IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2756/Mum/2024 (A.Y.2019-20)

Abbott Healthcare Pvt. Ltd.
3, Corporate Park,
Sion Trombay Road,
Mumbai - 400 071
PAN: AAACK3935D ..... Appellant

Vs.

ACIT 2(1) (1)
R. No. 561, 5th floor,
Aayakar Bhavan,
Maharishi Karve Marg,
Mumbai- 400 020 ..... Respondent

&

ITA No. 2746/Mum/2024 (A.Y.2019-20)

ACIT 2(1) (1)
R. No. 561, 5th floor,
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Mumbai- 400 020 ..... Appellant

Vs.

Abbott Healthcare Pvt. Ltd.
3, Corporate Park,
Sion Trombay Road,
Mumbai-400 071
PAN: AAACK3935D ..... Respondent

Appellant by	:	Shri Madhur Agrawal, Ld. AR
Respondent by	:	Shri Manoj Kumar Sinha, Ld. DR
Date of hearing	:	22/07/2024
Date of pronouncement	:	23/09/2024

O R D E R

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of Ld. CIT(A), Chandigarh dated 23.03.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2019-20. The assessee has raised the following grounds of appeal:-

The Appellant is aggrieved by the order dated 23 March 2024 passed by the Additional/ Joint Commissioner of Income-tax (Appeals)-1, Chandigarh ('CIT(A)'), under section 250 of the Income-tax Act, 1961 ('Act'), disposing of appeal against intimation under section 143(1) of the Act dated 9 March 2021. The following grounds of appeal are alternate and without prejudice to one another:

1. Ground No 1-Validity of the intimation issued under section 143(1) of the Act

1.1 on the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the validity of intimation order dated 9 March 2021 passed by the Central Processing Centre ('CPC') under section 143(1) of the Act.

1.2 On the facts and in the circumstances of the case and in law, the CIT (A) failed to appreciate that in case of intimation under section 143(1), adjustments can be made in respect of items mentioned in sub-clause (i) to (v) of clause (a) to section 143(1) and no adjustment is permissible with respect to item any other item.

2. Ground No 2-Addition in respect of employee contribution to provident fund paid before the due date of filing return of income INR 2,11,523/- (Tax effect: INR 53,236/-)

2.1 On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the CPC of disallowing employees' contribution to provident fund of INR 2,11,523/- for the month of September 2018, as having been deposited beyond the due date prescribed under the applicable law.

2.2 On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the employees' contribution to provident fund for the month of September 2018 was deposited with the provident fund authorities on 12 October 2018 i.e. before the due date of 15 October 2018 prescribed under the applicable law.

2.3 The CIT(A) ought to have appreciated that the date of deposit of employees' contribution to provident fund for the month of September 2018 as mentioned in clause 20(b) of the Tax Audit Report of 17 October 2018, is the date on which challan was generated by the provident fund authorities, whereas the payment was made on 12 October 2018

2.4 The Appellant prays that the disallowance of INR 2, 11,523/- made on account of alleged delay in depositing the employees' contribution to provident fund be deleted.

3. Ground No 3 Disallowance of expenditure incurred on membership and annual subscription fee paid for club INR 1,18,95,580/- (Tax effect: INR 29,93,880/-)

3.1 on the facts and in the circumstances of the case and in law, the CIT (A) erred in confirming the action of the CPC of disallowing an amount of INR 1, 18, 95,580/-being expenditure on entrance fees and subscription fees incurred at clubs.

3.2 on the facts and in the circumstances of the case and in law, the CIT (A) erred in holding that expenditure on club membership and annual subscription cannot be said to have been incurred wholly and exclusively for the purpose of business.

3.3 The Appellant prays that the expenditure incurred at clubs being membership fees and annual subscription fees totalling to INR 1,18,95,580/- be allowed as a deduction as expenditure incurred wholly and exclusively for the purpose of business.

The Appellant craves leave to add, alter, modify or delete or modify the above grounds of appeal.

2. The revenue has raised the following grounds:-

1. On the fact and circumstances of the case and in law the Ld. CIT (A) has erred in allowing the gratuity provision amounting of Rs. 3, 34, 88,744/- u/s. 43B of the IT Act despite the fact that auditor has categorically mentioned in the Tax Audit Report (Form 3CD) that expenses under the head gratuity provision not paid on or before the furnishing of return of income'.

2. the appellant craves the leave to add, amend, alters and/or deletes any of the grounds of appeal as above.

3. The brief facts of the case are that the assessee filed its return of income on 28.11.2019 declaring total loss (-) at Rs. 453,80,59,811/-, subsequently, the assessee filed a revised return of income for the year under consideration on 30.11.2020 declaring total loss (-) at Rs. 446,60,70,344/-. The return of the assessee was processed u/s. 143(1) vide dated: 10.12.2020 and second time on 30.12.2020 respectively. Certain adjustments were made by the CPC, Bengaluru vide its intimations issued (supra). Against these intimations, the assessee filed its response vide dated: 07.01.2021 and 01.04.2021 respectively. But there is no change in the adjustments originally done by the CPC, Bengaluru. The assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn partly allowed the appeal of the assessee. Both the parties being aggrieved with this order of the Ld. CIT (A) preferred the present cross-appeals before us.

4. We have gone through the intimations issued by the CPC, Bengaluru as mentioned (supra), order of the Ld. CIT (A) and submissions of the assessee along with grounds taken before us. For sake of convenience we are taking the assessee's appeal first for adjudication.

5. The 1st ground raised by the assessee pertains to validity of the intimation issued u/s. 143(1) of the Act. For better understanding and clarity on the issue we deem it fit to reproduce the provisions of the section 143 of the Act as under:

Section - 143, Income-tax Act, 1961 - FA, 2023

Assessment.

143. *(1) where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, 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 incomes", 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:

Provided *that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

Provided further *that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]*

Provided also *that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;*

(b) the tax , interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax , interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the

sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided *that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax , interest or fee is payable by, or no refund is due to, him:*

Provided further *that no intimation under this sub-section shall be sent after the expiry of nine months from the end of the financial year in which the return is made.*

Explanation.—for the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) The acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, 2012.

(1C) every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

In the light of the provisions of section 143(1) reproduced (supra), clause (ii) and (iv) of the section 143(1) (a) of the Act is relevant and again reproduced herein below as under:

> *(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
>
> *(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;*

6. In the light of the provisions of clause (ii) and (iv) of the section 143(1) (a) of the Act, action of the CPC, Bengaluru is well within their powers. As the claim of the assessee of Rs. 2,26,719/- in respect of employee's contribution to the provident fund paid after due date of respective law, but within the due date of filing the return of income u/s. 139(1) of the Act, clearly attracts clause (ii) of section 143(1) (a) of the Act. Another claim of the assessee covered by the intimations mentioned (supra) is Rs. 3,34,88,744/- shown as unpaid amount of gratuity and duly reported in the Tax Audit Report vide clause 26(i), same is clearly covered by clause (iv) of section 143(1) (a) of the Act for the purposes of processing of return.

7. Other claims of the assessee viz. Loss on sale of fixed assets amounting to Rs. 1,39,59,802/-, Stamp Duty paid for issuance of equity share capital amounting to Rs. 14, 61,710/- and entrance fees and subscriptions paid at clubs amounting to Rs. 1,18,95,580/-. These claims of the assessee were duly reported by the Tax Auditor in his Tax Audit Report vide clause 21(a) and 21(b). In the given situation clause (iv) of section 143(1) (a) of the Act applies and we do not see any fault at the end of the CPC, Bengaluru while considering these amounts for the purposes

of disallowance u/s. 143(1) of the Act. **Our observations are with reference to scope of section 143(1) of the Act only and there is no observation on the merits of the allowability/dis-allowability of the expenses concerned. Merits of the allowability/dis-allowability of the same we will discuss and adjudicate in our ensuing paras in response to the grounds taken by the assessee.Based on above, Ground No. 1 with its sub-grounds is dismissed.**

8. Ground No. 2 with its sub grounds pertains to adjustment made in respect of employee's contribution to provident fund paid after the due date of respective law, but paid before the due date of filing the return amounting to Rs. 2,11,523/- (Changed from 2,26,719/- to 2,11,523/- by the Ld. CIT(A) on appeal of the assessee). On this issue, matter is settled once for all by the Hon'ble Apex Court in the case of **[2022] 143 taxmann.com 178 (SC) Checkmate Services (P.) Ltd. *v.* Commissioner of Income-tax-1,** wherein the Hon'ble Apex Court held as under:

- *Section 43B falls in Part-V of the IT Act. What is apparent is that the scheme of the Act is such that sections 28 to 38 deal with different kinds of deductions, whereas sections 40 to 43B spell out special provisions, laying out the mechanism for assessments and expressly prescribing conditions for disallowances. In terms of this scheme, section 40 (which too starts with a non obstante clause overriding sections 30-38), deals with what cannot be deducted in computing income under the head "Profits and Gains of Business and Profession". Likewise, section 40A (2) opens with a non obstante clause and spells out what expenses and payments are not deductible in certain circumstances. Section 41 elaborates conditions which apply with respect to certain deductions which are otherwise allowed in respect of loss, expenditure or trading liability etc. If this scheme is considered, sections 40- 43B, are concerned with and enact different conditions, that the tax adjudicator has to enforce, and the assessee has to comply with, to secure a valid deduction. [Para 31]*

- *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 fulfilment 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, with effect from 1-4-1988. 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) was 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)). [Para 32]

- *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. [Para 33]*

- *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. [Para 34]*

- *It is evident that the intent of the lawmakers was clear that sums referred to in clause (b)*

of section 43B, i.e., "sum payable as an employer, by way of contribution" refers to the contribution by the employer. The reference to "due date" in the second proviso to section 43B was to have the same meaning as provided in the explanation to section 36(1)(va). Parliament therefore, through this amendment, sought to provide for identity in treatment of the two kinds of payments: those made as contributions, by the employers, and those amounts credited by the employers, into the provident fund account of employees, received from the latter, as their contribution. Both these contributions had to necessarily be made on or before the due date. [Para 37]

- *When Parliament introduced section 43B, what was on the statute book, was only employer's contribution (Section 34(1) (iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting section 36(1) (va) and simultaneously inserting the second proviso of section 43B, its intention was not to treat the disparate nature of the amounts, similarly. The memorandum introducing the Finance Bill clearly stated that the provisions - especially second proviso to section 43B - was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, etc.) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24) (x) too, deems amount received from the employees (whether the amount is received from the employee or by way of deduction authorized by the statute) as income - it is the character of the amount that is important, i.e., not income earned. Thus, amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the employer. The significance of this provision is that on the one hand it brought into the fold of "income" amounts that were receipts or deductions from employee's income; at the time, payment within the prescribed time - by way of contribution of the employees' share to their credit with the relevant fund is to be treated as deduction (Section 36(1) (va)). The other important feature is that this distinction between the employers' contribution (Section 36(1) (iv)) and employees' contribution required to be deposited by the employer (Section 36(1) (va)) was maintained - and continues to be maintained. On the other hand, section 43B covers all deductions that are permissible as expenditures or out-goings forming part of the assessee's liability. These include liabilities such as tax liability, cess duties etc. or interest liability having regard to the terms of the contract. Thus, timely payment of these alone entitles an assessee to the benefit of deduction from the total income. The essential objective of section 43B is to ensure that if assessees are following the mercantile method of accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary pre-condition for allowing the expenditure. [Para 52]*

- *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. [Para 53]

- *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. [Para 54]*

9. In view of the above judicial pronouncements and facts of the assessee, we confirm the order of the Ld. CIT(A) and hold disallowance in the case of the assessee was justified. **In the result, Ground No. 2 with its Sub-Grounds is dismissed.**

10. Ground No. 3 with its Sub-Grounds raised by the assessee pertains to expenditure incurred on membership and annual subscription fee paid for club amounting to Rs. 1,18,95,580/-. We have gone through the order of the Ld. CIT (A) and submissions of the assessee. Vide para 7.1 (B) of the appeal order breakup of the payments made by the assessee is observed. The same has been reported vide clause 21(b) of the Tax Audit Report. This fact of payment made by the assessee had been reported by the Tax Auditor in the Tax Audit Report. The copy of the Tax Audit Report is placed on record by the Ld. AR before us together with its annexures. On perusal of the same, we find that the Tax Auditor had merely mentioned the payment made by the assessee. The Tax Auditor had not even contemplated to disallow the payments made. Hence, it is merely recording of facts and a mere statement made by the Tax Auditor in his Audit Report. The CPC Bangalore had taken up this data from Tax Audit Report and sought to disallow the same while processing the return under section 143(1) (a)(iv) of the Act.

11. In following judicial pronouncements by the coordinate benches, scope of Tax Audit Report has been discussed at length as under:

[2023] 148 taxmann.com 153 (Mum. - Trib.) P. R. Packaging Service v. ACIT
[2022] 137 taxmann.com 475 (Mum. - Trib.) Kalpesh Synthetics (P.) Ltd. v. DCIT
[2022] 142 taxmann.com 97 (Mum. - Trib.) Jasbir Singh Kaberwalv. ADIT
[2022] 141 taxmann.com 440 (Mum. - Trib.)

K A Hospitality (P.) Ltd. *v.* Income-tax Department, The bench observed as under:

*"**2.** In appeal, the assessee has challenged the correctness of the order of CIT(A) in upholding validity of processing of income tax returns u/s. 143 (1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2019-20. Grievance of the assessee, in this appeal, is that the CIT (A) is not justified in upholding the adjustment, made by the Centralized*

Processing Centre Bengaluru while processing income tax returns under section 143(1) in respect of disallowance of Rs. 1, 05,193/- on account of delay in making the payment towards the employees' contribution for the provident fund, under section 36(1)(va) r.w.s. 2(24)(x) of the Act.

3. *We have heard the submissions made by ld. Departmental Representative perused the material on record and duly considered facts of the case in the light of accepted legal position.*

4. *An identical issue was consideration by the Tribunal in the case of Kalpesh Synthetics (P.) Ltd. v. Dy. CIT [2022] 137 taxmann.com 475/195 ITD 142 (Mum. - Trib.) held as follows:—*

2. The issue in appeal lies in a very narrow compass of common material facts. While processing the income tax return filed by the assessee, apparently, based on information contained in column 20(b)of the tax audit report under section 44AB(a), which was submitted online, there were certain delays in depositing the provident fund dues vis-à-vis 'the due date for (such) payments'. The sum total of such, as perceived by the tax auditor, delayed payments, aggregating to Rs. 4, 24,634/- , were sought to be disallowed under section 143(1). When the assessee was put to notice, by the Dy. Commissioner of Income Tax, CPC, Bangalore (hereinafter referred to as 'the Assessing Officer- CPC') in respect of the proposed adjustment under section 143(1) for this disallowance, the assessee objected to the adjustment so proposed. As evident from the uncontroverted facts set out in the Statement of Facts before the learned CIT(A), it was categorically pointed out by the assessee, through an online communication to the Assessing Officer CPC, that as held by the Hon'ble jurisdictional High Court, the payments made after the due date under the respective statute but before filing the income tax return are also deductible in the computation of business income, and the adjustment in question, therefore, was unsustainable in law. It was thus contended that de-hors the observations made by the tax auditor, what was reported as delayed payment in column 20(b) were delayed payments of contributions received from the employees for various funds, as referred to in section 36(1)(va) vis-à-vis the respective statute, but not vis-à-vis the provisions of the Income-tax Act. The judicial precedents in support of the said contention were pointed out. None of these arguments, however, impressed the Assessing Officer- CPC. The disposal of this objection, as per the standard template text embedded in the impugned intimation, was that "As there has been no response/the response given is not acceptable, the adjustment(s) as mentioned below are being made to the total income as per provisions of section 143(1)(a)". Leave aside giving reasons for not agreeing with the submissions of the assessee, no efforts were made even to strike out the inapplicable clause (i.e. whether the reply was not given or whether the reply was found unacceptable). The efforts to get the intimation under section 143(1) rectified under section 154 did not yield results either. Aggrieved, the assessee carried the matter in appeal before the CIT (A) but without any success. The assessee is aggrieved and is in appeal before us.

3 Learned counsels for the assessee, has a three-fold submission. His first plea is that in the light of law laid down by Hon'ble jurisdictional High Court, in the case of Khatau Junkar Ltd. v. K S Pathania [(1992) 196 ITR 55 (Bom.)] the scope of prima facie disallowance under section 143(1)

is inherently very limited and only such a disallowance can be made under this statutory provision as can be conclusively held to inadmissible based on material on record. It is submitted that a claim backed by the binding judicial precedents of Hon'ble jurisdictional High Court- as in this case, at the minimum, cannot fall in this category. Our attention was invited to Hon'ble jurisdictional High Court's judgments in the cases of CIT v. Hindustan Organic Chemicals Limited [(2014) 366 ITR 1 (Bom.)] and CIT v. Ghatge Patil Transports Ltd. [(2014) 368 ITR 749 (Bom.)].What is on record, in this case, is an audit report which is prepared by a third party, i.e. an independent tax auditor, and a lapse in the tax audit report, as indeed in this case, cannot be put against the assessee for the purpose of a disallowance under section 143(1). For this short reason alone, according to the learned counsel, the impugned adjustment must be deleted. The next plea is that it is a settled legal position, in the light of the binding judicial precedents from the Hon'ble jurisdictional High Court, that as long as the payments towards provident fund dues are made before the due date of filing of the income tax return under section 139(1), even beyond the permissible time limit under the relevant statute under which payment is made, the payments so made are deductible in the computation of business income. The disallowance is thus unwarranted. While on this aspect of the matter, learned counsel has invited our attention to the judicial precedents holding so, and the fact that, even after noting the assessee's reliance on these binding judicial precedents- including by Hon'ble jurisdictional High Court, learned CIT (A) has relied upon the decisions of the lower forums or by Hon'ble non-jurisdictional High Courts. Such conduct, according to the learned counsel, is impermissible. Finally, his next plea is that the insertion of Explanations to section 36(1)(va) and 43B, by the Finance Bill 2021, is prospective in nature, and, accordingly, so far as the period prior to 1st April 2021 is concerned, such a disallowance cannot come into play. Our attention is invited to a series of decisions of the coordinate benches holding so. It is thus submitted that for this reason also, the impugned adjustment under section 143(1) must stand deleted. Shri Chourasia, the learned Senior Departmental Representative, on the other hand, invites our attention to the fact that there is a significant difference between the earlier legal positions, i.e. when judgments as in the case of Khatau Junkar (supra) were delivered vis-à-vis the law as it stood at the material point of time. It is submitted that the scope of expression 'an incorrect claim, if such claim is apparent from any information in the return' appearing in section 143(1)(a) is now statutorily defined under Explanation to section 143(1) and it means a claim, on the basis of an entry, in the return,—(i) of an item, which is inconsistent with another entry of the same or some other item in such return; (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction. It is submitted that when the audit report itself points out the delay in payment of provident fund dues, the claim of deduction for provident fund dues, to that extent, is "inconsistent" with another entry, i.e. by way of the tax audit report input, and that, in any event, any disallowance of expenditure in question is indicated in the audit report but not taken into account in computing the total income in the return. He submits that the Assessing Officer CPC cannot be faulted for going by the information submitted by the tax auditor, appointed by the assessee, and that the tax audit report is an integral part of the income tax return filed by the assessee. The disallowance is thus justified for this short

reason alone. As regards the legal position regarding the deductibility of payments in question even when it is paid after the due date under the relevant statute but as long as the same is made before the due date of filing of income tax return, learned Departmental Representative submitted that there are decisions on both the sides, i.e. in favour of the assessee as also against the assessee, and that, in any event, this analysis is irrelevant when the income tax return itself points out that there are payments beyond the due date which are clearly inadmissible under the statutory provisions. As regards the amendment having prospective effect only, the learned Departmental Representative relies upon the reasoning adopted by the learned CIT (A) and the unambiguous scheme of the Act. Our attention is invited to the Explanatory Memorandum to the Finance Bill 2021, which categorically states that, under the heading 'Explanation added to section 36(1)(va)', "For the removal of doubts, it is clarified that the provisions of section 43B shall not apply and shall never be deemed to have applied for the purpose of determining 'due date' under this clause" and, under the heading 'Explanation added to section 43B of the Act", that "For the removal of doubts, it is clarified that the provisions of this section shall not apply, and shall be deemed to have never been applied to a sum received by the assessee from any of the employees to which the provisions of sub-clause (x) of clause 24 of section 2 applies". The intent of the legislature is thus said to be unambiguous. Our attention is then invited to the words of the statute, and it is submitted that it cannot be open to us to disregard the specific words in the legislation itself which specifically uses the expression "shall never be deemed to have been applied". It is suggested that while the amendment is to take effect from the date specified, that is 1st April 2021, once that amendment takes effect, it has to apply also on pending cases as it provides covering the earlier cases as is clearly discernible from the peculiar expressions employed therein. We are thus urged to confirm the impugned adjustments and decline to interfere in the matter. In a brief rejoinder, it is submitted that the tax auditor is an independent professional and, even though the tax auditor is appointed by the assessee, the views of the assessee need not be the same as that of the tax auditor and that a statement by the tax auditor cannot be binding on the assessee. It is submitted that in any event the tax auditors in question had subsequently revised the tax audit report and corrected the due dates of payment. It is also reiterated that the settled legal position, as binding on the Assessing Officer CPC in view of the sit us of the jurisdictional Assessing Officer and in view of the judgment of Hon'ble jurisdictional High Court, is that the payments made beyond the due date under the relevant statute but before the due date of filing of the income tax return under section 139(1) cannot attract the disallowance for the reason of delay. Once again learned counsel has referred to and relied upon the decisions of the coordinate benches holding that the insertion of Explanations to Section 36(1)(va) and 43B, by the Finance Bill 2021, is prospective in nature, and, accordingly, so far as the period prior to 1st April 2021 is concerned, such a disallowance cannot come into play. We are thus once again urged to delete the impugned adjustment.

4. We have heard the rival contentions perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

5. In our considered view, it is quite evident, from a careful look at the related statutory provisions, that here is a material difference in the scheme of processing the income tax return under section 143(1)(a) as it stands now vis-à-vis as it stood at the point of time when Khatau Junkar judgment (supra) by Hon'ble jurisdictional High Court was delivered. That was the time when incorrect claims could be disallowed only when such a deduction was "on the basis of information available in such return, accounts or documents is prima facie inadmissible" [see section 143(1)(a)(iii) as it then stood] and it was in this context that the connotations of the expression "prima facie inadmissible" came up for consideration before Hon'ble Courts above. While the expression used in section 143(1)(a)(i) is materially similar inasmuch as its wordings are "an incorrect claim, if such incorrect claim is apparent from any information in the return", there are two important things that one must bear in mind- (a) firstly, the expression "an incorrect claim, if such incorrect claim is apparent from any information in the return" is well defined in Explanation to Section 143(1), and; (b)secondly, and perhaps much more importantly, that is just one of the permissible types of adjustments, denying a deduction, under section 143(1)(a) which goes well beyond such adjustments and includes the cases such as "(iii)disallowance of loss claimed, if the 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 indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, 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". So far as the first point is concerned, it must be noted that the expression "incorrect claim apparent from any information in the return", for the purpose of Section 143(1)(a), is further defined, under Explanation to Section 143(1), and it means that a claim, on the basis of an entry, in the return,—(i) of an item, which is inconsistent with another entry of the same or some other item in such return; (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction. On the second point, it is useful to bear in mind the fact that the scheme of Section 143(1)(a) thus permits the processing of the income tax return in the manner that the total income or loss of the assessee is computed after making the adjustments for (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 indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, 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". The adjustments under clause (vi) above are no longer permissible after 1st April 2018. Clearly, thus, there is a significant paradigm shift in the processing of income tax returns under section 143(1), and the

decisions rendered in the context of old section 143(1)(a) cease to be relevant. Learned counsel thus derives no advantage from the judgments rendered in the context of old Section 143(1) (a) - such as Hon'ble jurisdictional High Court's judgment in the case of Khatau Junkar (supra).To that extent, we must uphold the plea of the learned Departmental Representative.

6. Coming to the mechanism of application of Section 143(1), we find that the first proviso to Section 143 (1) mandates that "no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode" and, under the second proviso to Section 143(1), "the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made". The scope of permissible adjustments under section 143(1)(a) now is thus much broader, and, as long as an adjustment fits the description under section 143(1)(a) (i) to (v), read with Explanation to Section 143(1), such an adjustment, subject to compliance with first and second proviso to Section 143(1), is indeed permissible. It is, however, important to take note of the fact that unlike the old scheme of 'prima facie adjustments' under section 143(1)(a), the scheme of present section 143(1) does not involve a unilateral exercise. The very fact that an opportunity of the assessee being provided with an intimation of 'such adjustments' [as proposed under section 143(1)], in writing or by electronic mode, and "the response received from the assessee, if any" to be "considered before making any adjustment" makes the process of making adjustments under section 143(1), under the present legal position, an interactive and cerebral process. When an assessee raises objections to proposed adjustments under section 143(1), the Assessing Officer CPC has to dispose of such objections before proceeding further in the matter- one way or the other, and such disposal of objections is a quasi-judicial function. Clearly, the Assessing Officer CPC has the discretion to go ahead with the proposed adjustment or to drop the same. The call that the Assessing Officer CPC has to take on such objections has to be essentially a judicious call, appropriate to facts and circumstances and in accordance with the law, and the Assessing Officer CPC has to set out the reasons for the same. Whether there is a provision for further hearing or not, once objections are raised before the Assessing Officer CPC and the Assessing Officer CPC has to dispose of the objections before proceeding further in the matter, this is inherently a quasi-judicial function that he is performing, and, in performing a quasi-judicial function, he has to set out his specific reasons for doing so. Disposal of objections cannot be such an empty formality or meaningless ritual that he can do so without application of mind and without setting out specific reasons for rejecting the same. Let us, in this light, set out the reasons for rejecting the objections. The Assessing Officer-CPC has used a standard reason to the effect that "As there has been no response/the response given is not acceptable, the adjustment(s) as mentioned below are being made to the total income as per provisions of Section 143(1)(a)",and has not even struck off the portion inapplicable. To put a question to ourselves, can such casually assigned reasons, which are purely on a standard template, can be said to be sufficient justifications for a quasi-judicial decision that the disposal of objections inherently is? The answer must be emphatically in negative. It is important to bear in mind the fact that intimation under section 143(1) is an appealable order, and when consideration of objections raised by the assessee is an integral part of the process of finalizing the intimation

