

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA Nos. 659 & 645/Chd/2023
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The DCIT Circle, Patiala	बनाम	Punjab State Power Corporation Limited, The Mall, Patiala
स्थायी लेखा सं. / PAN NO: AAFCP5120Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Saldi, C.A
राजस्व की ओर से / Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख / Date of Hearing : 03/09/2024
उद्घोषणा की तारीख / Date of Pronouncement : 28/11/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

These are two appeals filed by the Revenue against the respective orders of Ld. CIT(A)/ NFAC each dt. 23/08/2023 pertaining to Assessment Years 2012-13 & 2013-14 respectively.

2. Both these appeals were heard together and are being disposed off by this consolidated order for the sake of convenience and brevity.

3. With the consent of both the parties, the case of the Assessee in ITA No. 659/Chd/2023 was taken as a lead case wherein the grounds of appeal read as under:

- "1. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in law in deleting the addition on account of non-payment of CPF and GPF amounting to Rs.259,79,18.803/- which is against facts and bad in law
2. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has fallen in error by not following the legal maxim that tax statutes are to be strictly construed, as held applicable by the Hon'ble Supreme Court in PCIT vs M/s Aarham Softronics Civil Appeal No. 1784 of 2019.

3. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has fallen in error by not following the legal maxim that concepts such as equity, hardship or compulsion have no place in taxation statutes.*
4. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erroneously not followed the binding judgment of Hon'ble Supreme Court in the case Checkmate Services Pvt Ltd vs CIT Civil Appeal No. 2833 of 2016.*
5. *The appellant craves leave to add, amend or delete any of the grounds of appeal during the appellate proceedings."*

4. At the outset, it is noted that this is the second round of appellate proceedings wherein the matter travelled up to the Tribunal. It would therefore be necessary to refer to the proceedings during the first round of assessment and appellate proceedings and the directions of the Coordinate Bench before we consider and examine the rival submissions advanced by both the parties.

5. During the course of original assessment proceedings, the AO referred to the Tax Audit Report (TAR) submitted by the assessee company alongwith its return of income wherein the Tax Auditor has stated that in respect of employees covered under CPF scheme, Rs. 2,62,83,922/- was deducted during the year which had not been deposited by the assessee company. The Tax Auditor further stated that in respect of employees covered under GPF scheme, the assessee company had been deducting Provident Fund (PF) under the Provident Fund Rules 1960 framed by the erstwhile PSEB, however the deduction had not been remitted in any separate account and had been utilized for assessee's operation. The AO, referring to the said findings of the Tax Auditor, issued a show cause to the assessee company as to why the amount deducted under CPF scheme as well as GPF scheme which are not deposited by the assessee company should not be disallowed under the provisions of Section 36(1)(va) r/w section 43B and of the Act.

6. In response, the assessee in its submission stated that regarding GPF of Rs. 253,02,49,471/- which is the net accumulated amount during the year, the

erstwhile PSEB was treating the amount of PF under regulation 41(a) & (b) of the Provident Fund Regulations. It was further stated that as per the Regulation 41(a), GPF balance after deducting final payment, permanent and temporary advance as admissible under these Regulations will be available for use by Board in meeting its capital expenditure under the plan. For this purpose, budgetary provisions shall be made showing gross accretion to the GPF balances, final withdrawals, permanent and temporary advances as admissible under the Regulations. Further referring to the Regulation 14(b) wherein it was provided that capital expenditure made out of the GPF balances will be reflected in the creation of the assets of the Board and the provident fund dues of the employees shall constitute the first charge on these assets of the Board, it was submitted by the assessee that as per the above Regulation, the amount was to be retained by the PSEB for utilization in capital assets.

7. It was further submitted that after unbundling of PSEB on 16/04/2010 as per Clause 10B, 10C and 10D of the notification dt. 24/12/2012 of Government of Punjab, the amount of GPF till 31/03/2013 and thereafter will be deposited in separate trust over a period of ten years and the company shall bear the interest from the transition period till the matter is settled through trust i.e; upto 31/03/2013 .

8. Regarding CPF of Rs. 6,76,69,332/- which was accumulated during the year, it was submitted by the assessee company that the employees recruited on or after 01/01/2004 are covered under CPF Scheme of the Government of India and to deposit the same, various formalities i.e. allocation of HOD code from the State Government, registration of company with the NSDL, allotment of code / account number to the employees etc. took some time. Further reference was drawn to Note No. 6 (iii) of the Annual report for the financial year 2011-12 which read as under:

"Provident Fund & CPF

Employees on roll up to 31.12.2003 have contributed in G.P.F. an amount of Rs. 2156.92 crore as on 31-3-2012. PSPCL is using these contributions for its own purposes and is providing/ paying interest on this amount. As on date FDRs against GPF is of Rs. 324 crore. However, a Trust has been created, as notified in Transfer Scheme, and operationalised on 11-2-11 and 01-04-2013 respectively for maintaining the separate account of provident fund of the employees. For employees other than those mentioned above, the PSPCL is contributing equal amount to CPF. Amount worth Rs. 12.36 crore (GH- 57.160 CPF employees contribution Rs. 6.32 crore & GH- 57.165 CPF Boards' contribution Rs. 6.04 crore), is not yet deposited. The company has provided interest on the contribution of CPF (employees' share and employers' share) @8% since 2007-08 to the tune of Rs. 1.75 crore."

9. It was submitted before the AO that as per the direction of the Government, the above amount has been retained under compulsion and not by choice and therefore, no disallowance is called for under provision of Section 43B and 36(1)(va).

10. The submissions so filed by the assessee company were considered but not found acceptable to the AO. As per the AO, the assessee has clearly violated the provision of Section 43B and 36(1)(va) of the Act. The assessee company not only delayed in actual payment but completely failed to deposit the amount of CPF and GPF contribution of employees and employer even after the due date of filing of the returned income. The assessee company has failed to deposit total amount of Rs. 259,79,18,803 [GPF of Rs. 253,02,49,471 + CPF of Rs. 6,76,69,332] and the said amount was disallowed and added back to the returned income of the assessee company.

11. The assessee company thereafter carried the matter in appeal before the Ld. CIT(A) who has sustained the said findings and the order of the AO.

12. On further appeal to the Tribunal, the Ld. Counsel for the Assessee submitted that the A.O. had not considered the facts of the present case in right perspective. It was stated that a trust was created in the year under consideration wherein amount deducted was to be deposited. It was further stated that the GP Fund after deducting the final payment of the advances was to be deposited but in the year under consideration the net accrual was

negative therefore nothing was to be deposited, but this facts have not been appreciated and considered by the A.O. as well as the Ld. CIT(A). It was further submitted that no such disallowance was made in the previous assessment year 2011-12 in similar circumstances, therefore the disallowance made by the A.O. and sustained by the Ld. CIT(A) was not justified. In his rival submissions, the Ld. CIT(DR) submitted that the facts are not clear from the impugned order and it is also not clear what were the conditions in the notification dated 24/12/2012 of Government of Punjab. He therefore requested that the matter may be restored to the A.O.

13. The Coordinate Bench while disposing off the assessee's appeal in ITA No. 744/Chd/2019 for A.Y. 2012-13 vide order dt. 06/12/2019 has held as under:

"18. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the Ld. CIT(A) had passed a non speaking order in other words he has not brought on record the relevant facts involved for the year under consideration. It also appears that the A.O. had not considered the explanation of the Assessee in right perspective particularly it is not brought on record that what were the distinguishable facts from the earlier assessment year, while the Ld. Counsel for the Assessee claimed at Bar that in the similar circumstances no disallowance was made for the A.Y. 2011-12. We, therefore in the absence of clear facts on record deem it appropriate to set aside this issue back to the file of the A.O. for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee."

14. In the set aside proceedings, the AO after issuing the show cause and calling for the submissions from the assessee has sustained the said addition of Rs. 259,79,18,803/- vide order dt. 18/10/2021. On perusal of the submissions so made by the assessee company before the AO during the set aside proceedings, we find that the submission as made in the original proceedings were reiterated before the AO in terms of net accruals to the tune of Rs 107.27 crores and following the PF Regulations of erstwhile PSEB whereby the amount was to be retained for capital purposes and as such no fresh contentions have been raised/submitted.

15. The submissions so filed by the assessee company were considered but not found acceptable to the AO. As per the AO, the assessee company has clearly violated the provisions of Section 43B and 36(1)(va) of the Act. The assessee company not only delayed in actual payment but completely failed to deposit the amount of CPF contribution of employees and employer even after the due date of filing of the return of income as mandated in Section 43B of the Act. Further, as per the provisions of Section 36(1)(va) of the Act in order to claim the allowance of GPF, the assessee company is required to deposit the amount received from the employees in the year in the relevant funds or fund on or before the due date, however, the assessee could not submit any evidence of having credited this amount to the account of the employees in the relevant fund within due date. Since the assessee company has failed to deposit the amount of Rs. 259,79,18,803/- [GPF of Rs. 253,02,49,471/- + CPF of Rs. 6,76,69,332/-], the whole of the amount was disallowed and added back to the returned income.

16. Being aggrieved, the assessee again carried the matter in appeal before the Ld. CIT(A) and reiterated the submissions so made before the AO. The Ld. CIT(A) considering the submissions of the assessee allowed the appeal of the assessee company against which the Revenue is now in appeal before us.

17. The findings of the Ld. CIT(A) are contained in para 6.5 to 6.7 of the impugned order and the contents thereof read as under:

“6.5 During the appellate proceedings the appellant requested for hearing through virtual conferencing, during the hearing the AR of the appellant has clarified that the issue has arisen out of the restructuring of the company from the earlier electricity board. Therefore, the period from April, 2010 to 31st March, 2013 [FY 2010-11; 2011-12 and 2012-13 relevant to AYs 2011-12; 2012-13 and 2013-14] when the structures were being unbundled from a Board into 2 separate companies. During such period, the old system of PF continued till the new norms were notified and consequent approval structure, DDO, approving authorities etc were designated.

6.6 Till such time that the new PF/CPF scheme became operational, the company continued to deduct and hold net PF collections [gross collections less

payments on a/c of retirements] with it as per the mandate of the GPF regulations of the state of Punjab. Copies of such regulations have also been provided and placed on record. The expenditure is thus allowable since it was retained by the approved Government of Punjab regulations.

6.7 Regarding the CPF contributions of Rs. 6,76,69,332/- in respect of employees recruited on or after 01/01/2004 covered by the New Pension Scheme of Government of India it was submitted that –

It is submitted that the amount of Rs 6,76,69.332/- pertains to employees' share In this regard, it is submitted that the employees recruited on or after 01.01.2004 are covered under New Pension Scheme of the Govt, of India. To deposit the same with Govt. various formalities were involved such as allocation of HOD code from the State Govt., registration of the company with NSDL, allotment of code/account no to the employees etc which took its time. The sequence of events that took place to operationalize the deposit of CPF subscription is hereby attached as Annexure-D From the facts stated above, it is very much clear that the above amount has been retained under compulsion and not by choice and as such shall not be disallowed."

These were also deposited by the company once the notification dated 24/12/2012 was complied with and the systems for deductions and transmissions to PF head were not set up in place, interest for delayed payments was also paid. Since, this was a onetime default arising out of restricting and consequent fresh systems being put in place and the company has demonstrated that there was no delay attributable to it in the same: the same are allowable for this period of restructuring since the same were remitted with a delay for reasons beyond the control of the appellant."

18. During the course of hearing, the Ld. CIT/DR taken us through the provisions of Section 36(1)(iva), Section 36(1)(va) as well as Section 43B of the Act and submitted that the Ld. CIT(A) has fallen in error by not following the legal maxim that the tax statute has to be strictly construed as held by the Hon'ble Supreme Court in case of PCIT Vs. M/s Aarham Softronics Civil Appeal No. 1784 of 2019. It was further submitted that concepts such as equity, hardship or compulsion have no place in tax statutes. It was submitted that in the instant case, the AO has recorded a clear finding that there is complete failure on the part of the assessee company in depositing the amount of employee as well as employer share of CPF contribution even after the due date of filing of return of income. It was further submitted that as far as the GPF contribution is concerned, the assessee company could not submit any evidence of having credited this amount to the account of the employees in the relevant fund

within the due date. It was further submitted that the Ld. CIT(A) has also failed to take into consideration the binding judgment of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. CIT, Civil Appeal No. 2833 of 2016 which has been specially rendered in the context of Section 36(1)(va) of the Act and the concept of due date has been elaborately discussed therein. It was accordingly submitted that the order so passed by the Ld. CIT(A) be set aside and that of the AO be sustained.

19. The Ld. AR in his submission submitted that firstly the figure of disallowance amounting to Rs. 259.79 Cr has been taken by the AO from Note No. 6 of the Annual Report for the F.Y. 2011-12 relevant to A.Y. 2012-13 and it is the difference between the opening balance and closing balance of the amount of GPF liability. It was submitted that the details of the amount of subscription received from the employees and payment made on account of GPF during the F.Y. 2011-12 relevant to impugned assessment year are as per the table below:

Table Showing Subscription and Payments on Account of GPF during A.Y. 2012-13			
	Particulars	Amount (Rs.)	Amount (Rs.)
(A)	Opening Balance of G.P. Fund (As per books of accounts)		18,92,15,72,417
	Subscription received during the year	5,20,21,62,917	
	Less:- Payments to employees during the year	4,22,79,85,058	
(B)	Net Accrual to GPF during the year		97.41,77,859
(C)	Accrued Interest to the GPF for the year		1,55,26,67,711
	Closing Balance of G.P. Fund (A+B+C)		21,44,84,17,987

19.1 It was accordingly submitted that the wrong figures have been considered by the AO without taking into consideration the actual subscription received during the year and the payment made and the net accrual to GPF during the year is only an amount of Rs. 97,41,77,859/-.

19.2 It was further submitted that before unbundling of erstwhile PSEB on 16/04/2010, the PSEB was following Provident Fund Regulation, 1960 in terms of

section 79(c) of the Electricity (Supply) Act, 1948 for the purposes of establishing and maintaining provident fund for the benefit of its employees and the said regulations continued to be followed by the assessee company, being one of the companies formed as a result of unbundling of the PSEB for the impugned assessment year. It was submitted that the Id CIT(A) has rightly appreciated and taken into consideration the said PF regulations while allowing relief to the assessee in so far as disallowance of GPF contribution is concerned. It was further submitted that as per the said Regulation, separate accounts are maintained for each subscriber/employee which shall show his amount of subscription/contribution for the year alongwith interest calculated as per the regulations, withdrawals, etc and the same are duly administered by and records are duly maintained by the drawing and disbursing officer and in this regard, reference was drawn to Regulations 11 and 11-A of the PF Regulations. It was submitted that during the year, there were subscriptions received from the employees to the tune of Rs 5,20,21,62,917/- and there were disbursement to the tune of Rs 4,22,79,85,058/- and the said subscriptions and disbursements have been duly reflected in the respective subscription account of the employees and there is no dispute in this regard. It was submitted that subscriptions so received from the employees have in effect being deducted while disbursing the salary to the employees and on real time basis, have been credited in respective subscription account of the employees. It was accordingly submitted that there is no merit in the contention of the Id DR that the assessee has not credited this amount to the account of the employees in the relevant fund within the due date. It was further submitted that the GPF balances were to be retained by the PSEB itself and were available for use in meeting the capital expenditure under the plan and reference was drawn to Regulation 41(a) and 41(b) of the said PF Regulation as per which the amount was to be retained by the PSEB for utilization in capital assets.

19.3 It was further submitted that as per the unbundling notification dt. 16/04/2010, the assessee company was entitled to frame regulations governing the conditions of personnel transferred to the assessee company under the transfer scheme and till such time, the existing service rules / regulations of the erstwhile PSEB was applicable and accordingly, during the transitional period of unbundling from 16/04/2010 to 31/03/2013, the service rules and regulations of erstwhile Board were applicable and as per these regulations, the Provident Fund was to be retained by the erstwhile Board for capital expenditure and the assessee company has duly followed those regulations and as such, the employee share of GPF was duly deposited well within time as required under section 36(1)(va) of the Act and therefore there cannot be any disallowance under the said provision.

19.4 It was further submitted that during the said period, the assessee company has made payment to the retired and other employees and only net funds retained by the company was to the tune of Rs. 97,41,77,859/- and in this regard, reference was drawn to the notification issued by the Government of Punjab dt. 24/12/2012 and the relevant extract thereof read as under:

"10-B The General Provident Fund Trust, shall be funded by Powercom and Transco both, as per the apportionment made in the Opening Balance Sheet, on and with effect from the 16th April, 2010, and the same shall be funded over a period of ten years commencing on and with effect from the 1st April, 2013, along with interest as applicable:

Provided that for the period commencing from 16th April, 2010 to 31st March, 2013, the Powercom and Transco shall be liable to pay interest on the apportioned General Provident Fund liability, at the rate as applicable for the respective financial years.

10-C the Powercom and Transco, shall be liable to pay Interest, as applicable to General Provident Fund from time to time, on the net accruals (on monthly basis) of the General Provident Fund amount on and with effect from the 16th April, 2010 to the date of issuance of this notification, and thereafter all the General Provident Fund matters, shall be settled through trust.

10-D Until otherwise directed by the State Government, the Powercom and Transco shall maintain common Trust for pension, gratuity, other terminal benefit

liabilities and General Provident Fund, instead of individual Trusts for each of the companies and all the contributions shall be made to such Trusts in the aforesaid manner."

20. Regarding CPF contribution, it was submitted that during the year, only Rs. 2.63 Crores was received from employees on account of subscription to CPF and the AO has wrongly disallowed Rs. 6.76 Crores which included Rs. 3.71 crores being the opening balance of employees contribution to the fund and our reference was drawn to the following table:

Table Showing Subscription and Payments on Account of CPF during A.Y. 2012-13			
	Particulars	Amount (Rs.)	Amount (Rs.)
(A)	Opening Balance of C.P. Fund (As per books of accounts)		3,70,93,463
	Subscription received during the year	2,62,83,922	
	Less: Payments to employees during the year	1,10,262	
(B)	Net Accrual to CPF during the year		2,61,73,660
	Closing Balance of C.P. Fund (A+B)		6,32,67,123

20.1 It was further submitted that only those employees who were appointed on or after 01/01/2004 are covered under New Pension Scheme (CPF) of the Government of India and to deposit the same with Government, various formalities such as allocation of HOD code from the State Government, registration of company with the NSDL, allotment of code / account no. to the employees etc. took some time and reference was drawn to the sequence of events which read as under:

"1. Allotment of HOD code: Directorate of Disinvestment Finance Dep. Govt. of Punjab allotted state autonomous body code to ten State Autonomous Bodies (SABs)/PSU/ACI including PSPCL vide No. 111/123/07FD(Disc.) BA-2/3124-33 dated 10.05.2011.

2. Decision taken by BODs in its 16th meeting held on 15.12.2011 at Mohali BODs of PSPCL took the decision to authorize CAO/PSPCL to execute and sign on behalf of PSPCL the documents regarding registration of PSPCL with various authorities (i.e. NSDL/PFRDA).

3. Direction of Punjab Govt.: Directorate of Disinvestment Finance Deptt. Govt. of Punjab directed PSPCL vide letter no. 111/123/07FD(Disc.) ABA-7261-70 dated 23.11.2011 to forward the required documents to Pension Fund Regulatory

and Development Authority (PFRDA) with a copy to NPS Trust and NSDL-CRA for the registration.

4. Documents forwarded: As per the above direction of Punjab Govt. the required documents for registration were forwarded to Dy. Gen Manager / PFRDA New Delhi vide memo no. 31/21 dated 01/02/2012.

Joint Direct (Finance & Accounts Directorate of Disinvestment Finance Deptt. Punjab was also requested to issue letter of confirmation to CRA regarding Govt. intent to extend the NPS to PSPCL vide letter memo no. 815/16 dated 01/02/2012.

Govt. of Punjab Dept. of Finance Finally sent its request to NSDL regarding registration of PSPCL under NPS vide memo no. 111/123/07FD(Disc) BA-2/6291 dt. 13/08/2012.

5. PFRDA Direction: PFRDA vide its letter dt. 31/08/2012 advised PSPCL to enter into dialogue with NSDL which is Central Record Keeping Agency (CRA) for the NPS to finalize the modalities with regard to interfacing with CRA which includes registration of Nodal Office.

Forwarding of N-2 and N-3 forms: These forms of registration were forwarded to Directorate of Disinvestment Finance Dep. Govt of Punjab directed PSPCL vide letter No. 10892 dated 31.10.2012 for forwarding the same to NSDL Mumbai.

DTO and DDO numbers were allotted to PSPCL by NSDL

Registration of Subscribers / Allotment of Permanent Retirement Account Numbers (PRAN) PRAN allotment to each subscriber of NPS was a pre requisite of this scheme. This way a very difficult job. These employees were scattered over 160 DDO locations throughout Punjab. Application Forms of around 3320 employees have been collected and forwarded to Central Record keeping Agency (CRA). Till date around 3300 PRANs have been allotted.

Uploading of Regular and Arrear Subscription: Regular updating of CPF Subscription was started from July 2013 onwards and arrear with interest was also uploaded and deposited with due course of time (as per instructions issued by Deputy Director Pension Punjab Govt. vide memo no. 6/17/2009-6/863 dated 12/07/2010)/ the entire arrear amount with valid PRANs has been deposited now."

20.2 It was accordingly submitted that as per the direction of the Government the above amount has been retained under compulsion and not by choice and therefore, there should not be any disallowance for tax purpose in the hands of the assessee company. The Id AR accordingly supported the order and findings of the Id CIT(A).

21. We have heard the rival contentions and perused the material available on record. The issue under consideration is broadly two fold namely, deposit of

GPF contribution which has been collected by the assessee company from its employees towards the GPF subscription during the year and whether any disallowance is called for under relevant provisions of the Act. The second issue relates to employees share of CPF/NPS contribution which has been collected by the assessee company from its employees during the year as well as its corresponding contribution by the assessee company as an employer and whether any disallowance is called for in respect of employee and employer share of CPF/NPS contribution under relevant provisions of the Act.

22. Firstly, as regards the GPF contribution collected by the assessee company from its employees during the year is concerned, it has been submitted that the erstwhile PSEB was following its own Provident Fund Regulation, 1960 in terms of Section 79(c) of the Electricity (Supply) Act, 1948 for the purposes of establishing and maintaining provident fund for the benefit of its employees and the said regulations continued to be followed by the assessee company, being one of the companies formed as a result of unbundling of the PSEB for the impugned assessment year. It has been further submitted that as per the said Regulation, separate accounts are maintained for each subscriber/employee which show his amount of subscription/contribution for the year alongwith interest calculated as per the regulations, withdrawals, etc and the same are duly administered by and records are duly maintained by the drawing and disbursing officer and that the subscriptions so received from the employees have in effect being deducted while disbursing the salary to the employees for the relevant month and on real time basis, have been credited in respective subscription account of the employees and in this regard, reference was drawn to Regulations 11 and 11-A of the PF Regulations which reads as under:

"11. An account shall be prepared in the name of each subscriber and shall show the amount of his subscription with interest thereon calculated as prescribed in sub-regulation (2) of Regulation 16.

11-A i) *Parallel CP. Fund Accounts shall be maintained in G.P. Fund pass books for all the subscribers who subscribe to the G.P. Fund, by their respective drawing and disbursing Officers.*

ii) *The G.P. Fund Pass Books will be kept up to date by the Drawing Disbursing Officers and shall be maintained as service record of the subscriber and will be transferred alongwith the service book of the official on the eve of his transfer.*

iii) *In case of Gazetted Officers the entries in the G.P. Fund Pass Books shall be made by themselves and got verified from their respective disbursing officers periodically These pass books shall be surrendered by them to their respective disbursing officers at the time of claiming final payment."*

23. It was further submitted that during the year, there were subscriptions received from the employees to the tune of Rs 5,20,21,62,917/- and there were disbursal to the tune of Rs 4,22,79,85,058/- and the said subscriptions and disbursements have been duly credited on real time basis and reflected in the respective subscription account of the employees and there is no dispute in this regard. We therefore find that in the instant case, the provident fund was maintained and administered by the erstwhile PSEB and thereafter, by the assessee company internally in terms of the PF Regulations as so authorized by the Electricity (Supply) Act, 1948 and the yearly subscriptions have been credited on real time basis in the individual account of respective employees. The Id CIT(A) has duly taken into consideration the said PF regulations while allowing relief to the assessee company. No dispute has been raised by the Revenue as far as the assessee not following the said PF Regulations and any violations/irregularities in administering the same as pointed out by any authorities. Therefore, in absence of any adverse material on record, we uphold the order of the Id CIT(A) whereby he has allowed the relief to the assessee company as far as GPF contribution is concerned.

24. Now, coming to the second issue of employees share of CPF contribution which has been collected by the assessee company from its employees during

the year as well as corresponding contribution by the assessee company as an employer and whether the same is allowable for tax purposes in the hands of the assessee.

25. It is an admitted fact that these contributions relates to employees recruited on or after 01/01/2004 who are covered under the New Pension Scheme(NPS) of Government of India and who has since been transferred to and on the payrolls of the assessee company post unbundling of the PSEB and steps were taken by the assessee company to operationalize the deposit of these contributions in the respective employee's account under the NPS during the financial year relevant to the impugned assessment year as well as in the subsequent period whereby regular uploading of CPF contribution was finally started in July 2013 onwards and entire arrears along with interest was deposited by the assessee company.

26. The Id CIT(A) has also returned a similar finding that these contributions were deposited by the assessee company once the notification dated 24/12/2012 was complied with and the systems for deductions and transmissions to PF head were put in place and interest for delayed payments was also paid by the assessee company.

27. The subsequent findings of the Id CIT(A), however, has not found favour with the Revenue and is under challenge before us. In the said findings, the Id CIT(A) stated that since this was a onetime default arising out of restructuring and consequent fresh systems being put in place and the fact that company has demonstrated that there was no delay attributable to it, the same were held allowable for period of restructuring since the same were remitted with a delay for reasons beyond the control of the assessee company.

28. As rightly pointed out by the Id CIT/DR to which the Id AR didn't raise any specific objection, the relevant provisions under which the contributions have

been held allowable has not been referred and specifically dealt with by the Id CIT(A) especially where specific provisions have been introduced by the Finance Act, 2011 w.e.f 1-04-2012 relevant to impugned assessment year 2012-13 in so far as contribution by the assessee as an employer towards NPS is concerned in terms of section 36(iva) read with existing provisions of section 43B(b), and in so far as amount deducted/received by the assessee from its employees as their share of contribution towards NPS is concerned, how the provisions of section 36(1)(va) are satisfied in the instant case has not been spelt out by the Id CIT(A).

29. It would therefore be relevant to refer to these provisions and applicability thereof in the instant case especially whether the provisions talks about the timelines/due date for deposits of contributions so received, delayed contribution for reasons beyond the control of the assessee company and allowance thereof for tax purposes.

30. The Finance Act, 2011 has introduced Section 36(iva) which provides that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee to the extent it does not exceed ten per cent of the salary of the employee in the previous year shall be allowed in computing the income referred to in section 28 of the Act.

31. Further, Section 40(A)(9) has been simultaneously amended by the Finance Act, 2011 and the amended provisions provide that no deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860(21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or

under clause(iv) or clause (iva) or clause(v) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.

32. The scope and effect of insertion of section 36(iva) as well as amendment to section 40A(9) has been discussed in the CBDT Circular no. 2 of 2012 dated 22/05/2012 and the relevant contents thereof read as under:

“10.3 Under the existing provisions of the 1961 Act, the contribution made by an employer towards a recognised provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under clauses (iv) and (v) respectively, of section 36(1), subject to certain limits. However, section 36 does not provide for a similar deduction from business income in respect of the contribution made by the employer, on behalf of the employee, to the New Pension System (NPS) account.

10.4 Section 36 has been amended by insertion of a new clause (iva) in sub-section (1), to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme on the behalf of an employee to the New Pension System (NPS) account, as referred to in section 80CCD shall be allowed as deduction in computing the income of the employer under the head "Profits and gains of business or profession", to the extent it does not exceed ten per cent, of the salary of the employee in the previous year.

10.5 Section 40A deals with expenses or payments not deductible in certain circumstances. Section 40A(9) has been amended to provide that a contribution made for the purposes and to the extent provided under section 36(1)(iva) would not be disallowed as a deduction in the hands of the employer.

10.6 Applicability. These amendments take effect from 1-4-2012, and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years."

33. Further, we refer to the provisions of Section 43B(b) which provides that:

“43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of –

(a).....

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.

34. On a combined reading of the aforesaid provisions, the legal position that emerges is that the assessee company is now eligible to claim its share of contribution as an employer towards NPS w.e.f 1-04-2012 as a deduction while computing its income under the head “Profits and gains from business or profession”. However, there is a restriction on the quantum of such contribution

which can be claimed and which has been restricted by the statute to the extent of 10% of the salary of the employees in the previous year as so defined. Secondly, the quantum of deduction so determined shall be allowed as a deduction in the previous year when such contribution is actually paid by the assessee. The emphasis is therefore on the actual payment and the year it shall be paid, the deduction shall be allowed, which in effect, means that it has an inbuilt mechanism to cater to the delayed deposit of contribution. Further, no explanation or corroboration is required to explain the delay so long as the amount is actually paid. It has been further provided that where such contribution is paid on or before the due date of filing of return of income u/s 139(1) in respect of the previous year in which the liability to pay such contribution was incurred, the same shall be allowed in the said previous year subject to furnishing of necessary evidences in support thereof. In other words, the delayed contribution upto the date of filing of return can be claimed in the year in which the liability to pay was incurred and the assessee need not wait for the subsequent financial year, being the year of actual payment, to claim the said amount.

35. In the instant case, it is an admitted and undisputed position that in respect of employees recruited on or after 01/01/2004 who are covered under the NPS Scheme and are on payroll of the assessee company, the assessee company has not paid/deposited its own share of contribution as an employer towards NPS either during the previous year or on/before the due date of filing of the return of income for the impugned assessment year. In view of the same, where the test of actual payment not being satisfied, we are of the considered view that the assessee shall not be eligible to claim such contribution as eligible deduction while computing its income under the head "profits and gains from business or profession" for the impugned assessment year 2012-13. At the same time, the assessee is eligible to claim the said contribution in the subsequent

year(s) when it is actually paid and the assessee is at liberty to claim the same in the respective assessment year(s) as so advised and the AO shall allow the same after examining the necessary evidence in support thereof.

36. Now, coming to the matter relating to the amount received by the assessee from its employees as latter's share of contribution towards NPS, we find that the provisions of section 36(1)(va) need to be examined to see whether the same are satisfied or not in the instant case.

37. The said provisions provide that where any sum is received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply and where such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date, it shall be allowed as a deduction in the hands of employer assessee.

38. Further, sub-clause (x) of clause (24) of section 2 provides that any sum received by an employer from his employees as a contribution to any provident fund or superannuation fund or any fund set up under the provisions of the Employees state insurance, 1948, or any other fund for the welfare of such employee shall be deemed as income of the employer.

39. In the instant case, the assessee company has received the sum from its employees (by way of deduction from salary at the time of disbursement/payment of salary), their share of contribution (employee's share) towards NPS which is clearly a fund/scheme for the welfare of such employees. Thus, the provisions of section 36(1)(va) read with section 2(24)(x) are attracted in the instant case as far as employee share of NPS contribution is concerned.

40. In this regard, what needs to be examined is whether the employee share of contribution so received by the assessee company is credited by it to the employee's account in the relevant NPS fund/Scheme on or before the due date. The term "due date" has been defined in the explanation to section

36(1)(va) to mean 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 thereunder or under any standing order, award, contract of service or otherwise. Here, it is relevant to note that NPS fund/scheme is managed and administered externally unlike the earlier fund which was managed and administered internally by the assessee company.

41. In case of *Adani Electricity Mumbai Ltd Vs AO/CPC (ITA No. 543/Ahd/2024 dated 14/10/2024)*, we find that the Coordinate Ahmedabad Benches were seized of a similar matter where the matter relating to allowance of employee share of NPS contribution came up for its consideration. The Coordinate Bench accepted the arguments on behalf of the assessee that the National Pension Scheme (NPS) is governed by the Pension Fund Regulatory and Development Authority (PFRDA) and that the PFRDA Act, 2013 does not specify a due date for contributions to NPS accounts. Further, the Coordinate Bench referred to the provisions of the Central Civil Services (Implementation of National Pension System) Rules, 2021 which *inter alia* prescribes time limes or date by which employees' contribution to NPS has to be deposited, however, distinguished the case of the assessee, being a private limited company and held that these rules shall only apply to the Government servants, including civilian Government servants in the Defence Services, appointed substantively to Civil Services and posts in connection with the affairs of the Union and didn't agree with the contention so raised on behalf of the Revenue to apply the same in case of the assessee, being a private limited company. Further, the Coordinate Bench held that given that all payments towards employee share of NPS contribution were duly made before filing of return of income as per section 139(1) of the Act, the adjustment made by CPC was not justified and amount in question was held as allowable under the Act.

42. The Central Civil Services (Implementation of National Pension System) Rules, 2021 which have been notified on 30/03/2021 (and made effective from the date of said notification) provides that these rules shall apply to the Government servants, including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union on or after 1st day of January, 2004, but shall not apply to,- (a) Railway servants; (b) persons in casual and daily rated employment; (c) persons paid from contingencies; (d) members of the All India Services; (e) persons locally recruited for services in diplomatic, consular or other Indian establishments in foreign countries; (f) persons employed on contract; (g) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force; and (h) persons to whom the Central Civil Services (Pension) Rules, 1972 apply in accordance with any special or general order issued by the Government.

43. Further, Rule 6 of the aforesaid Rules talks about the contribution by the subscriber to the National Pension System and the same reads as under:

"6. Contribution by the Subscriber to the National Pension System.- (1) The National Pension System shall work on defined contribution basis. A Subscriber shall make a contribution of ten per cent or such other percentage as may be notified from time to time, of his emoluments to the National Pension System every month. The amount of contribution payable shall be rounded off to the next higher rupee.

(2) Contribution may be made by the Subscriber, at his option, during the period of suspension: Provided that where, in the final orders passed by the Government on conclusion of the inquiry, the period spent under suspension is treated as duty or leave for which leave salary is payable, contributions to the National Pension System shall be determined based on the emoluments which the Subscriber becomes entitled to for the period of suspension. The difference of the amount of contribution to be deposited and the amount of contribution already deposited during the period of suspension, shall be credited to the Individual Pension Account of the Subscriber along with interest. The rate of interest for this purpose would be the rate of interest as decided by the Government from time to time for the Public Provident Fund deposits.

(3) No contribution shall be made by the Subscriber during the period of absence from duty (whether on leave or otherwise) for which no pay or leave salary is payable.

(4) During the period of transfer on deputation to a Department or organisation under the Central Government or the State Government, the Subscriber shall remain subject to these rules in the same manner, as if he was not so transferred or sent on deputation and will

continue to contribute towards National Pension System based on emoluments worked out in accordance with sub-rule (5) of rule 5.

(5) Contributions in respect of any arrears of salary received by the Subscriber due to retrospective increase shall be treated as the contributions for the month in which the payments are made.

(6) The Subscriber shall contribute toward National Pension System during the period spent under probation.

(7) Deduction and crediting of contributions to the Individual Pension Account during foreign service in India or outside India, including deputation to United Nations' Secretariat or other United Nations' Bodies, the International Monetary Fund, the International Bank of Reconstruction and Development, or the Asian Development Bank or the Commonwealth Secretariat or any other International organisation, shall be regulated in accordance with the instructions issued by the Department of Personnel and Training from time to time and the procedure laid down by the Authority.

(8) The Drawing and Disbursing Officer shall deduct the contribution from the salary of the Government servant and send the bill to the Pay and Accounts Officer or Cheque Drawing and Disbursing Officer, as the case may be, along with details of contributions deducted in respect of each Subscriber on or before Twentieth day of each month.

(9) A Subscriber may, at his option, make contribution in excess of the contribution specified in sub-rule (1) in accordance with the procedure laid down by the Authority and the Government.

(10)(i) The Pay and Accounts Officer or the Cheque Drawing and Disbursing Officer, as the case may be, based on the details of contributions in respect of each Subscriber sent by the Drawing and Disbursing Officer to Pay and Accounts Officer or Cheque Drawing and Disbursing Officer under sub-rule (8), shall prepare and upload a Subscription Contribution File and generate a Transaction ID by Twenty- fifth day of each month.

(ii) The Pay and Accounts Officer or the Cheque Drawing and Disbursing Officer, as the case may be, shall remit the contribution to the Trustee Bank through the Accredited Bank by the last working day of each month :

Provided that the contribution for the month of March shall be remitted by the Pay and Accounts Officer or the Cheque Drawing and Disbursing Officer to the Trustee Bank through the Accredited Bank on the first working day of the month of April.

(iii) In case of delay in crediting of contribution to the Individual Pension Account of the Subscriber beyond the prescribed timeline due to factors not attributable to the Subscriber, the amount shall be credited to the Individual Pension Account of the Subscriber along with interest for the delayed period, as determined in accordance with rule 8."

44. The aforesaid rules, though having come into force on 30/03/2021 and strictly not applicable for the impugned assessment year, lays down a detailed mechanism and give us a broad sense in terms of how the NPS scheme has been envisaged to be implemented by the Government. It provides that a Subscriber shall make a contribution of ten per cent or such other percentage as may be notified from time to time, of his emoluments to the National Pension

System every month, it talks about the situation relating to suspension, absence from duty, foreign deputation, etc. It further provides that the Drawing and Disbursing Officer shall deduct the contribution from the salary of the Government servant and send the bill to the Pay and Accounts Officer along with details of contributions deducted in respect of each Subscriber on or before Twentieth day of each month, the Pay and Accounts Officer thereafter shall prepare and upload a Subscription Contribution File and generate a Transaction ID by Twenty- fifth day of each month and shall remit the contribution to the Trustee Bank through the Accredited Bank by the last working day of each month and for the month of March, the amount shall be remitted on the first working day of the month of April. It further provides that in case of delay in crediting of contribution to the Individual Pension Account of the Subscriber beyond the prescribed timeline due to factors not attributable to the Subscriber, the amount shall be credited to the Individual Pension Account of the Subscriber along with interest for the delayed period, as so determined.

45. In the instant case, we find that the assessee company, being a state government undertaking under the administrative control of Government of Punjab, having decided to implement the NPS scheme, is likely to be guided by the aforesaid Central Civil Services (Implementation of National Pension System) Rules, 2021; and are applicable to the government employees in the state of Punjab and similar timelines are specified for deposit of NPS contribution and in case of delayed contribution, similar provisions relating to deposit along with interest subject to modification, if any have been instructed as can be seen from the assessee's written submission where it talks about memo no. 6/17/2009-6/863 dated 12/07/2010 issued by the Deputy Director, Pension, Government of Punjab pursuant to which all arrears including interest was deposited by the assessee company. It cannot therefore be denied that there are timelines/due date which the employer has to adhere to while remitting and crediting the

contribution to the individual pension account of the subscriber. However, in absence of specifics in the instant case as to the timelines so laid down by the Government of Punjab and as applicable to the assessee and that too for the impugned assessment year, we would restrain ourselves in terms of examining this aspect any further as to the exact timelines and due dates of such deposits.

46. Notwithstanding as to what are the timelines so specified, the admitted facts in the instant case are that the contribution so received by the assessee from its employees has infact not been deposited/credited to the employee's account in the relevant NPS fund/Scheme during the whole of the financial year 2011-12 and such contributions were infact deposited, well after the end of the impugned assessment year 2012-13, starting July 2013 onwards as so stated by the assessee as part of its written submissions.

47. In terms of Section 2(24)(x), as soon as the assessee is in receipt of the sum from its employees being latter share of NPS contribution, it will be deemed as its income of the relevant financial year. The provisions of section 36(1)(va) however, allows a corresponding deduction subject to the fact that such sum of money is actually paid by the assessee by way of credit to the account of employee in the NPS Fund/scheme and the amount is not just paid but paid on or before the due date. The Hon'ble Supreme Court in case of Checkmate Services (*supra*) also held that it is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned statute, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Both the provisions where read and implemented together provides the necessary mechanism whereby the receipts are firstly treated as deemed income and subsequently, the deposit of employee share of NPS contribution are treated as allowable deduction, without any tax consequences in the hands of the employer assessee for the relevant period. Therefore, the emphasis on payment/credit as employed in section 36(1)(va) is clearly in a restricted

sense and have to be read in the context of the relevant financial year and in any case, it cannot be stretched beyond the end of the financial year except for the contribution for the month of march which can be deposited within a reasonable period of time. In light of aforesaid discussion, the amount deducted/received by the assessee from its employees as latter's share of contribution towards NPS shall be treated as deemed income under Section 2(24)(x), and having admittedly not paid the same before the end of the financial year shall not be eligible for deduction under section 36(i)(va) and shall thus be subject to tax in the hands of the assessee company for the impugned assessment year 2012-13.

48. During the course of hearing, the Id AR has submitted that the AO has wrongly considered the quantum of employee share of NPS contribution. It has been submitted that only Rs 2.63 crores has been received from employees towards their share of contribution as against the figure of Rs 6.76 crores considered by the AO. In this regard, as we have noted above, the AO has not just disallowed the employee's share of NPS contribution but has also disallowed employer's share of NPS contribution which, as per AO, comes to Rs 6.76 crores. In view of the same, we donot see any infirmity in action of the AO in quantifying the amount of NPS contribution.

49. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, in far as employee share of GPF contribution of Rs 253,79,15,803/- is concerned, we uphold the order of the Id CIT(A) and the matter is decided in favour of the assessee company and against the Revenue. Secondly, in respect of the employer'S share of CPF/NPS contribution is concerned, the assessee shall not be eligible to claim such contribution as eligible deduction while computing its income under the head "profits and gains from business or profession" for the impugned assessment year 2012-13. At the same time, the assessee is eligible to claim the said contribution in the

subsequent year(s) when it is actually paid and the assessee is at liberty to claim the same in the respective assessment year(s) as so advised and the AO shall allow the same after examining the necessary evidence in support thereof. And lastly, in respect of employee share of CPF/NPS contribution is concerned, the shall be treated as deemed income under Section 2(24)(x) and shall not be eligible for deduction under section 36(i)(va) and will be subject to tax in the hands of the assessee company for the impugned assessment year 2012-13. In the result, employer as well as employee share of NPS contribution of Rs 6,76,69,332/- is to be brought to tax for the impugned assessment year 2012-13 and the order of the Id CIT(A) is hereby set-aside and that of the AO is sustained and the matter is decided in favour of the Revenue and against the assessee company.

50. In the result, the appeal of the Revenue is partly allowed.

51. In ITA No. 645/Chd/2023 for A.Y 2013-14, the Revenue has raised the following grounds of appeal:

a. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in law in deleting the addition on account of non-payment of CPF and GPF amounting to Rs. 503,46,41,315/- which is against facts and bad in law.

b. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has fallen in error by not following the legal maxim that tax statutes are to be strictly construed, as held applicable by the Hon'ble Supreme Court in PCIT Vs. M/s Aarham Softronics Civil Appeal No. 1784 of 2019.

c. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has fallen in error by not following the legal maxim that concepts such as equity, hardship or compulsion have no place in taxation statutes.

d. Whether on the facts & in the circumstances of the case, the Ld CIT(A) has erroneously not followed the binding judgment of Hon'ble Supreme Court in the case Checkmate Services Pvt. Ltd. Vs. CIT Civil Appeal No. 2833 of 2016.

e. The appellant craves leave to add, amend or delete any of the grounds of appeal during the appellate proceedings.

52. Both the parties submitted that the facts and circumstances are exactly identical as in ITA No. 659/Chd/2023 and similar contentions as raised therein may be considered in the context of the present appeal. Admittedly, given the

identical facts and circumstances of the case as so submitted by both the parties, our findings and directions contained in ITA No. 659/Chd/2023 shall apply *mutatis mutandis* to the present appeal.

53. In the result, both the appeals filed by the Revenue are partly allowed.

Order pronounced in the open Court on 28/11/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar