आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 2627/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2017-18

The Deputy Commissioner of Income Tax, Non-Corporate Circle 8, Chennai	Vs.	**Chemplast Sanmar Limited,** 9, Cathedral Road, Chennai - 600 086. **PAN: AAACC 3000F**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Gouthami Manivasagam, Addl.CIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 03.02.2026

घोषणा की तारीख/Date of Pronouncement : 06.02.2026

आदेश/ O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue directed against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (herein after the 'CIT(A)') dated 24.07.2025 for the assessment year 2017-18.

2. Brief facts of the case are that, the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacture and sale of PVC Resins, Caustic Soda, Chiromethanes and Refrigerant Gases etc. The return of income for the assessment year 2017-18 was filed on 29.11.2017 disclosing total income of Rs.348,62,24,143/- under normal provisions and also returned book profit u/s.115Jb of the Act of Rs.305,76,23,229/-. Against said return of income, assessment was completed by the AO vide order dated 27.12.2019 passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') determining total income of Rs.355,92,80,286/- and the same was set-off against the brought forward business loss and determined 'nil' income. However, assessed the book profits u/s. 115JB of the Act at Rs.311,77,00,807/-. While doing so, the AO made the following disallowances:-

i. Disallowance of Provision for Gratuity claimed u/s. 40A(7)- Rs. 1,75,37,548/-.

ii. Disallowance of Contribution to the Benevolent fund u/s. 40A(9) of the Income Tax Act, 1961- Rs. 14,565/-.

iii. Disallowance u/s. 14A - Rs. 1,29,64,000/-.

iv. iv). Disallowance of CSR expenses- Rs. 1,29,64,000/-

3. The AO also made the following additions to book profit determined u/s.115JB of the Act

i. Disallowance u/s. 14A- Rs. 4,25,40,030/-

ii. Provision for Gratuity- Rs. 1,75,37,548/

4. Being aggrieved by the above assessment order, an appeal was filed before the CIT(A), who vide impugned order allowed the provision for gratuity of Rs.1,75,37,548/- following the decision of the Tribunal in assessee's own case for assessment years 2008-09 to 2014-15. The Ld.CIT(A) deleted the addition made u/s.14A of the Act accepting the contention of the assessee company that in the absence any expenditure incurred to earn exempt income, no disallowance u/s.14A can be made. The CIT(A) also directed the AO to allow addition made on account of CSR expenses following the decision of the Hon'ble High Court of Madras in the case of CIT vs. Madras Refineries Ltd., 266 ITR 170. Lastly, the CIT(A) directed the AO not to add the provision for gratuity for the purpose of book profit u/s.115JB of the Act following the Tribunal's order in assessee's own case for assessment years 2008-09 to 2014-15. Similarly, the CIT(A) deleted the addition made u/s.14A of the Act to the book profits u/s.115JB of the Act.

5. Being aggrieved by the order of CIT(A), Revenue is in appeal before us in the present appeal. The Revenue raised eight grounds of appeal. Grounds Nos.1 and 8 are general in nature and do not require any adjudication. Ground No.2 challenges the correctness of the direction of CIT(A) to delete the addition made on account of provision of gratuity of Rs.1,75,37,548/-. The AO was of the opinion that the provision made towards gratuity fund of Rs.1,75,37,548/- requires to be disallowed under the provision of section 43B of the Act, rejecting the contention of the respondent assessee company that the provision for gratuity fund is governed by the provision of section 40A(7) of the Act and the provision of section 43B of the Act has no overriding effect to the provisions of section 40A(7) of the Act. On appeal before the CIT(A), the Ld.CIT(A) deleted the addition by following the decision of the Tribunal in assessee's own case for assessment years 2008-09 to 2014-15 in ITA Nos.2957 to 2963/Chny/2017, order dated 04.12.2019. We find that the issue is no longer res integra as stands settled in favour of the assessee by the decision of the Hon'ble Madras High Court in the case of Sanmar Specialty Chemicals Ltd., vs. ACIT, [2025] 173 taxmann.com 884, wherein the Hon'ble High Court held that the provisions of section 40A(7)(b) of the Act has to be applied in precedence to the provisions of

section 43B of the Act. The relevant finding of the Hon'ble High Court reads as follows:-

> *16. Section 40A adumbrates those categories of expenses/payments that are not deductible under certain circumstances. Sub-section (1) to Section 40A contains a categoric, non-obstante declaration to the effect that the provisions of Section 40A shall have effect, notwithstanding anything to the contrary contained in any other provision of the Income-Tax Act, 1961 relating to the computation of income under the head 'Profits and Gains of Business or Profession'.*
> *17. Sub-section 7(a) of Section 40A reads thus:~*
>
> > "40(A) Expenses or payments not deductible in certain circumstances.-
> >
> > (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head Profits and gains of business or profession .
> > ....
> >
> > (7)(a) No Subject to the provisions of clause (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name') made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.
> > (b) Nothing in clause (a) shall apply in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.
> > . . . . "
>
> *18. Clause (a) of Section 40A(7) states that no deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to their employees on their retirement or on termination. Clause (b) carves out an exception to the stipulation under clause (a), to the extent of a contribution made towards an approved gratuity fund or for the purpose of payment of any gratuity that has become payable during the previous year.*

19. Section 43B too commences with a non obstante clause that 'notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of – 'expenditures adumbrated in clauses (a) to (h) of that Section shall be allowed only if actually paid by that assessee.

20. We are concerned with two special provisions as both Sections 43B and 40A commence with non obstante clauses. In such situations, one may make useful reference to a series of judgments of the Supreme Court dealing with preference to be accorded in the case of an interpretation involving two special provisions.

21. Three Judges of the Supreme Court in Sarwan Singh and anr v KasturiLal [AIR 1997 SC 265] stated that, where both the enactments in question contain a non obstante clause and 'when two or more laws operate in the same field and each contains a non obtante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise since statutory interpretation has no conventional protocol case of such conflict has to be decided in reference to the object and purpose of the laws under consideration'.

22. In R.S.Ragunath v State of Karnataka and Ors [AIR 1992 SC 81], the Supreme Court noted its earlier observations in the case of Justiniane Augusto De Piedade Barreto v Antonio Vincente Da Fortseca and ors [AIR 1979 SC 984] to the effect that a law which is essentially general in nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore unless the special law is abrogated by express repeal or by making provisions which arc wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication.

23. In Ashoka Marketing Limited and anr v Punjab National Bank and others, [AIR 1991 SC 855], a Constitution Bench of the Supreme Court also considered two special enactments, the Public Premises Act and the Rent Control Act and which would override the other. They concluded as follows:~

> One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia

specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).

24. The Rule that a general provision should yield to specific provision springs from the common understanding that when two directions are given one encompassing a large number of matters in general and another to only some, the latter directions should prevail as being more specific in nature. Section 40A has been inserted by the Finance Act, 1968 with effect from 01.04.1968 whereas Section 43B has been inserted later vide Finance Act, 1983 with effect from 01.04.1984.

25. One of the parameters to determine priority of one legislation / provision over the other, is as to which was the later provision and the general understanding is that the later would prevail. However, in the present case, the provisions of Section 40(A)(7), particularly clause (b) are specific to a claim of deduction based on a provision for payment towards an approved gratuity fund.

26. This is a stipulation which does not feature in the other provision i.e., Section 43B which is general its application and, relates to a 'gratuity fund' in clause (b) thereof in general terms. Seen in that context, the two provisions could be reconciled easily as, in our considered view, there is no real conflict inter se.

27. Had Section 43B also made reference to an approved gratuity fund, a conflict might have arisen. In the present circumstances, where Section 40(A)(7)(b) refers specifically to an approved gratuity fund and Section 43B, in generic terms, to a gratuity fund, we see no conflict in applying the provision of Section 40(A)(7)(b) in preference to Section 43B in the case of an approved gratuity fund.

28. The decisions in Commonwealth Trust (I) Limited (Kerala High Court) and Bechtel India Private Limited (Delhi High Court), support the legal position canvassed by the assessee on all fours. In Commonwealth Trust (supra), the Court answered this issue in favour

of the assessee after a detailed discussion where the provisions of Sections 43B and 40(A)(7) have been compared and several case law referred.

29. In Betchal India (supra) the Court was concerned with the computation under Section 115JB of the Act, being Minimum Alternate Tax. On the issue of allowability of the claim for gratuity, the Court accepts the assessee's stand noting thus:

> *"6. Further, we are in agreement with the Tribunal that s.40A(7)(b) of the Act will have an overriding effect over s.43B of the Act. In the first place s.40A(1) is an unequivocal non obstante clause and since s. 40A(7)(b) specifically permits a deduction of a sum constituting the provision towards an approved gratuity fund, the said provision will take precedence over a comparatively general provision like s.43B. Secondly, s.40A(7)(a) which disallows deduction of any provision of gratuity to employees on their retirement is itself made subject to s.40A(7)(b) which allows such deduction as long as it is made towards an approved gratuity fund. There is no dispute that in the instant case the provision made is towards contribution to an approved gratuity fund. Therefore the claim by the assessee for deduction on this score was clearly justified. We are accordingly of the opinion that no substantial question of law arises in this regard as well."*

30. We find support for our conclusion at paragraph 20 supra, in the observations of the Delhi Court above to the effect that a specific provision such as Section 40A(7)(b) will take precedence over 'a comparatively general provision like Section 43B'.

31. In fact, the issue has been more or less answered by the Supreme Court in the case of Shasun Chemicals (supra), where the interplay between Sections 43B and Section 40A(9) is noted. The provisions of Section 43B mandate that certain deductions would be allowed only on actual payments.

32. Section 40A(9) states that no deduction shall be allowed in respect of any sum paid by the assessee as an employer towards setting up, or its contribution to any fund/trust/company/AoP/ DOI/Society/Institution, except were the sum is paid in accordance with the relevant provisions

of Section 36 or as required by, or under any other law for the time being in force.

33. The analogy drawn by the assessee is qua the observation of the Supreme Court in the context of Section 40A(9) by that assessee, pointing out that that provision, Section 40A(9), has been held to override the provisions of Section 43B by operation of the non-obstante clause in Section 40A(1). So too in the present case, we agree that the provisions of Section 40A(7) would override Section 43B if the assessee in question satisfies the stipulations under clauses (a) and (b) thereof.
34. It thus remains for us to see whether the contributions made by the assessee are to an approved gratuity fund or otherwise, as that would be critical to determine eligibility in terms of Section 40A(7)(b).

6. In light of the above binding of Hon'ble Jurisdictional High Court, this ground No.3 filed by the Revenue stands dismissed.

7. Ground No.3 challenges the correctness of the direction of CIT(A) to delete the addition made on account of contribution to benevolent fund of Rs.14,565/-.

8. The AO, of the opinion that during the previous year relevant to the assessment year under consideration, the assessee made contribution of Rs.14,565/- to the benevolent fund for the benefit of employees. The AO, of the opinion that said contribution is hit by the provisions of section 40A(9) of the Act and accordingly, disallowed the same. It is contended that the contribution was made to the benevolent fund for the welfare of employees in terms

of agreement entered into with Workers Union and further contended that this issue was decided in favour of the assessee company by the Tribunal in assessee's own case for assessment year 2008-09 to 2014-15 in ITA Nos.2597 to 2963/Chny/2017, order dated 04.12.2019. Since the CIT(A) followed the Tribunal's decision in assessee's case for earlier years, we do not find any illegality in the decision of the CIT(A) allowing the contribution of benevolent fund of Rs.14,565/-. Accordingly, we do not find any merit in this ground of Revenue. Therefore, the Ground No.3 stands dismissed.

9. The next Ground No.4 challenges the decision of CIT(A) deleting the addition made u/s.14A r.w.rule 8D of Rs.4,25,40,030/-.

10. During the previous year relevant to the assessment year under consideration, the assessee company earned exempt income of Rs.11,21,18,637/- by way of share of profit from the partnership firm. It was contended that the share of profit from the partnership is exempt under the provisions of section 10(2A) of the Act. It was further contended that the assessee company had not incurred any expenditure to earn said exempt income, since the investments made were out of own funds and not from the borrowed funds and

therefore, provisions of section 14A cannot be invoked. Rejecting the above contentions, the AO made addition of 1% of average monthly value of investment yielding exempt income under clause (ii) of 8D(2) of the Rules. However, on appeal before CIT(A), the CIT(A) deleted the addition accepting the contention of the assessee that no expenditure was incurred to earn exempt income.

11. Being aggrieved, Revenue is in appeal before us in this ground of appeal. We have carefully perused the assessment order. The respondent assessee company contended before the AO that no expenditure was incurred to earn the exempt income. The AO without recording satisfaction as to how the contention of the respondent assessee company is incorrect, had proceeded with making disallowance u/s.14A r.w.Rule 8D(ii). Now, it is settled position of law that the AO cannot apply the provisions of rule 8D(ii) unless and until the AO had first recorded a satisfaction as mandated by the provisions of section 14A(2) of the Act and Rule 8D(1) as held by the Hon'ble Delhi High Court in the cases of CIT vs. Taikisha Engineering India Ltd, [2015] 54 taxmann.com 109, H.T. Media Ltd., vs. CIT, [2017] 85 taxmann.com 113 and the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Abhishek Industries Ltd, [2015] 56 taxmann.com 391. In light of

above well settled position of law, we find no illoegality in the findings of the CIT(A). Accordingly, this ground of appeal stands dismissed.

12. The next Ground No.5 challenges the decision of the CIT(A) deleting the CSR expenses of Rs.1,29,64,000/- relying on the decision of Hon'ble Madras High Court in the case of CIT vs. Madras Refineries Ltd., 266 ITR 170. We find that the ratio of the decision of Hon'ble Madras High Court in the case of Madras Refineries Ltd., *supra* cannot be applied blindly without discussing about the applicability of Explanation (2) to Section 37(1) of the Act inserted by Finance Act-2, 2014 w.e.f.01.04.2015. Since there was no discussion in the impugned order by the CIT(A) whether the expenses in question is governed by the provisions of section 135 of Companies Act, 2013 or the expenditure was incurred out of business expediency, we are of the view the matter requires to be remanded to the file of the AO for verification of the claim on the above lines. Accordingly, the findings of the CIT(A) are reversed and this ground of appeal is set aside to the AO. Hence, Ground No.5 is partly-allowed for statistical purposes.

13. The next Ground No.7 challenges the direction of CIT(A) deleting the addition to book profit of gratuity for the purpose of determining tax liability u/s.115JB of the Act. The provision for gratuity cannot be termed as a provision for unascertained liability. Therefore, the CIT(A) was correct in holding that this provision is not required to be added to book profits for the purpose of determining the tax liability u/s.115JB of the Act. Therefore, we do not find any irregularity in the findings of the CIT(A). Accordingly, this ground of appeal is dismissed.

14. In the result, the appeal filed by the Revenue is partly-allowed for statistical purposes.

Order pronounced in the open court on 6th February, 2026 at Chennai.

Sd/-	*Sd/-*
(जॉर्ज जॉर्ज के)	(इंटूरी रामा राव)
(GEORGE GEORGE K)	**(INTURI RAMA RAO)**
उपाध्यक्ष /VICE PRESIDENT	लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 6th February, 2026

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.