

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.944/Kol/2024**  
**Assessment Years: 2017-18**

**Raja Udyog (P) Ltd.....Appellant**  
**Sukchar Girja, 16F,**  
**Barrackpore Trunk Road,**  
**24 Parganas (N),**  
**W.B – 700115.**  
**[PAN: AACCR0764P]**

**vs.**

**ACIT, CC-4(3), Kolkata..... Respondent**

**I.T.(SS)A. No.43/Kol/2024**  
**Assessment Year: 2017-18**

**Raja Udyog (P) Ltd.....Appellant**  
**Sukchar Girja, 16F,**  
**Barrackpore Trunk Road,**  
**24 Parganas (N),**  
**W.B – 700115.**  
**[PAN: AACCR0764P]**

**vs.**

**ACIT, CC-4(3), Kolkata..... Respondent**

**I.T.(SS)A. No.44/Kol/2024**  
**Assessment Year: 2018-19**

**Raja Udyog (P) Ltd.....Appellant**  
**Sukchar Girja, 16F,**  
**Barrackpore Trunk Road,**  
**24 Parganas (N),**  
**W.B – 700115.**  
**[PAN: AACCR0764P]**

**vs.**

**ACIT, CC-4(3), Kolkata..... Respondent**

**Appearances by:**

Shri Rajeeva Kumar, Advocate, appeared on behalf of the appellant.  
Shri Rakesh Kr. Das, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 29, 2024

Date of pronouncing the order : July 30, 2024

## आदेश / ORDER

### PER BENCH:

The captioned appeals have been preferred by the assessee against the separate orders, all dated 29.02.2024, of the Commissioner Of Income Tax (Appeals)-27, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since common issues are involved in all the appeals relating to the same assessee, therefore, all the appeals have been heard together and are being disposed of by this common order.

2. **ITA No.944/Kol/2024** – The assessee in this appeal has taken the following grounds of appeal:

*“1. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.73,65,644/- for provision for gratuity made by the A.O in the order passed under sec. 143(3) of the Income Tax Act, 1961. The said amount was wrongly disallowed twice in TAR. In column 21(e) of the TAR, provision for payment of gratuity was not allowed u/s 40A(7) and again the said amount was disallowed u/s 43B(b) in the column 26(2) of the TAR. Thus, the amount was incorrectly taken twice in the Tax Audit Report which resulted in erroneous addition. The addition is, therefore, unjustified and need to be deleted.*

*2. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.20,76,540/- for delayed deposit of employees' contributions to PF and ESI under sec. 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961. The addition made by the AO and confirmed by the CIT(A) is unjustified and need to be deleted.*

*3. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing.”*

3. **Ground No.1** – Vide Ground No.1, the assessee has agitated against the confirmation of Rs.73,65,644/- on account of disallowance for provisions for gratuity.

4. At the outset, the ld. counsel for the assessee has submitted that in fact the chartered accountant of the assessee, inadvertently, in the

books of account has made double disallowance of the aforesaid provisions for gratuity. That the aforesaid mistake was inadvertent. He has submitted that the assessee should be taxed of the amount, which the assessee is liable to pay and the assessee should not be punished for inadvertent mistake of his chartered accountant.

5. Considering the above submissions, the aforesaid ground is restored back to the file of the Assessing Officer with a direction that the Assessing Officer will verify the aforesaid contention of the assessee. If the amount disallowable as 'provision for gratuity' has been inadvertently disallowed twice, then the Assessing Officer will accordingly assess the income of the assessee by disallowing only the amount, which is liable for disallowance under the relevant provisions of section 36(1)(va) of the Act. The assessee will be given benefit of excess amount, if any, disallowed inadvertently.

6. **Ground No.2** - Vide Ground No.2, the assessee has agitated the action of the lower authorities in confirming the disallowance made u/s 36(1)(va) of the Act on account of late deposits of employee's contribution to PF and ESI.

7. The Id. counsel for the assessee has been fair enough to submit that the aforesaid issue has been decided against the assessee by the recent verdict of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022. He, therefore, has not pressed the aforesaid ground and the said ground is accordingly dismissed as not pressed.

8. **ITA No.43/Kol/2024** – The assessee in this appeal has taken the following grounds of appeal:

*"1. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the AO's authority under sec. 153C of the*

*Income Tax Act, 1961 to reassess income for completed assessments without having any incriminating material. The order dated 15.02.2023 passed by the AO under section 153C of the Income Tax Act, 1961 is bad in law and therefore need to be quashed.*

*2. That under the facts and in the circumstances of the case, the CIT(A) erred in confirming the addition of Rs.76,371/- made by the AO u/s. 69C of the Income Tax Act, 1961 for cash payment allegedly made to M/s. Sunny Chemical Pvt. Ltd based on the documents seized from the third-party. There was no corroborative evidence on record in relation to the payment made by the assessee and no opportunity was provided to the assessee of cross-examination of the third party. The addition is unjustified and the addition need be deleted.*

*3. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.73,65,644/- for provision for gratuity made by the A.O in the order passed under sec. 143(3) of the Income Tax Act, 1961. The said amount was wrongly disallowed twice in TAR. In column 21(e) of the TAR, provision for payment of gratuity was not allowed u/s 40A(7) and again the said amount was disallowed u/s 43B(b) in the column 26(2) of the TAR. Thus, the amount was incorrectly taken twice in the Tax Audit Report which resulted in erroneous addition. The addition is, therefore, unjustified and need to be deleted.*

*4. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.20,76,540/- for delayed deposit of employees' contributions to PF and ESI under sec. 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961. The addition made by the AO and confirmed by the CIT(A) is unjustified and need to be deleted.”*

9. **Ground Nos.1 & 2** – The assessee through these grounds of appeal has agitated the confirmation of addition of Rs.76,371/- made by the Assessing Officer u/s 69C of the Act in the assessment carried out u/s 153C of the Act.

10. At the outset, the ld. counsel for the assessee has submitted that a search and seizure operation was carried out in the case of one, M/s Sunny Chemical Pvt. Ltd. based on Gurugram. That during the assessment of the said party u/s 153A of the Act, the Assessing Officer of the said party noted that there were some unaccounted cash receipt of Rs.76,371/- by the said party from one M/s Raja Udyog Pvt. Ltd. (the assessee). He, therefore, forwarded the copy of the seized material to the

Assessing Officer of the assessee and thereafter the assessment proceedings were carried out u/s 153C of the Act in the case of the assessee. On being asked to explain regarding the aforesaid payment of Rs.76,371/- to M/s Sunny Chemical Pvt. Ltd, Gurugram, the assessee totally denied having made transaction with the said party. However, the Assessing Officer did not agree with the contention of the assessee and made the impugned addition.

11. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

12. We have heard the rival contentions and gone through the record. The ld. counsel for the assessee has brought our attention to the impugned assessment order to submit that there was absolutely no evidence recorded by the Assessing Officer, assessee having made any such transaction with M/s Sunny Chemical Pvt. Ltd. We have gone through the assessment order. The Assessing Officer has failed to establish that the name of the party recorded in the seized material i.e. M/s Raja Udyog Pvt. Ltd., is that the assessee or some other company or firm of similar name. Nothing has been recorded in the assessment order that any statement of the searched person was recorded to confirm the said amount was received from the assessee company only, if yes, then on what account? Even the said seized material was not put to the assessee. There is absolutely neither direct or indirect or any corroborating evidence, which has been produced or discussed in the assessment order, from which it can be gathered that the said cash amount was received by M/s Sunny Chemical Pvt. Ltd. from the assessee, whereas, the assessee has categorically taken a stand that the assessee has no any concern, whatsoever, with the said M/s Sunny Chemical Pvt. Ltd. Under the circumstances, we are of the view that the

impugned addition made by the Assessing Officer is not sustainable and the same is accordingly ordered to be deleted.

