination amongst the tax payers. Such

interpretation amounts to creation of class [tax payer] within the class [tax payer] meaning thereby that those tax payers who are assessed u/s 143(3) of the Act would have to face disallowance because of the delay in deposit of contribution and those tax payers who have been processed and intimated u/s 143(1) of the Act would go scot- free even if there is delay in deposit of contribution and even if they do not deposit the contribution.

16. We are of the considered view that the ratio decidendi of the Hon'ble Supreme Court is equally applicable to the intimation u/s 143(1) of the Act and, therefore, the decision of the co-ordinate bench relied upon by the assessee is distinguishable. Therefore, respectfully following the binding decision of the Hon'ble Supreme Court [supra], all the three appeals of the assessee are dismissed and that of the revenue is allow

17. In the result, all the three appeals of the assessee in ITA No. 249/DEL/2022, 2250/DEL/2022 and 2197/DEL/2022 are dismissed whereas the appeal of the Revenue in ITA No. 2293/DEL/2022 is allowed.''

In view of the above deliberations and the decision taken by the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. vs CIT-1(supra), PCIT vs Strides Arcolab Ltd. and also the decision of ITAT Delhi Bench in the case of Savleen Kaur (supra), the Bench sustains the addition confirmed by the ld. CIT(A) and ground No. 1 & 2 of appeal of the assessee are dismissed.

4.1 As regards the other appeals of the above mentioned assessee inITA No.650JP/2023 in the case of Rajasthan Motors (Cars) Pvt Ltd and in ITA No.651/JP/2023 in the case of Rajasthan Motors (Rajasthan) Pvt Ltd, the decision taken by the in the case of Rajasthan Motors (Cars) Pvt Ltd in ITA No.649JP/2023 shall apply mutatis mutandis. Hence, these three appeals are dismissed.

5.0 In the result, appeals of the above mentioned assessee's are dismissed.

Order pronounced in the open court on 19 /02/2024.

Sd/- Sd/-

(डा॰ एस. सीतालक्ष्मी) (राठोडकमलेशजयन्तभाई)
(Dr. S. Seethalakshmi) (Rathod Kamlesh Jayantbhai)
न्यायिकसदस्य / Judicial Member लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/02/2024
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:
1. The Appellant- M/s. Rajesh Motors (Cars) Pvt. Ltd , Jaipur
2. The Appellant- M/s. Rajesh Motors (Rajasthan) Pvt. Ltd , Jaipur ,.
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 5(1), Jaipur
3. प्रत्यर्थी / The Respondent- The DCIT, Circle-1, Jaipur
4. आयकरआयुक्त / The ld CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 649/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar