आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.307/RPR/2025

निर्धारण वर्ष / Assessment Year : 2020-21

Technoblast Mining Corporation
19, 2nd Floor, Krishna Complex,
Chaityana Nagar, Raigarh (C.G.)- 496 001
PAN: AAEFT5992Q

........अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1

......प्रत्यर्थी / Respondent

Assessee by	:	Shri Rakesh Kumar, Advocate
Revenue by	:	Shri Ram Tiwari, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.06.2025

घोषणा की तारीख / Date of Pronouncement : 27.06.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT") passed u/s.263 of the Income Tax Act, 1961 (for short 'the Act') dated 11.03.2025 for the assessment year 2020-21 as per the grounds of appeal on record.

2. In this case, the assessee is aggrieved with the fact that the Pr. CIT, Raipur had invoked revisionary jurisdiction and passed order u/s. 263 of the Act, dated 11.03.2025. It would be pertinent to observe the relevant contents of the said order which reads as follows:

> "3. Considering the facts narrated in the foregoing paras which have emanated from the case record, I am of the considered view that the order passed u/s.143(3) r.w.s. 144B of the Income tax Act, 1961 vide order dated 20.08.2022 is erroneous in so far as it is prejudicial to the interest of revenue and therefore, needs to be revised under the provisions of section 263 of the IT Act, 1961. The revision proceedings u/s 263 of the Act was therefore initiated in the instant case of the assessee and before initiating such proceedings the assessment records have been gone through and after such thoughtful perusal of the same an independent assessment of the facts are ascertained in the case. The decision for revision of the case is based on fair and thorough investigations in tax matters and the importance of adhering to legal principles to ensure justice and integrity in tax assessments. Thus, an independent application of mind is ensured for revision of the case in hand.
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> 4. In view of the above facts, a show cause e-notice u/s 263 dated 22.01.2025 was issued to the assessee, incorporating the above facts, asking to furnish her reply with supporting

evidence. The assessee complied with the notice and filed submission on 03.03.2025and the gist of the submission is being produced as under:-

"This fact was available on the record while making the assessment. The Id. AO while making the assessment specifically asked this question by issuing show-cause dated 03.04.2022 regarding the above referred question i.e. regarding the delay in making payment of the above referred payments. The assessee replied for the same and after considering the reply of the assessee the learned AO framed an opinion and passed the assessment order. The finance Act, 2021 as pointed out by your honor, was also existing at that time. The Id. Assessing Officer has considered this fact while making the assessment order. Hence, the assessment order is neither erroneous nor prejudicial to the interest of the revenue on this ground."

The assessee has relied on the decision of the following cases in support of its claim:

1. CIT Vs. Gabriel India Ltd. (1993) Bombay High Court.

2. CIT Vs. T.Naraina Pai of Karnataka High Court.

3. Venkatakrishna Rice Co. Vs. CIT (1987) Madras High Court.

4. Malabar Industrial Co. Ltd. Vs. CIT of Hon'ble Supreme Court of India.

5. Dawjee Dadabhoy & Co. Vs. S P Jain &Anr.

6. CIT Vs. Smt. Minalben S Parik of Gujarat High Court.

7. K A Ramaswami Chettiar Vs. CIT of Madras High Court.

8. Duggal & Co. Vs. CIT of Delhi High Court.

9. Sirpur Paper Mills Ltd. Vs. CWT of Hon'ble Supreme Court of India.

10. Rayon Silk Mills Vs. CIT of Gujarat High Court.

11. CIT Vs. Gabriel India Ltd. of Bombay High Court.

"It is discernible from the assessment order claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the revenue.

5. It is apparent from the chart given supra that the assessee company had belatedly deposited their employees' contribution towards the EPF, considering the due dates under the relevant Acts and regulations. Consequently, by virtue of Section 36(1)(va) read with Section 2(24)(x) of the IT Act, such sums received by the assessee company constituted "income". Those amounts could not have been allowed as deductions under Section 36(1)(va) of the IT Act when the payment was made beyond the relevant due date under the respective Acts.

6. The hon'ble Apex Court, in its decision dt 12.10.2022 in Checkmate Services Pvt Ltd vs CIT [CIVIL APPEAL NO. 2833 OF 2016/[2022j 448 1TR 518 (SC)], resolved the judicial conflict on the issue of the 'due date' for payment of employees PF etc. As such, sums were paid beyond the due dates as prescribed under the respective acts, the right to claim such sums as allowable deduction while computing the income was lost forever.

7. It is important to note that the Hon'ble Supreme Court's ruling is applicable retrospectively from the date when the relevant section was enacted in the Income Tax Act. The Hon'ble SC ruling effectively endorses the amendments made by the Finance Act 2021 with effect from tax year 2020-21 and having retrospective effect to all past tax years.

8. In the case of P.V. George & Ors vs State Of Kerala & Ors on 23 January, 2007, it is held that "the effect of the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra), in view of the decision of the Hon'ble Apex Court in the case of P. V. George Vs. State of Kerala reported in (2007) 3 SCC 557 any decision of a court declaring the law is retrospective in nature unless otherwise provided, and, therefore, the decisionin Checkmate Services Pvt. Ltd. (supra) will take the retrospective effect since it is not specifically stated to be prospective in nature."

9. Hon'ble Bench of Jurisdictional ITAT, Raipur in its decision dtd.29.05.2023, in the case of DCIT, Bhilai Vs. N.R.VVires Pvt. Ltd. & 38 other cases has allowed all the respective miscellaneous applications filed by the department u/s.

254(2) of the Act. It is held that since no such rider is found in the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-I (supra), which means 1 that the same would have a retrospective application.

10. In the case of Guardian India Operations Pvt. Ltd., Chennai Vs. PCIT-1, Chennai VITA No.842/CHNY/2024; A.Y. 2017-18; Dt.07.08.20241, Hon'ble ITAT, Chennai has held that "respectfully following the judicial precedents relied upon in the case of Checkmate Services (P). Ltd. Vs CIT and Electrical India Vs ADIT [2023] 147 taxmaqn.com 470, we also held that the decision of the Hon'ble Supreme Court would relate back to the date of consequential amendment brought in by Legislatures in respective provisions of the Act and it was presumed that the legal position was always since inception and the employee's contributions was always subject to rigours of section 36(1)(va) of the Act. Case laws relied upon by the assessee on merit of the issue has already been considered by the Hon'ble Supreme Court in the case of Checkmate Services (P). Ltd. Vs CIT itself.

Therefore, we are of the considered opinion that order of AO dated 21.04.2021 passed u/s 143(3) r.w. section 1448 of the Act is erroneous and prejudicial to the interest of revenue. Hence, we find no infirmity in the impugned order of Id.PCIT revising the order of AO dated 21.04.2021 passed u/s 143(3) r.w. section 1448 of the Act."

11. In the case of Checkmate Services Pvt. Ltd.vs The Addl. Cit, Range-1 Baroda on 31 January, 2023 it is held that "It is, therefore clear that the law under section 36(1)(va) of the Act in the light of the Explanation-1 as declared by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra), shall be taken to have effect from the enactment of the provision by way of Finance Act, 1987 with effect from 01/04/1988. No other inference is possible."

12. In the case of O.S. Motors Pvt. Ltd. vs Principal Commissioner of Income Tax, Jodhpur [ITA No.54/Jodh/2022; A.Y. 2017-18; Dt.16.01.2023], Hon'ble ITAT, Jodhpur has held that "regarding PF & ESI contributions under Section 36(1)(v), the ITAT agreed with the PCIT that the AO had not made any inquiry into the timing of payments, thereby preventing a clear establishment of the AO's stance. Consequently, the PCIT was justified in setting aside the AO's order on this matter."

The submission of the assessee was perused carefully and found not acceptable because, the subject matter has been decided the Hon'ble Supreme Court of India once for all in the case of Checkmate Services Pvt. Ltd. and Vs. Commissioner of Income Tax-1, wherein it was held that employees' contribution will not apply to section 43B of the Income Tax Act, 1961. The decision has come from the Hon'ble Supreme Court of India, i.e. the apex court and whose decision is regarded as the law of the land. In view of the above, the contention of the assessee is not acceptable and the order of the Assessing Officer was erroneous in so far as it is prejudicial to the interest of revenue and needs to be set-aside to the file of the AO for fresh assessment.

6. Thus, it can be stated that this is a case of A.O not conducting proper and correct enquiries. It is not out of place to mentioned that the Explanation-2 introduces in Section 263 w.e.f. 01.06.2015 provides that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner:

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board u/s 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

With the insertion of this explanation, the decisions, which hold that PCIT should carry out enquiries, if AO failed to carry out enquiries to show as to how the Order passed by the AO is erroneous, are no longer applicable. Further, it is not out of place to mention that the honorable Supreme Court in the cases of Taradevi Agarwal Vs CIT (1972) 88 ITR 373(SC) and in the case of Rampyari Devi Saraogi Vs CIT (1968) 67 ITR 84 (SC) have already held that failure to conduct enquiries on part of AO constitutes assessment order to be erroneous and prejudicial to the interest of Revenue.

Therefore, the decisions rendered without taking into considerations the above decisions of the Supreme Court appear to be incorrect.

7. These fact find support from the judgment of Hon'ble Supreme Court of India in the case of Malabar Industrial Co. Ltd Vs CIT [2000] 109 Taxman 66 (SC) :

"In the instant case, the Commissioner noted that the ITO passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding that the ITO failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appeared that the resolution passed by the board of the appellant-company was not placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the ITO was erroneous was irresistible. Therefore, the High Court had rightly held that the exercise of the jurisdiction 6ythe Commissioner under section 263(1) was justified"

And in the case of Ambika Agro Suppliers Vs. Income-tax Officer, Wd. 2(6), Jalgaon [2005] 95 ITD 326 (PUNE) IN THE ITAT PUNE BENCH wherein it was held "Commissioner set aside assessment order on grounds that Assessing Officer had not made proper enquiries in regard to (a) considerable increase in salary and account writing fees; (b) genuineness of debts; (c) genuineness of transactions on cash payment exceeding Rs.10,000, identity of payee and circumstances compelling assessee to make cash payments; and (d) genuineness of unsecured loans taken from certain persons - Whether acceptance of assessee's explanation without any enquiry rendered assessment order erroneous as well as prejudicial to interests of revenue - Held, yes - Whether Commissioner had given cogent reasons in support of his action and, therefore, Commissioner, having wide powers under section 263, had rightly set aside assessment order - Held, yes"

Further, in the case of Assam Tea House Vs CIT [2012] 25 taxmann.com 93 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA wherein it was held that Where Commissioner had recorded that order of Assessing Officer

did not show verification of closing stock, purchase, and transportation, etc., he was justified in exercising power under section 263.

In the case of Jagdish Kumar Gulati vs. Commissioner of Income-tax [2004] 139 TAXMAN 369 (ALL.) HIGH COURT OF ALLAHABAD " Whether when an assessment is done under section 143(3), it is expected that Assessing Officer will make a detailed enquiry to find out correct income of assessee and not to take facts placed by assessee on their face value - Held, yes - Whether where Assessing Officer completed assessment proceedings under section 143(3) and admitted that he could not make proper enquiries as assessment was becoming time-barred, there was valid assumption of jurisdiction under section 263 by Commissioner, and Tribunal, in such a situation, did not commit any error in law in confirming order of Commissioner in setting aside assessment and directing Assessing Officer to make a fresh assessment - Held, yes"

Moreover, in the case of Apollo Tyres Ltd. v. Deputy Commissioner of Income-tax [2014] 46 taxmann.com 421 (Kerala) HIGH COURT OF KERALA " it was held that Commissioner, by detailed order passed under section 263, held that several issues raised in order passed under section 263 were not explained properly and, therefore, matter came to be remanded for fresh consideration by Assessing Officer-on appeal, Tribunal also confirmed opinion of Commissioner that there was no application of mind while considering assessment under section 143(3) and, therefore, it was not only erroneous but also prejudicial to interest of revenue and further, procedure adopted definitely would have implication on tax computation which ultimately caused prejudice to revenue."

Considering the overall legal provision as held in various case laws as enumerated above, leads to conclusion that No enquiry on the issues or non-application of mind for reaching any conclusion would certainly lead to hold the order erroneous so far as prejudicial to the interest of revenue.

8. Considering the above legal provisions of the Act and the factual position of this case as emanating from the assessment order and case records as well as the judicial precedents as discussed above, I am of the considered opinion that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue in view of Section 263 of the Income tax Act. Thus, the assessment order is held

> to be erroneous in so far as it is prejudicial to the interests of revenue. The said assessment order is hereby set-aside to the file of the AO with a direction to pass a fresh assessment order in a speaking manner after making all necessary enquiries required and after providing due and adequate opportunity of being heard to the assessee and after considering all the submissions, etc. made and counter-reply submitted by the assessee in a fair and judicious manner."

3. The Ld. Pr. CIT observed that the assessee company had belatedly deposited their employee's contribution towards EPF considering the due dates under the relevant Acts and regulations. The Pr. CIT relied on the decision of the **Hon'ble Apex Court** in the case of **Checkmate Services Pvt. Ltd. Vs. CIT (2022) 448 ITR 518 (SC)** and thereafter, found that the A.O had not conducted any enquiry with regard to this issue which had made the assessment as erroneous in so far it was prejudicial to the interest of the revenue. Accordingly, the assessment order was set-aside to the file of the A.O with a direction to pass a fresh assessment order in a speaking manner while complying with the principles of natural justice. We find that the **Hon'ble Apex Court** in the case of **Checkmate Services Pvt. Ltd. Vs. CIT (supra)** on the aforesaid issue held and observed as follows:

> "51. The analysis of the various judgments cited on behalf of the assessee i.e., Commissioner of Income-Tax v. Aimil Ltd.; Commissioner of Income-Tax and another v. Sabari Enterprises; Commissioner of Income Tax v. Pamwi Tissues Ltd.; Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 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 Alom Extrusions. As noticed previously, Alom Extrusions did not consider the fact of the introduction of Section 2(24)(x) or in fact the 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 retain 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 assessee's liability. These include liabilities such as tax liability, cess duties etc. or interest

liability having regard to the terms of the contract. Thus, timely payment of these alone 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.
>
> 55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."

4. That admittedly when the facts are that the employee's contribution towards EPF were deposited beyond the due date as prescribed within the relevant statutes itself, in such scenario, the contributions towards employee's in possession of the employer is considered as deemed income in the hands of the employer.

5. The Ld. Counsel for the assessee failed to demonstrate whether the A.O had conducted any enquiry in this regard. That on a careful perusal of the assessment order itself shows that there has not been, in fact, any enquiry conducted by the A.O with regard to the delayed payment of employee's share of contribution to EPF. Considering the entire facts and

circumstances, we do not find any infirmity with the findings of the Ld. Pr. CIT which is upheld.

6. As per the above terms grounds of appeal raised by the assessee are dismissed.

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

Order pronounced in the open court on 27th day of June, 2025.

Sd/-	Sd/-
ARUN KHODPIA	**PARTHA SARATHI CHAUDHURY**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 27th June, 2025.
SB, Sr. PS

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

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.