13. **Ground No.3** - Vide Ground No.3, the assessee has agitated against the confirmation of Rs.73,65,644/- on account of disallowance for provisions for gratuity. The said issue has already been adjudicated above in assessee's appeal in ITA No.944/Kol/2024 for the same assessment year i.e. A.Y 2017-18 in relation to original assessment carried out u/s 143(3) of the Act. Our findings given above on this issue are reaffirmed.

14. **Ground No.4** - Vide Ground No.4, the assessee has agitated against the confirmation of addition of Rs.20,76,540/- on account of delayed deposits of employee's contribution to PF and ESI made u/s 36(1)(va) of the Act.

14. A perusal of the assessment order would reveal that the aforesaid addition of Rs. Rs.20,76,540/- was already made by the Assessing Officer in the assessment u/s 143(3) of the Act vide order dated 26.12.2019. While adjudicating the appeal of the assessee in relation to assessment carried out u/s 143(3) of the Act, the aforesaid addition has stood confirmed. However, so far as the appeal of the assessee against the assessment carried out u/s 153C of the Act is concerned, we find the said issue is not relating to incriminating material found during the search action. The Assessing Officer has simply taken the amount already assessed in the assessment order u/s 143(3) of the Act dated 26.12.2019. In view of this, no adjudication is required in relation to Ground No.4 of the appeal and the same is accordingly dismissed.

15. **ITA No.44/Kol/2024** - The assessee in this appeal has taken the following grounds of appeal:

*“1. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the AO's authority under sec. 153C of the Income Tax Act, 1961 to reassess income for completed assessments without having any incriminating material. The order dated 15.02.2023 passed by the AO under section 153C of the Income Tax Act, 1961 is bad in law and therefore need to be quashed.*

*2. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.7,32,646/- for delayed deposit of employees' contributions to PF and ESI under sec. 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961. The issue was settled when Hon'ble ITAT, Kolkata passed order dated 08.06.2022 in ITA No.180/Kol/2022 deleting the said addition. Thus, the addition made by the AO and confirmed by the CIT(A) is unjustified and need to be deleted.*

*3. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing.”*

16. The sole issue raised by the assessee in this appeal through its grounds of appeal is relating to the disallowance of Rs.7,32,646/- on account of delayed payment towards employee's contribution to PF and ESI.

17. At the outset, the ld. counsel for the assessee has submitted that no incriminating material was found for the assessment year under consideration in the case of the searched person and that the said issue was not supposed to be subject matter of the assessment proceedings carried out u/s 153C of the Act. The ld. counsel has further brought our attention to the copy of the order of the Tribunal dated 08.06.2022 in ITA No.180/Kol/2022 in the own case of the assessee for assessment year 2018-19 in relation to assessment proceedings carried out u/s 143(3) of the Act. The Tribunal vide the said order dated 08.06.2022 has decided the said issue in favour of the assessee.

18. In view of the above, the order of the Tribunal dated 08.06.2022 in relation to assessment proceedings carried out u/s 143(1)/143(3) of the Act, will prevail. Since, no incriminating material was found in relation to the aforesaid issue in the search action and neither any

material has been referred to by the Assessing Officer of the searched person to the Assessing Officer of the assessee on this issue, therefore, the addition made on this issue in the assessment proceedings carried out u/s 153C of the Act is not sustainable and the same is accordingly ordered to be deleted.

19. In the result, I.T.(SS)A. No.944/Kol/2024 is treated as partly allowed, I.T.(SS)A. No.43/Kol/2024 is also treated as partly allowed and I.T.(SS)A. No.44/Kol/2024 is allowed.

***Kolkata, the 30<sup>th</sup> July, 2024.***

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 30.07.2024.

RS

*Copy of the order forwarded to:*

1. Raja Udyog (P) Ltd
2. ACIT, CC-4(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches