

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.159/Nag./2024**

(Assessment Year : 2017-18)

And

**ITA no.160/Nag./2024**

(Assessment Year : 2019-20)

Shilpa Steel & Power Ltd.  
2, 3 & 4, Wanjra Layout, Kamptee Road  
Nagpur 440 026 PAN – AABCS8627D

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-2, Nagpur

..... Respondent

Assessee by : Ms. Shikha Loya  
Revenue by : Shri Abhay Marathe

Date of Hearing – 16/05/2024

Date of Order – 16/05/2024

**ORDER**

**PER K.M. ROY, A.M.**

These appeals have been filed by the assessee challenging the impugned separate orders dated 25/01/2024, for the A.Y. 2017-18 and order dated 19/01/2024, for the A.Y. 2019-20, passed by the learned Addl. Commissioner of Income Tax (Appeals)-1, Vadodara.

2. In view of the substantial common grounds of appeal for both the years under consideration are taken up for adjudication simultaneously.

3. For both the years under consideration, the assessee has challenged the disallowance of Club expenses carried out in intimation by Central Processing

Centre (CPC). It appears from the provisions of clause-21 of the Tax Audit Report the tax auditor has specifically remarked that this expenditure is debited as perquisite to directors. The assessee has carried out the matter in appeal, but could not produce any documents to substantiate, the same was included as perquisite in the director's computation of income and accordingly tax has been paid.

4. The learned CIT(A) in the absence of reasonable explanation sustained the disallowance against which the assessee is in appeal before us.

5. The learned A.R. reiterated the submission as buttressed before the lower authorities. She referred to various judgments which are given below:-

- i) *M/s. ISGEC Heavy Engineering Ltd. v/s DCIT, ITA no.798/Chd./2019, order dated 23/09/2020;*
- ii) *CIT v/s Sundaram Industries Ltd., [1999] 240 ITR 335 (Mad.);*
- iii) *Pricewaterhouse Coopers Pvt. Ltd. v/s ACIT, ITA no.2034/Kol./2013, order dated 18/05/2016;*
- iv) *CIT v/s United Glass Mfg. Co. Ltd., [2012] 28 taxmann.com 429 (SC);*
- v) *Clariant Chemicals India Ltd. v/s ACIT, [2015] 53 taxmann.com 39 (Mum.);*
- vi) *ACIT v/s M/s. Enam Securities Pvt. Ltd., ITA no.1084/Mum./2011, etc., order dated 17/04/2015; and*
- vii) *Priyanshu Chemicals Pvt. Ltd. v/s DCIT, ITA no.2350/Kol./2019, order dated 19/02/2020.*

6. She also submitted the details of Club expenses which is placed at Page-6 of the paper book.

7. Upon analysis of the ledger account, it is clear that the expenditure has been made mainly on account of K.K. Bagadia, and Karan Bagaria. Even in

the ledger account, it is clearly mentioned that it is a perquisites to Managing Director. Now, the question arises as to whether the perquisites to Managing Director can be considered to be expenditure allowable under section 37 of the Act. The provisions of section 17 of the Act which covers the definition of perquisites, it is gainful to refer to sub-clause (iv) of sub-section (2) of section 17 of the Act which specifies that any sum paid by the employer in spite of any obligation are, but for such payment would have been payable by the assessee. Upon analysis of the said clause, it is apparent that the personal obligation of the employee when made by the employer becomes a perquisites in the hands of the employer. There is no quarrel with the proposition that such perquisites become expenditure allowable under section 37 of the Act. However, it has to be demonstrated on record that such expenditure is also considered as perquisites in the hands of the employee. At this juncture when questioned by the Bench, the learned A.R. could not given any satisfactory reply as to whether the amount of Club expenditure was considered as perquisites. The various case laws relied upon are absolutely distinguishable and do not deal with the particular issue of perquisites to the directors. In most of the cases, the various Benches of the Tribunal and High Courts have decided upon the allowability of subscription paid to various clubs as well as the expenditure incurred on entertainment of various customers to attract more business. This feature is glaringly absent in the cases before us. It is not the case of the learned A.R. that there was a misrepresentation by the tax auditors. She explained that before uploading the tax audit report the same was also accepted by the company. Thus, she tacitly submitted that the report of the tax audit was accepted to be true and correct by the company

itself. Thus, we find that permitting the same Club expenditure allowability in the hands of the company will amount to shifting of stand which is clearly not permissible. The learned A.R. also submitted that these expenditures were for the purpose of dealers' conference, etc., but again this was not backed by any evidence whatsoever except her bold averments.

8. For the assessment year 2019-20, the appellant has also raised following ground for our adjudication:-

*"3. That the learned ADDL/JCIT(A) erred in confirming the action of the AO in making addition of Rs.1,20,129/ on account of employees contribution to ESIC Fund paid after the due date by invoking provisions of section 36(1)(va) r/w.s. 2(24)(x). On the facts and circumstances of the case, the payment has been made before due date of filing return of income u/s 139 and the action of the authorities in making addition is therefore highly unjustified.*

9. It is pertinent to note at Page-3 of the paper book, the learned CIT(A) has specifically requested to submit documentary evidence in support of the claim i.e., copy of return of income of the Director, Form no.16 of the Director, where the amount is reflected as perquisites. The appellant failed to submit the documents upon which the learned CIT(A) has dismissed the ground of appeal sustaining the disallowance. No interference is required in such well-reasoned and cogent order. In view of the above, it is strongly felt that the adjustment made by the CPC is on a correct footing and accordingly the grounds of appeal raised in the present appeals for both the years under consideration are liable to be dismissed.

10. For the assessment year 2019-20, the appellant has also raised a ground regarding disallowance of addition of ₹ 1,20,129, on account of Employers' contribution towards ESIC which was made after the due date.

11. Here also, we find that the appellant had not furnished any submissions before the learned CIT(A), however, on merits also, this issue was decided in favour of the Revenue as per the decision of the Hon'ble Supreme Court in Chekmate Services Private Limited vs. CIT in Civil Appeal No. 2833 of 2016 dated 12.10.2022. The relevant observations are extracted below:–

*"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 assessee is 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 nonobstante 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."*

12. Therefore, respectfully following the decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra), we see no legal infirmity in the impugned order passed by the learned CIT(A) warranting interference at the instance of the assessee company. Accordingly, upholding the order passed by the learned CIT(A), this ground of appeal raised by the assessee is dismissed.

13. In the result, both the appeals for the A.Y. 2017-18 and 2018-19 filed by the assessee are dismissed.

Order pronounced in the open Court on 16/05/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 16/05/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur