आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 5/RPR/2023

(**निर्धारण वर्ष** Assessment Year: 2019-20)

M/s Varsha Construction, Second Floor-25, 26, Millenium Plaza, Raipur-492 001, Chhattisgarh	V s	The Assistant Commissioner of Income Tax, Circle-1(1), Central Revenue Building, Civil Lines, Raipur, C.G..
PAN: AAEFV 8399 M		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Mr. Sakshi Gopal Aggarwal, CA
राजस्व की ओर से /Revenue by	:	Smt. Tarannum Verma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	21.01.2025
घोषणा की तारीख /Date of Pronouncement	:	22.01.2025

आदेश / O R D E R

PER ARUN KHODPIA, AM:

The captioned appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, dated 10.11.2022, decided against the appeal of the assessee filed against the intimation u/s.143(1) of the Income Tax Act, 1961 (in short "the Act") dated 03.01.2021.

2. The assessee has raised the following grounds of appeal:

1. *CIT(A), NFAC has been erred for not condoning the delay in filing of appeal.*
2. *The Deputy Comm. Of Income Tax, CPC has been erred in disallowance of Rs.4,64,730/- on account ESIC payment (employee's contribution) made after the due date as specified in relevant act but before the due date of filing of return.*

3. The Deputy Comm. Of Income Tax. CPC has been erred for making addition u/s 143(1) on the basis of reporting in form 3CD of tax audit report u/s 44AB and also the impugned addition is beyond the scope of section 143(1).

3. The brief facts of the case are that the assessee has e-filed its return of income for the AY 2019-20 on 30.10.2019 declaring total income of Rs.1,27,98,870/-. The assessee is a partnership firm engaged in the business of building of complete constructions or parts. The return of income of the assessee was processed by CPC, Bangalore, and has issued an intimation u/s.143(1) of the Act, on 03.01.2021 and assessed the income at Rs.1,32,63,600/-. While processing the return, disallowance of Rs.4,64,728/- on account of failure of the assessee to deposit employee's contribution to PF & ESI, which was admittedly not paid on or before the prescribed due dates u/s.36(1)((va) of the Act. Aggrieved by the intimation u/s.143(1) of the Act, the assessee preferred an appeal before the Ld. CIT(A), NFAC. However, the appeal of the assessee was not considered maintainable by the Ld. CIT(A) on account of delay in filing of the appeal, wherein, the explanations of the assessee were not found, convincing and acceptable in terms of provisions of sec.249(3) of the Act. Since the assessee was unable to demonstrate that it had sufficient cause within the meaning of limitation provisions for not presenting the appeal within the period of 30 days. Accordingly, appeal of the assessee was dismissed by Ld. CIT(A) considering the same as barred by limitation.

4. Dissatisfied with the decision of Ld. CIT(A), NFAC, the assessee carried the matter before the Tribunal for adjudication of the same.

5. This matter was disposed of earlier by this tribunal in favour of the assessee, vide its order dated 11.08.2023, with the following observations:

> ***8.*** *The issue in the present appeal that ITR filed by the assessee for AY 2019-20 was processed by the Centralized Processing Centre (CPC), Bengaluru issuing intimation U/s 143(1) of the IT Act. CPC has processed the return and has triggered the provisions of section 36(1)(va) r.w.s. 43B of the Act and has made a disallowance of Rs.4,64,730/- on account of delayed payment of employee's contribution to ESIC under the respective statute but paid before the date of filing of return u/s.139 of IT Act. On perusal of the facts and issue in the present case, it is observed that the issue involved in the present case is covered by the issue dealt with and the view adopted by the co-ordinate Bench of the ITAT Raipur in the case of* ***Gayatri Constructions v. ITO & 7 Others in ITA No.8/RPR/2022 dated 22.07.2022****, wherein it has been held that:*
>
> > *9. After giving a thoughtful consideration to the issue in hand in the backdrop of the contentions advanced by the ld. Authorized Representatives of both the parties, we find that the issue herein involved is squarely covered by the order passed by the Tribunal in the case of M/s Ind Synergy Limited Vs. The DCIT-1(2), Raipur, ITA No.312/RPR/2016; dated 10/03/2022 (to which one of us, the JM was a party), wherein after exhaustive deliberations it was held as under :*
> >
> > *"Adverting to the disallowance of the assessee's claim for deduction of the employees share of contribution towards PF of Rs.2,88,976/-, we find that the same had been disallowed by the Assessing Officer u/s.2(24)(x) of the Act, for the reason that the said amount was deposited beyond the stipulated time period that was prescribed under the said Employees Welfare Fund Act. Before us, it was claimed by the Ld. AR, that now when the aforesaid amounts were deposited by the assessee before the "due date" of filing of its return of income for the year under consideration, therefore, the same were allowable as a deduction u/s.43B of the Act. It was submitted by the Ld. AR that the lower authorities had misconceived the settled position of law and disallowed the aforementioned amounts, despite the fact that the same had been deposited prior to "due date" of filing of the return of income by the assessee company.*
> >
> > *10. In order to answer the issue as to whether or not the employees contribution to welfare funds falls within the scope and domain of Sec. 43B of the Act, we may herein draw support from the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Hindustan*

Organic Chemicals Ltd in ITA No. 399/12, dated 11.07.2014. In the said case, the Hon'ble High Court of Bombay was, inter alia, called upon to answer the following substantial question of law that was raised in the appeal filed by the revenue:-

"(A). Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal, in law, was right in allowing the claim of the Assessee on account of delayed payments of P.F. Of employees' contribution amounting to Rs.1,82,77,138/- by relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Alom Extrusion Ltd. (319 ITR 306) ?"
After referring to the amendments that were made available to Section 43B of the Act, the Hon'ble High Court answered the aforesaid question in the affirmative and upholding the order of the tribunal qua the aforesaid aspect dismissed the appeal filed by the revenue. Also, we find that a similar view had been arrived at by various Hon'ble High Courts, as under :-

i. CIT Vs. Amil Ltd reported (2010) 321 ITR 508 (Delhi High Court)
ii. CIT Vs. Hemla Embroidery Mills (P) Ltd. (2014) 366 ITR 167 (P&H)
iii. Bihar State Warehousing Corporation Ltd.Vs. CIT 386 ITR 410 (Patna)
iv. Sagun Foundary Pvt. Ltd Vs. CIT 145 DTR 265 (All)
v. CIT Vs. Mark Auto Industries (2008) 358 ITR 43 (P&H)
vi. CIT Vs. Jaipur Vidyut Vitran Nigam Ltd (2014) 363 ITR 307 (Raj)
vii. Essae Teraoka Pvt. Ltd Vs. DCIT (2014)366 ITR 408 (Kar)
viii. CIT Vs. Vijay Shree Ltd (2014) 43 Taxmann.com 396 (Cal)
ix. CIT Vs. Kichha Sugar Co Ltd (2013) 356 ITR 351 (Uttarakhand)

In the backdrop of the aforesaid settled position of law, we are of the considered view that no distinction is to be drawn between the employers as well as employees contribution to PF and ESI, as both are covered u/s 43B of the Act.

11. Before parting qua the aforesaid issue in hand, we think it apt to deal with the scope of applicability of the amendments that have been made available on the statue vide the Finance Act, 2021, i.e, "Explanation 5" to Section 43B and "Explanation 2" to Section 36(1)(va), i.e, as to whether those are applicable prospectively w.e.f A.Y 2021-22 onwards, or, are to be given a retrospective effect. Issue in hand is squarely covered by the order of a coordinate bench of the tribunal, i.e, ITAT, Amritsar in the case of Vinko Auto Industries Ltd. Vs. DCIT 2021 (12) TMI 636. In its aforesaid order, the Tribunal had after drawing support from the order of the ITAT, Hyderabad Bench in the case of the Value Momentum Software Services Pvt Ltd. Vs. DCIT in ITA No. 2197/Hyd/2017, dated 19.05.2021, had observed, that the amendments in section 36(1)(va) and section 43B of the Act, vide respective explanations that had been made available on the statue by the Finance Act, 2021, are applicable only from 01.04.2021 i.e. w.e.f A.Y 2021-22 onwards. For the sake of clarity the observations of the tribunal in its aforesaid order are culled out as under:-

"5.1 We may observe that the ld. CIT(A) in its order at para no. 7.15 itself has observed that the issue has been highly contentious and different High Courts have taken divergent views on the same issue, out of which some are in favour of the assessee and some are against the assessee. The ld. CIT(A) further observed that the judgments and orders relied upon by the assessee have been rendered before the clarificatory amendments made in the Finance Act, 2021 and the Finance Act, 2021 has put an end to this controversy.

5.2 Admittedly there is plethora of judgments in favour of the Assessee's contention and of the Revenue. The controversy with regard to divergent views of different High Courts, has been settled by the Hon'ble Apex Court in the case of CIT Vs. M/s. Vegetables Products Ltd. (88 ITR 192) by laying the dictum that if two reasonable constructions of a taxing provision are possible that construction which favours the Assessee must be adopted. The Hon'ble jurisdictional High Court in the case of CIT Vs. M/s Hemla Embroidery Mills (P) Ltd. (366 ITR 167) (P&H HC) and in the case of CIT Vs. M/s Mark Auto Industries Ltd. (358 ITR 43) (P&H HC) clearly held that the assessee is entitled to claim deduction of employee's share

of ESI & PF u/s.43B of the Act, if the same has been deposited prior to the filing of return of income u/s.139(1) of the Act. From the above judgments of the Hon'ble jurisdictional High Court, it is clear that the Hon'ble Court has not drawn any distinction between the employee's and employer's share qua PF & ESI contributions. Admittedly there are no contrary judgements of the jurisdictional High Court against the assessee on the aspect under consideration hence, first determination of the Ld. CIT(A) qua non applicability of the provisions of Section 43B of the Act to the employee's share qua PF & ESI, is unsustainable.

5.3 Now, coming to the second aspect/determination made by the CIT(A) to the effect that the amendment made in Section 36(1)(va) and 43B of the Act by Finance Act 2021 has to be considered as clarificatory in nature and having retrospective effects, therefore would be applicable to the previous assessment years as well.

We may observe that various benches of the ITAT including Hyderabad Bench in the case of Value Momentum Software Services Pvt. Ltd. (ITA No.2197/Hyd/2017 decided on 19.05.2021), have taken into consideration the identical issue qua applicability of the amendment to Section 36(1)(va) and Section 43B of the Act, by inserting Explanations by the Finance Act, 2021 and clearly held that the amendment shall be applicable from 1st April, 2021 onwards . It is also relevant to note that the CBDT has also issued Memorandum of Explanation qua applicability of the amended provisions of Section 36(1)(va) & 43B of the Act w.e.f. 1st April, 2021, and Assessment Year 2021-21 onwards, hence there is no doubt qua applicability of the amended provisions referred above, prospectively.

On the aforesaid discussion, the second aspect as considered/determined by the ld. CIT(A) qua retrospective application of the amended provisions of Section 36(1)(va) and 43B of the Act wherein Explanations have been inserted by Finance Act, 2021 qua employees' share in respect of PF & ESI Act, is also unsustainable .

5.4 In view of the above discussions, the disallowances of Rs.5,88,203/- for A.Y.2018-2019 and Rs.60,540/- for A.Y.2019-2020 made by the A.O. and confirmed by the CIT(A) are not sustainable and, hence, the same stands deleted."

On the basis of our aforesaid deliberations, we are of the considered view, that as the amendments made available on the statue vide the Finance Act, 2021 i.e "Explanation 5" to Section 43B and "Explanation 2" to Section 36(1)(va) are applicable w.e.f 01.04.2021, i.e, from A.Y 2021-22 onwards, therefore, the same would not have any bearing on the case of the assessee before us, i.e, for A.Y 2011-12. Accordingly, drawing support from the aforementioned judicial pronouncements, we, herein conclude, that as the employees contributions to PF and ESI of Rs.2,88,976/-was deposited by the assessee before the "due date" of filing of its return of income for the year under consideration, therefore, the same being saved by the provisions of Sec. 43B of the Act could not have been disallowed by the A.O. We, thus, in the backdrop of our aforesaid deliberations set-aside the order of the CIT(A) and vacate the disallowance of Rs.2,88,976/- made by the A.O. Thus, the Ground of appeal No. 1 is allowed in terms of our aforesaid observations."

As the facts and the issue involved in the aforesaid order of the Tribunal in the case of Ind Synergy Lyd. (supra) remains the same as are there before 10 ITA No. 08/RPR/2022 & 7 Others us in the case of the present assessee, therefore, we respectfully follow the same. We, thus, in terms of our aforesaid observations set-aside the order of the CIT(Appeals) and direct the AO to vacate the disallowance of Rs.19,61,340/- made by him u/s.36(1)(va) of the Act qua the delayed deposit of the employees share of contribution of EPF/ESIC. The Ground of appeal No.(s) 1 & 2 are allowed in terms of our aforesaid observations.

9. *In view of the aforesaid decision of the ITAT Raipur and other cases referred to in the said decision in the case of Gayatri Constructions(supra), the ratio of law laid is mutatis*

mutandis applicable on facts and circumstances of the present case having identical set of facts and issues. Respectfully following the same, we set aside the order of Ld CIT(A) and direct the AO to vacate the disallowance for Rs.4,64,730/- made by him u/s.36(1)(va) of the Act, for the delayed deposit of the employees share of contribution of ESIC.

6. Subsequently, the respondent i.e. department had filed an Miscellaneous Application (MA) u/s 254(2) of the Income Tax Act, 1961 on 19.01.2024, raising the contention that "*Weather or not the A.O. /CPC, Bangaluru in the backdrop of judgment of the Hon'ble Apex Court in the case of* ***Checkmate Services Pvt. Ltd. Vs. CIT, Civil Appeal No. 2833 of 2016, dated 12.10.2022*** *was justified in declining the assessee's claim for deduction of delayed deposits of employee's share of contribution towards ESI/PF vide intimation issued u/s 143(3) of the Act, which is covered by the judgment of the Hon'ble HC of Chhattisgarh in the case of* ***M/s BPS Infrastructure vs ITO, Ward-1(3), TAXC No. 87/ 2024 dated 12.04.2024****".*

7. The aforesaid MA of the department has been considered by this tribunal, wherein it is observed that the issue raised by the revenue merits acceptance, therefore, the matter is recalled, vide ITAT's order dated 17.01.2025, for the limited purpose to bring the decision of Tribunal in conformity with the judgment of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. Vs CIT(Supra).**

8. After recalling, the matter is fixed for hearing on 21.01.2025, wherein Ld. AR has raised another contention by way of an additional ground as under:

> *"That on the facts, and in the circumstances of the case and in law, the intimation dated 03/01/2021 issued u/s 143(1) (Document Identification No. CPC/1920/A5/2013098634) by Asst. Director of Income Tax, CPC, Banglore is illegal and bad in law since the adjustment in the returned income was made without following the mandatory procedures as Neither any intimation nor any show cause notice was given to the appellant as specified in* ***Proviso 1 to Section 143(1)*** *before making such adjustments.*
>
> *Assessee-Appellant prays before the Hon'ble Tribunal to delete the adjustments made in the intimation dated 03/01/2021 because neither the mandatory procedures nor the principles of natural Justice was followed before making such adjustments."*

9. After a thoughtful consideration to the aforesaid additional ground raised on behalf of the assessee, we are constrained to state that, the matter is recalled in consideration of MA filed by the department for the limited purpose to give effect to the judgment of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. Vs CIT(Supra),** which is further directed to be adhered to by the Hon'ble Jurisdictional High Court in the case of **M/s BPS Infrastructure (supra).**

10. In backdrop of such facts and circumstances, as the matter is recalled for specific purpose, the additional ground raised by the Ld. AR

with fresh contentions found to be unacceptable, as the same is not permitted under the mandate of law, particularly in a recalled matter. Consequently, the **additional ground** raised by the Ld.AR dated 21.01.2025, **stands dismissed**.

11. Adverting to the prime issue, for which the matter is recalled, that whether the ratio of law laid down by Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. (supra)**, shall be applied to the cases wherein the assessee's ITR is processed u/s 143(1), prior to the pronouncement of said Judgment.

12. This issue is thoughtfully deliberated upon and decided; therefore, it is squarely covered by the orders of ITAT Raipur, after the order of Hon'ble Jurisdictional High Court in the case of **BPS Infrastructure (supra)**. The observations of the Tribunal qua the issue in hand, in a recent decision in the case of **Shree Shivam Attires Pvt. Ltd. Vs ACIT, Circle-2(1), Bhilai,** in **ITA No. 111/RPR/2021(AY 2018-19), dated 17.01.2025**, reads as under:

> ***8.1*** *In this case, the assessee has placed his reliance various judgments / decisions referred to* ***(supra)****, however, subsequent to the orders relied upon by the Ld. AR, the issue has been deliberated upon by the Hon'ble Jurisdictional High Court of the Chhattisgarh in the case of* ***M/s BPS Infrastructure Vs. ITO, Ward-1(3), Raipur, Tax Case No, 87 of 2024, dated 12.04.2024,*** *which is relied upon by the revenue and rightly so, wherein it has been held that the issue of delayed*

payment of employees share of contribution towards ESI/PF is no more res integra in terms of principle of law laid down by the Hon'ble Apex Court in the case of ***Checkmate Services Pvt. Ltd. (supra)****, the relevant findings of Hon'ble Jurisdictional High Court in the case of* ***M/s BPS Infrastructure Vs. ITO (supra)*** *are as under:*

13. As far as the issue involved pertaining to claiming of deduction under section 36 (1) (va) of the IT Act 1961 on delayed payment of employees share of contribution towards ESI/PF of Rs. 19,84,415, in the instant case is concerned is no more res integra. The Hon'ble Supreme Court has decided the legal issue on merits in the matter of ***Checkmate Services P. Ltd. v. Commissioner of Income Tax-1****, {Civil Appeal No. 2833 of 2016, decided on 12.10.2022}, wherein at paragraphs 51 to 54, it was observed as under:*

> ***"51.*** *The analysis of the various judgments cited on behalf of the assessee i.e., Commissioner of Income-Tax v. Aimil Ltd. [2010] 321 ITR 508 (Delhi High Court); Commissioner of Income-Tax and another v. Sabari Enterprises [2008] 298 ITR 141 (Karnataka High Court).; Commissioner of Income Tax v. Pamwi Tissues Ltd. [2009] 313 ITR 137 (Bombay High Court).; Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd. [2013] 35 taxmann.com 616 (Rajasthan High Court) and Nipso Polyfabriks (supra) would reveal that in all these cases, the High Courts principally relied upon omission of second proviso to Section 43B (b). No doubt, many of these decisions also dealt with Section 36(va) with its explanation. However, the primary consideration in all the judgments, cited by the assessee, was that they adopted the approach indicated in the ruling in Alom Extrusions. As noticed previously, Alom Extrutions did not consider the fact of the introduction of Section 2(24)(x) or in fact the 8 other provisions of the Act.*
>
> ***52.*** *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. As discussed previously, 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 employees 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 assessees' 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 entitle 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.

53. *The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by*

definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

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

14. Looking to the facts and circumstances of the case and law laid down by the Hon'ble Supreme Court in Checkmates Services (supra), the present appeal filed by the appellant is not only devoid of merits but also barred by limitation as provided under Section 253 of the Act. The learned ITAT has rightly dismissed the appeal of the assessee. We, therefore, are not persuaded to differ with the view taken by the ITAT and the reason assigned thereof.

8.2 *Respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court, we are of the considered view that the payments qua the employees' contribution to provident fund made after the due date under the relevant statutes shall be liable to be disallowed, even if the ITR is processed u/s 143(1) prior to the pronouncement of Judgment of Hon'ble Apex Court in the case of* ***Checkmate(supra)****. In view of such observations the decision of Ld. CIT(A) following the decision of Hon'ble Supreme Court in the case of* ***Allied Motors (P) Ltd. Vs CIT 91 Taxman 205 (SC),*** *which is in concurrence with the view taken by Hon'ble Apex Court in* ***Checkmate (supra)****, was justified well-reasoned and acceptable.*

8.3 *Our aforesaid view is further fortified by the Latest judgment of Hon'ble Mumbai High Court in the case of* ***Rohan Korgaonkar vs DCIT (2024) 159 taxmann.com 321 (Bombay) dtd 07.02.2024****, wherein Hon'ble Court on the issue in hand has held as under:*

> *8. Checkmate Services (P). Ltd. (Supra) holds that the deductions can be claimed, or adjustments can be made under section 141(I)(a)(iv), read with section 36(1)(va) only when the employer deposits the contributions in the employee's accounts on or before the due date prescribed under the Employee's Provident Fund / Employees State Insurance Act. In this case, admittedly, the contributions were deposited in employees' accounts beyond the due date. The circumstances that the assessment order was made u/s 143(1)(a) of the Act cannot make any difference.*

8.4 *In backdrop of aforesaid observations, we are of the considered view that the issue raised by the assessee assailing the applicability of the decision of Hon'ble Apex Court in the case of* ***Checkmate (supra),*** *qua the disallowance regarding employee's contribution to provident fund under the provisions of section 143(1) on a date prior to the date of the order of Hon'ble Apex Court cannot be accepted and allowed.*

13. Respectfully following the aforesaid view which is in conformity with the judgment of Hon'ble Apex Court and Hon'ble Jurisdictional HC in the case of **Checkmate Services Pvt. Ltd. (supra)** and **BPS Infrastructure (supra)** respectively, we are unable to subscribe and to concur with the contentions raised by the Ld. AR on behalf of the assessee, at the same time we find merit in the contentions raised by the revenue. Consequently, the **grounds of appeal** of assessee in present case towards the sole controversy **stands dismissed**.

14. In the result, appeal filed by the assessee in **ITA No. 5/RPR/2023** is **dismissed,** in terms of our aforesaid observations.

Order pronounced in the open court on 22/01/2025.

Sd/-	**Sd/-**
(RAVISH SOOD)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 22/01/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- M/s Varsha Construction
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1(1), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur