

IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA 814/MUM/2025
(A.Y. 2023-24)

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| Bajaj Hindusthan Sugar Limited , 2 nd Floor, Bajaj Bhawan, 226, Nariman Point, Mumbai 400 021, Maharashtra | v/s. बनाम | Deputy Director of Income Tax, CPC, Karnataka – 560 500 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACB4351J | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

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| Appellant by : | Shri Kirit Kamdar,AR |
| Respondent by : | Shri Layaqat Ali Aafiqui (Sr. AR) |

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| Date of Hearing | 17.04.2025 |
| Date of Pronouncement | 23.04.2025 |

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 09.12.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal, ADDL/JCIT (A)-2, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(1) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 09.01.2024 for the Assessment Year [A.Y.] 2023-24.



2. The grounds of appeal are as under:

- 1 *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-Tax (Appeals)-2, Delhi ["CIT(A)"] has erred in sustaining the addition made by the Centralized Processing Centre ["CPC"] vide the intimation u/s 143(1) on account of Interest on delay in depositing Employee's contribution to Provident Fund ["PF"] of Rs. 2,45,36,654/- without appreciating the appellant's contention that the said interest is compensatory and not penal in nature and was incurred wholly and exclusively for purpose of business and as supported by various judicial pronouncements and hence same is an allowable expenditure u/s 37(1) of the Income Tax Act, 1951 ["The Act"].*
- 2 *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the appellant's submission that in AY 2022-23 where in the intimation u/s 143(1) of the Act similar disallowance was made by the CPC, in the Assessment Order u/s 143(3) for the said assessment year, the Ld. Assessing Officer ["AO"] had deleted the addition made by the CPC. Hence, the claim of allowability u/s 37(1) of the Act should be allowed in subsequent years too in the absence of any change in law and facts following the principle of consistency.*
- 3 *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in disallowing interest pertaining to late deposit of employee's contribution to PF on the ground that "the Interest thereon being in the some nature of the principal cannot be an allowable deduction". The disallowance is made arbitrarily, not backed by judicial pronouncements.*

3. Brief facts of the case are that in this case as per clause 21(a) (ii) of the Tax Audit Report there was disclosure of Interest on delay in depositing Employees' contributions to Provident Fund aggregating to Rs.3,43,35,543/-. Treating the impugned payment as compensatory and not penal in nature, the assessee company, in its return of income, claimed it as an allowable expenditure under section 37 of the Act. On 05.12.2023 CPC conveyed a proposal to the assessee for adjustment u/s 143(1)(a) of the Act calling for its response to the proposed addition. The



assessee disapproved the proposed addition. However, the CPC disallowed Interest on late deposit of EPF aggregating to Rs. Rs.3,43,35,543/- on account of the inconsistency in income tax return and Tax Audit Report.

4. In the subsequent appeal before the Id.CIT(A), the assessee contented that the company paid interest on account of delayed contribution made under section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and as the payment was compensatory and not penal in nature had claimed deduction of the aforesaid amount under section 37(1) of the Act. It was further submitted that as per the provisions of section 37 of the Act, any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowable as deduction. Further, Explanation 1 to section 37(1) provides that any expenditure incurred for any purpose which is an offence, or which is prohibited by law is deemed to be not incurred for the purpose of business or profession. As per the above explanation, the allowance of expenditure would depend on whether the expenditure incurred is penal or compensatory in nature. Where the expenditure incurred is compensatory in nature, the same should be allowed as deduction.



5. The Id.CIT(A) has considered the issue at length. It has been observed by him that the interest on delayed payment of statutory dues is allowable or not is decided on the nature of the principal. Reliance was placed on the Hon'ble Supreme Court decision in the case of **Bharat Commerce & Industries Ltd. vs. CIT (198) 230 ITR 733 (SC)**, wherein it was held that interest on late payment of Income Tax was not allowable. It held that the interest levied u/s. 139 and section 215 of the Income-tax Act was not deductible as a business expenditure u/s. 37(1) of the Act. The court held that the income tax was a tax on profit of the business and was therefore not allowable as a deduction. Similarly, interest also was not deductible as the same was inextricably connected with the appellant's tax liability; if the income tax was not a permissible deduction u/s. 37, any interest payable for default in payment of such income tax could not be allowed as a deduction. In arriving at the conclusion, the court followed its own decision in the cases of **East India Pharmaceutical Works Ltd, 224 ITR 627** and **Smt. Padmavati Jaikrishna, 166 ITR 176**, where decision dealt with the issue of deductibility of interest paid on moneys borrowed for payment of income tax.

5.1 The Id.CIT(A) observed that in this case, the interest paid on delayed Provident Fund payments had to take its nature from the



principal in terms of provisions of Section 36(1)(va) with respect to any sum received by the assessee from any of its employees to which provision of Section 2 (24)(x) applied, if credited by it to the employees' account in the relevant fund or funds on or before the 'due date', the assessee was entitled to the deduction. Explanation to Section 36(1)(va) made it clear that for the purpose of that provision, "due date" meant the date by which the assessee, as an employer, had to credit the employees' contribution to the employees' account in the relevant fund under any law or rule or regulation issued there under or under any standing order, etc. Therefore, during the relevant assessment year, if the employer did not deposit the entire amount towards employees' contribution with the PF authorities on or before the due date under the EPF/ESI Act, to the extent there was shortfall in deposit of the employees' contribution/ESI contribution, the same deduction was prohibited by law and was deemed to be to income. Here the assessee had sought deduction u/s 37 of the Act with respect to interest paid on delayed deposit if provident fund. It is the case where the employee's contribution that was prohibited by the Income tax law to be claimed has been disallowed by the assessee itself. Thus, the interest payment thereof on the component of interest which related to delayed payment of employee's contribution to the PF was not allowable as the nature, if interest is same as the



principal. It is further stated that the assessee had submitted case laws that pertained to laid out law prior to 2021 when the clarificatory provisions were not in place and Employee contribution was allowable or not was itself debatable till the controversy was settled in 2022 by the Hon'ble SC in **Checkmate Services Pvt Ltd V. CIT 448 ITR 519 (SC)**.

5.2 The Id.CIT(A) concluded that if the principal sum was not deductible, the interest thereon partakes the nature of the principal. As the nature of deduction is covered under Section 36(1)(va) which is not permitted in law, the deduction of the interest on such delayed payments could not be allowed as allowable deduction under Section 37. He further pointed out that the Section 37 is residual section wherein deduction only with respect to those expenses can be claimed which are not covered in Section 30 to 36 and payments done should be for the purpose not prohibited by law. It is very clearly laid down now that deduction with respect to the delayed payment of employees' contribution is prohibited in law to avoid the mischief of the employer to retain employee's contribution for long and a way to penalize them. Similarly, the interest thereon being in same nature of the principal cannot be an allowable deduction. Accordingly, this ground of appeal of



the assessee with regard to the interest paid in respect of employees contribution was rejected.

6. Before us, the ld.Departmental representative placed reliance on the orders of CPC and of ld.CIT(A) claiming that the deduction claimed was rightly disallowed. He has made a written submission as well inter alia submitting that delayed payment of employees contribution to EPF constitutes a breach of the PF Act and the interest u/s 7Q is a statutory levy to penalise such delay. He placed reliance on the decision of hon'ble Bombay High Court in the case of **Panmwi Tissues Ltd.(2008) 215 CTR 150(Bom)** where interest in delayed statutory payments was held to be disallowable as it stemmed from a legal infraction. He also pleaded that Explanation 1 to section 37 of the Act prohibits deduction of any expenditure incurred for a purpose that is an offence or prohibited by law. It is further stated that allowing deduction of such interest would undermine the legislative intent behind section 36(1)(va) which prioritise timely remittance of workers dues to safeguard their social security.

7. Per contra, the ld.Authorised Representative reiterated the contentions as made before the appellate authority. It is also submitted



that similar disallowance made in AY 2022-23 by the CPC was deleted by the AO in order u/s 143(3) of the Act.

8. We have carefully considered all the relevant aspects of the case, provisions of the Act in this regard and the rival submissions. Now, the law is settled as regard Employees' Contributions to PF are concerned, in the case of Checkmate Services(supra). The hon'ble Apex Court has duly differentiated employees' and employer's contributions which are otherwise allowable u/s 43B even within the 'due date' of filing of return which is not the case in the employees' contribution. The hon'ble court observed that section 43B was introduced so that deductions, which were otherwise permissible and were being claimed on mercantile basis, would be allowed in certain cases on payment basis. Thereafter, sections 36(1)(va),2(24)(x) and the second proviso to section 43B of the Act were also introduced. It observed further that the Parliament intended to retain the separate character of employees' and employer's contribution to the welfare funds based on use of different language in the statute. Amount received from the employees (whether the amount is received from the employee or by way of deduction authorized by the statute) is deemed to be the income of the employer. This amount is held in trust by the employer, underlined by the condition that it has to be deposited on or before the due date (under the



respective Act). Deduction under section 36(1)(va) of the Act can be claimed on payment of employees' share to the relevant fund within the prescribed time as per the respective Act. Amendment to the definition of income in section 2(24) by insertion of clause(x) is a significant amendment because the Parliament intended that amounts not earned by the assessee but received by it, were to be treated as income. Since employee's contributions to the fund deducted from their salary were not receipts that belonged to the assessee but were held by it as trustees, 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. The significance of these provisions 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 same 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)). In this context, it noted 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 employee's income and held in trust by the employer. The Court held that the marked distinction had to be borne while interpreting the



obligation of every assessee under section 43B. 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. The extended timeline until the 'due date' of return of income, however, cannot apply in the case of amounts that are held in trust, as it is in the case of employee's contributions which are deducted from their income. They are not part of the assessee employer's income, nor are they deduction per se in the form of a statutory payout. They are other's 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. Upon deposit, on or before the 'due dates' as per the relevant statutes, the amount which is otherwise retained and deemed an income is treated as a deduction.

8.1 We also concur with the ld.DR that in view of the Explanation 1 to section 37 of the Act which prohibits deduction of any expenditure incurred for a purpose that is an offence or prohibited by law, allowing deduction of such interest on account of delayed payment of employees' contribution would undermine the legislative intent behind section 36(1)(va) of the Act which prioritise timely remittance of



workers dues to safeguard their social security. The deduction claimed u/s 37 was rightly disallowed by the CPC while processing return filed by the assessee. Accordingly, we do not find any infirmity in the appellate order which is therefore upheld. Thus, all the aforesaid grounds of appeal of the assessee are dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 23/04/2025.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 23.04.2025

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