under section 143(1) unless the reasons for such rejection are known, a meaningful appellate exercise can hardly be carried out. When the first appellate authority has no clue about the reasons which prevailed with the Assessing Officer- CPC, in rejecting the submissions of the assessee, because no such reasons are indicated by the Assessing Officer CPC anyway, it is difficult to understand on what basis the first appellate authority sits in judgment over correctness or otherwise of such a rejection of submissions. Whether the statute specifically provides for it or not, in our considered view, the need for disposal of objections by way of a speaking order has to be read into it as the Assessing Officer CPC, while disposing of the objections raised by the assessee, is performing a quasi-judicial function, and the soul of a quasi-judicial decision making is in the reasoning for coming to the decision taken by the quasi-judicial officer. While on this aspect of the matter, we may usefully refer to the observations made by the Hon'ble Supreme Court, in the case of Union Public Service Commission v. Bibhu Prasad Sarangi [2021] 4 SCC 516. While these observations are in the context of the judicial officers, these observations will be equally applicable to the decisions by the quasi-judicial officers like us as indeed the Assessing Officer CPC. In the inimitable words of Hon'ble Justice Chandrachud, Hon'ble Supreme Court has made the following observations:

…..Reasons constitute the soul of a judicial decision. Without them, one is left with a shell. The shell provides neither solace nor satisfaction to the litigant. We are constrained to make these observations since what we have encountered in this case is no longer an isolated aberration. This has become a recurring phenomenon. ……How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary

7. these observations of Their Lordships apply equally and in fact with much greater vigour, to the quasi-judicial functionaries as well. Viewed thus, reasons in a quasi-judicial order constitute the soul of the quasi-judicial decision. A quasi-judicial order, without giving reasons for arriving at such a decision, is contrary to the way the functioning of the quasi-judicial authorities is envisaged. A quasi-judicial order, as a rejection of the objections against the proposed adjustments under section 143(1) inherently is, can hardly meet any judicial approval when it is devoid of the cogent and specific reasons, and when it is in a standard template text format with clear indications that there has not been any application of mind as even the inapplicable portion of the template text, i.e. whether there was no response or whether the response is unacceptable, has not been removed from the reasons assigned for going ahead with the proposed adjustment under section 143(1). In any event, there is no dispute that the precise and proximate reasons for disallowance in all these cases admittedly are the inputs based on the tax audit report. The question then arises about the status and significance of the tax audit report. Can the observations in a tax audit report, by themselves, be justifications enough for any disallowance of expenditure under the Act? As we deal with this question, we are alive to the fact section 143(1) (a) (iv) specifically an adjustment in respect of "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return". It does proceed on the basis that when a tax auditor indicates a disallowance in the tax

audit report, for this indication alone, the expense must be disallowed while processing under section 143(1) by the CPC. It is nevertheless important to bear in mind the fact that a tax audit report is prepared by an independent professional. The fact that the tax auditor is appointed by the assessee himself does not dilute the independence of the tax auditor. The fact remains that the tax auditor is a third party and his opinions cannot bind the auditee in any manner. As a matter of fact, no matter how highly placed an auditor is, and even within the Government mechanism and with respect to CAG audits, the audit observations are seldom taken an accepted position by the auditee even when the auditor is appointed by the auditee himself. These are mere opinions and at best these opinions flag the issues which are required to be considered by the stakeholders. On such fine point of law, as the nuances about the manner in which Hon'ble Courts have interpreted the legal provisions of the Income-tax Act in one way or the other, these audit reports are inherently even less relevant- more so when the related audit report requires reporting of a factual position rather than express an opinion about legal implication of that position. In the light of this ground reality, an auditee being presumed to have accepted, and concurred with, the audit observations, just because the appointment of auditor is done by the assessee himself, is too unrealistic and incompatible with the very conceptual foundation of independence of an auditor. On the one hand, the position of the auditor is treated so subservient to the assessee that the views expressed by the auditor are treated as a reflection of the stand of the assessee, and, on the other hand, the views of the auditor are treated as so sacrosanct that these views, by themselves, are taken as justification enough for a disallowance under the scheme of the Act. There is no meeting ground in this inherently contradictory approach. Elevating the status of a tax auditor to such a level that when he gives an opinion which is not in harmony with the law laid down by the Hon'ble Courts above- as indeed in this case, the law, on the face of it, requires such audit opinion to be implemented by forcing the disallowance under section 143(1), does seem incongruous. Learned Departmental Representative's contentions in this regard that the observations made in the tax audit report, in the light of the specific provisions of section 143(1)(a)(iv), must prevail- more so when the tax auditor is appointed by the assessee himself, is clearly unsustainable in law. While section 143(1) (a) (iv) does provide for a disallowance based purely on the "indication" in the tax audit report, inasmuch as it permits "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return", and it is for the Hon'ble Constitutional Courts above to take a call on the vires of this provision, we are nevertheless required to interpret this provision in a manner to give it a sensible and workable interpretation. When the opinion expressed by the tax auditor is contrary to the correct legal position, the tax audit report has to make way for the correct legal position. The reason is simple. Under article 141 of the Constitution of India, the law laid down by the Hon'ble Supreme Court unquestionably binds all of us, and the Hon'ble Supreme Court has, in numerous cases- including, for example, in the case of East India Commercial Co. Ltd. v. Collector of Customs [1963] 3 SCR 338, speaking through Hon'ble Justice Subba Rao observed, inter alia, as follows:

……Under article 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under article 226, it

has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under article 227 it has jurisdiction over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of the Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer

8. When the law enacted by the legislature has been construed 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 it in any other manner than as read by the Hon'ble jurisdictional High Court. The views expressed by the tax auditor, in such a situation, cannot be reason enough to disregard the binding views of the Hon'ble jurisdictional High Court. To that extent, the provisions of section 143(1) (a) (iv) must be read down. What essentially follows is that 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. It is also important to bear in mind the fact that what constitutes jurisdictional High Court will essentially depend upon the location of the jurisdictional Assessing Officer. While dealing with jurisdiction for the appeals, rule 11(i) 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". Then situs 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 the CPC is within the jurisdiction of Hon'ble Bombay High Court or not, as long as the regular Assessing Officer of the assessee and the assessee are located in the jurisdiction of Hon'ble Bombay 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 to the Assessing Officer CPC to take a view contrary to the view taken by the Hon'ble jurisdictional High Court- more so when his attention was specifically invited to the binding judicial 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 assessee must succeed for this reason as well.

9. What a tax auditor states in his report are his opinion and his opinion cannot bind the auditee at all. In this light, when one considers what has been reported to be 'due date' in column 20(b) in respect of contributions received from employees for various funds as referred to in section 36(1)(va) and the fact that the expression 'due date' has been defined under Explanation (now Explanation 1) to section 36(1)(va) provides that "For the purposes of this clause, 'due date' means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there under or under any standing order, award, contract of service or otherwise", one cannot find fault in what has been reported in the tax audit report. It is not even an expression of opinion about the allowability of deduction or otherwise; it is just a factual report about the fact of payments and the fact of the due date as per the Explanation to section 36(1) (va). This due date, however, has not been found to be decisive in the light of the law laid down by Hon'ble Courts above, and it cannot, therefore, be said that the reporting of payment beyond this due date in the tax audit report constituted "disallowance of expenditure indicated in the audit report but not taking into account in the computation of total income in the return" as is sine qua non for disallowance of section 143(1) (a) (iv). When the due date under Explanation to section 36(1) (va) is judicially held to be not decisive for determining the disallowance in the computation of total income, there is no good reason to proceed on the basis that the payments having been made after this due date is "indicative" of the disallowance of expenditure in question. While preparing the tax audit report, the auditor is expected to report the information as per the provisions of the Act, and the tax auditor has done that, but that information ceases to be relevant because, in terms of the law laid down by Hon'ble Courts, which binds all of us as much as the enacted legislation does, the said disallowance does not come into play when the payment is made well before the due date of filing the income tax return under section 139(1). Viewed thus also, the impugned adjustment is vitiated in law, and we must delete the same for this short reason as well.

10. In view of the detailed discussions above, we are of the considered view that the impugned adjustment in the course of processing of return under section 143(1) is vitiated in law, and we delete the same. As we hold so, we make it clear that our observations remain confined to the peculiar facts before us, that our adjudication is confined to the limited scope of adjustments which can be carried out under section 143(1) and that we see no need to deal with the question, which is rather academic in the present context, as to whether if such an adjustment was to be permissible in the scheme of section 143(1), whether the insertion of Explanation 2 to section 36(1)(va), with effect from 1st April 2021, must mean that so far as the assessment years prior to the assessment years 2021-22 are concerned, the provisions of section 43B cannot be applied for determining the due date under Explanation (now Explanation 1) to section 36(1)(va). That question, in our humble understanding, can be relevant, for example, when a call is required to be taken on merits in respect of an assessment under section 143(3) or under section 143(3) r.w.s. 147 of the Act, or when no findings were to be given on the scope of permissible adjustments under section 143(1) (a) (iv). That is not the situation before us. We, therefore, see no need to deal with that aspect of the matter at this stage.

5. *In the absence of any contrary decision before us, we respectfully following the decision of co-ordinate bench uphold the plea of the assessee in the terms indicated above. The impugned adjustment of Rs. 1, 05,193/- is thus, deleted."*

12. In view of the above, it is observed that there is a consistent view has been taken by the coordinate benches about the scope of the Tax Auditor's Report and its sanctity while finalising the assessee's Tax computation. Tax Auditor is mandated to report in a particular format prescribed in the Rules governed by the Statute. It does not mean that his reporting is sacrosanct for both the sides, i.e. Revenue and Assessee. Now we are coming on the merits of allowability of the expense under consideration claimed by the assessee. On this issue the assessee relied upon the ratio laid down by the Hon'ble Jurisdictional High Court in the case of [1992] 60 Taxman 215 (Bom.) Otis Elevator Co. (India) Ltd. *v.* CIT, wherein the Hon'ble Court held as under:

"For the assessment year 1972-73, the assessee-company paid club fees on, behalf of its executives. While the ITO disallowed these amounts under section 40(a) (v) on the ground that these payments amounted to perquisites, the AAC found that the assessee had incurred these expenses in the interest of its business as the assessee felt that the membership of the clubs would provide its officers and executives better contact and association with persons in good position and would result in publicity. The AAC also held that these amounts were not paid with the intention to benefit the employees and, therefore, the payment of such club fees should be considered to have been made for promoting the business of the assessee as it could not be dissociated from the assessee's business. The AAC deleted the disallowance made by the ITO. The Tribunal neither went into this issue in detail nor did it record any finding with regard to the aspect of the matter dealt with in detail by the AAC. It cursorily observed that these amounts, in its view, were in the nature of perquisites as it was the obligation of the employees concerned to

pay for the same arid in this view of the matter it set aside the findings of the AAC and restored the additions ordered by the ITO."

[2013] 37 taxmann.com 294 (Bom.) CIT (LTU), Centre-1, v. Lubrizol India Ltd.

"So far as question A is concerned, the dispute relates to payment of entrance fees for club memberships. The case of the revenue is that the entrance fees is of capital nature while the respondent contends that it is revenue and should be allowed as expenses. The Tribunal in the impugned order has followed the decision of this Court in the case of Otis Elevator Co. (India) Ltd. v. CIT [1992] 195 ITR 682/60 Taxman 215 holding that the entrance fees for the membership of a club would be considered as revenue expenditure. The Tribunal observed that though the entrance fee would have an enduring benefit; it cannot be considered to be capital in nature as no asset was created. Mr. Vimal Gupta, senior counsel on behalf of the revenue submits that the decision of this Court in the matter of Otis Elevator Co. (India) Ltd. (supra) would not be applicable as it did not deal with the payment of entrance fees for membership of the club. However, it is not in dispute that various decisions of the Tribunal had followed the decision of this Court in the matter of Otis Elevator Co. (India) Ltd. (supra) and allowed entrance fees of club as revenue expenditure. Further, this Court has also in numerous matters applied the decision of Otis Elevator Co. (India) Ltd. (supra) to the cases were entrance fees of club membership was an issue in dispute and held that the same is allowable as revenue expenditure. In view of the above, we do not entertain the question as formulated."

13. In view of the above discussion, we observed that position of law with reference to the claim of the assessee is in its favour and the assessee is entitled to claim the same. As far as verification of the expense w.r.t. section 37 of the Act is concerned, that was the duty of the revenue to follow the procedure by giving the assessee an opportunity of being heard, which was actually not done in this case, the verification w.r.t. the fact that the expenses claimed by the assessee is wholly and exclusively for the purposes of business we direct the AO to verify the same after giving the assessee an opportunity of being heard and the assessee is directed to come forward with all the relevant evidences to confirm the allowability of the same as per the provisions of section 37(1) of the Act. **In the result, Ground No. 3 with its Sub-Grounds is allowed for statistical purposes.**

14. **In the result, in view of above, the appeal of the assessee is partly allowed for statistical purposes.**

ITA No. 2746/Mum/2024 (A.Y.2019-20)

15. Ground raised by the Revenue pertains to deletion of addition made by the CPC, Bengaluru amounting to Rs. 3, 34, 88,744/-, u/s. 43B of the Act for provision made towards Gratuity Liability. We have gone through the order of the Ld. CIT (A) and submissions of the assessee along-with paper book filed. Again the CPC, Bengaluru relied upon the Tax Auditor's Report vide clause 26(i) of the Tax Audit Report. We have considered the extracts of the Audited Financial Statements filed by the assessee vide page nos. 1-4 of the paper book, Revised Computation filed page no. 5 of the paper book and submissions before the Ld. CIT (A) and observed that this claim of expense was never charged to taxable income of the assessee, hence the same is not disallowable and if revenue do so the same will tantamount to double disallowance, which is not permissible as per Law. In view of this, we do not find any fault in the findings of the Ld. CIT (A) and the same is confirmed in favour of the Assessee. **In the result, Ground raised by the Revenue is dismissed.**

16. In nutshell, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 23rd day of September, 2024.

Sd/-	Sd/-
(NARENDER KUMAR CHOUDHRY)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 23/09/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai