आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad "B" Bench, Hyderabad

श्री मंजूनाथ जी, माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आयकरअपीलसं./**I.T.A.No.1480/Hyd/2025**
(निर्धारण वर्ष/ **Assessment Year: 2011-12)**

Country Club Hospitality & Holidays Limited, C/o. 6-3-655/2/3, P. Murali and Co., Chartered Accountants, Somajiguda, Hyderabad – 500082., PAN : AAACC8276B	*Vs.*	The Deputy Commissioner of Income-tax, Central Circle – 1(1), Hyderabad.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri P. Murali Mohan Rao, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Narendra Kumar Naik, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.01.2026
घोषणा की तारीख/ Date of Pronouncement	:	27.03.2026

O R D E R

PER MANJUNATHA G., A.M :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre [in short "NFAC"], Delhi, dated 28.07.2025, pertaining to the assessment year 2011-12.

2. The grounds raised by the assessee read as under :

"1. The order of the CIT(A) passed u/s 250 of the Act dated 28-07-2025 is erroneous both on facts and in law to the extent the order is prejudicial to the interests of the appellant

2. The Ld. CIT(A) erred in upholding multiple additions made by AO without properly appreciating the facts of the case and appellant's submissions.

3. The Ld. CIT(A) ought to have well appreciated the fact that the AO erred in reopening the assessment u/s 147 of the Act without new tangible material in his possession.

4. The Ld. CIT(A) failed to fairly appreciate the fact that the AO already had this information available during the course of original proceedings and thus the reopening of the assessment just based on same information, which is bad in law.

5. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in issuing notice u/s 148 of the Act without there being any satisfactory reason to believe that the income chargeable to tax has escaped assessment.

6. The Ld. CIT(A) ought to have appreciated the fact that the period of four years from the end of the impugned assessment year as provided in the first proviso to section 149 of the Act, has expired on 31/03/2016 and that therefore, the notice issued u/s 148 of the Act is barred by limitation.

7. The Ld. CIT(A) ought to have considered the fact that there was no failure on the part of the assessee to make a return u/s 139 or in response to notice issued u/s 148 or to disclose fully and truly all material facts necessary for completion of original assessment proceedings.

8. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in not providing reasons for reopening of assessment, before completing the assessment u/s 143(3) r.w.s 147 of the Act.

9. The Ld. CIT(A) has erred in fairly considering the fact that the mandatory notice u/s 143(2) of the Act, was not at all issued by the AO before finalising the Assessment.

a) The Ld. CIT(A) ought to have invalidated the entire assessment order as bad in law, because of the fact that the mandatory initial notice was not given before finalising the assessment order u/s 143(3) r.w.s 147 of the Act.

b) The Ld. CIT(A) ought to have annulled the assessment order as bad in law basing on the legal precedents clearly pronouncing that an assessment order passed on scrutiny, without issuing first notice u/s 143(2) of the Act is invalid.

10. The Ld. CIT(A) erred in upholding the disallowance towards FCCB expenditure of Rs. 7,30,66,667/-, which is incorrect and not justified.

11. The Ld. CIT(A) ought to have appreciated the fact that the appellant Company has restated the Bonds at the exchange rates prevailing at the year end and the difference out of such restatement is transferred to "Foreign Currency Monetary Item Translation Difference Account, to be written off over a period of 3 years.

12 The Ld. CIT(A) failed to appreciate that the Appellant Company has transferred 1/3 of the difference amount to Profit and Loss Account under the head Gain/Loss account during the Financial Year 2008-09 by following the Notification issued by Ministry of Corporate affairs on 31" March, 2009 Vide notification No. G.S.R. 225(E) regarding foreign exchange loss, which is regarded as correct.

13. The Ld. CIT(A) ought to have appreciated the fact that the above said notification clarifies that companies can debit all foreign exchange losses incurred during the FY 2008-09 due to fluctuation of foreign exchange and the companies can avail benefit till 31 March, 2011.

14. The Ld. CIT(A) ought to have appreciated the fact that FCCB are not capital in nature in view of the above notification, it is revenue in nature because it has not been converted into equity share capital. Hence, foreign exchange loss which has been written off to profit and loss A/c over a period of three years shall be considered as revenue in nature

15. The Ld. CIT(A) erred in not considering the fact that the treatment of exchange loss is in accordance with AS-11 issued by the Institute of Chartered Accountants of India.

16. The Ld. CIT(A) ought to have appreciated the fact that, the Hon'ble ITAT in the assessee's own case in ITA 1689/Hyd/2012 for the AY 2009-10, deleted the addition made on account of amortization of exchange variation.

17. The Ld. CIT(A) failed to consider the fact that the AO had grossly erred in not accepting the Book profits admitted at Rs. 21,35,86,748/- and determined the book profit u/s 115JB of the Act at Rs. 28,66,53,413/- by making an addition of Rs. 7,30,66,667/-towards disallowance of foreign exchange amortization loss.

18. The Ld. CIT(A) ought to have appreciated the fact that the employee's contribution to PF and ESI were deposited by the appellant in their respective funds before filing its return of income for the AY 2011-12 and therefore, it cannot be taken as income of the assessee company as the amount was no longer in the hands of assessee allowable as deduction.

19. The AO ought to have appreciated the fact that as per the provisions of section 43B of the Act if, the assessee has deposited employee's contribution to PF and ESI on or before filing of return of income, then the said amount shall be allowed as deduction in the hands of the assessee.

20. The Id. CIT(A) erred in upholding the disallowance towards foreign exchange fluctuation loss of Rs. 51,28,500/- which is not correct and not justified.

21. Appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."

3. The brief facts of the case are that, the assessee company is engaged in the business of club services and hospitality, filed its return of income for A.Y. 2011-12 on 29.09.2011 declaring total income of Rs. 3,03,32,090/- under normal provisions of the Income-tax Act, 1961 and book profit of Rs. 21,35,86,748/- under Section 115JB of the Income-tax Act, 1961. The case was selected for scrutiny, and the assessment was completed under Section 143(3) of the Income-tax Act, 1961 on 18.03.2014 and determined the total income at Rs. 3,86,61,671/-. The case was subsequently reopened under Section 147 of the Act, for the reasons recorded, as per which, income chargeable to tax has escaped assessment on account of excess allowance of deduction towards expenditure of Rs.

7,30,66,667/- towards foreign exchange amortization loss under the head 'other general expenses' and allowance of deduction towards PF and ESI remittances beyond the due date specified under the respective Acts. Accordingly, notice under Section 148 of the Income-tax Act, 1961, dated 28.03.2018, was issued and duly served on the assessee. In response, the assessee filed return of income on 28.03.2018.

4. The case was selected for scrutiny and during the course of assessment proceedings, the A.O. called upon the assessee to explain as to why expenditure claimed under the head exchange variation for Rs. 7,30,66,667/- should not be disallowed. The A.O. also called upon the assessee to explain as to why the addition should not be made in respect of belated payment of employees' contribution towards PF and ESI. In response, the assessee submitted that, deduction claimed towards foreign exchange amortization loss and debited under the head 'other general expenses' is on account of fluctuation in foreign currency and because of this, the assessee company has incurred foreign exchange loss of Rs. 21.92 crores on Foreign Currency Convertible Bonds (FCCBs) issued during the financial year 2006-07. Further,

the said loss has been claimed over a period of three years starting from A.Y. 2009-10 up to A.Y. 2011-12 in view of Notification No. GSR 225 E dated 31.03.2009 issued by the Ministry of Corporate Affairs. The assessee also explained belated payment of PF and ESI and claimed that, the said payment has been made on or before the due date for furnishing of return of income under Section 139(1) of the Income-tax Act, 1961. The A.O., after considering the relevant submissions of the assessee and also taking note of certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Sutlej Cotton Mills Vs. CIT (1979) 116 ITR 1 (SC) disallowed forex loss on convertible bonds for Rs. 7,30,66,667/- on the ground that, the said loss is capital in nature, because the assessee has taken FCCB loans and used for capital expenditure and therefore, amortization of expenditure towards forex loss is capital expenditure only. The A.O. had also disallowed belated payment of employees' contribution towards PF and ESI for Rs. 15,61,389/- on the ground that, belated payment of employees' contribution towards PF and ESI partakes the nature of the income as referred to under Section 36(1)(va) r.w.s. 43B and r.w.s. 2(24)(x) of the Income-tax Act, 1961. Further, the A.O. had also made addition

of Rs. 56,98,338/- towards foreign exchange fluctuation loss on the basis of assessment order passed under Section 143(3) of the Income-tax Act, 1961 dated 18.03.2014 on the ground that, the assessee has not challenged the additions made by the A.O. and accepted the disallowances.

5. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee challenged the addition made towards disallowance of foreign exchange amortization loss of Rs. 7,30,66,667/-, addition towards delayed payment of PF and ESI and also addition towards foreign exchange fluctuation loss of Rs. 51,28,500/-. The Ld. CIT(A), after considering the submissions of the assessee and also by following certain judicial precedents, upheld the additions made by the A.O. towards disallowance of amortization of forex loss on account of Foreign Currency Convertible Bonds by holding that, if the foreign exchange fluctuation loss arises on restatement of FCCBs utilized for acquiring capital assets indigenously in India, then such loss will be capital in nature. The Ld. CIT(A) had also upheld the additions made towards disallowance of delayed payment towards PF and ESI on the ground that, the said issue is covered in favour of the Revenue by

the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (2022) 448 ITR 518 (SC). Similarly, the Ld. CIT(A) had also confirmed the addition made towards foreign exchange fluctuation loss of Rs. 51,28,500/- on the ground that, when the assessee has not preferred further appeal against the disallowance made by the A.O. in the original assessment order dated 18.03.2014, then the addition made towards disallowance of foreign exchange fluctuation loss is in accordance with law.

6. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal.

7. The first issue that came up for our consideration from Ground Nos. 10 to 16 of the assessee's appeal is addition towards disallowance of amortization of forex loss on account of FCCB amounting to Rs. 7,30,66,667/-.

8. The learned counsel for the assessee, Shri P. Murali Mohan Rao, C.A. submitted that, this issue is squarely covered by the decision of the ITAT, Hyderabad Bench, in the assessee's own case for A.Ys. 2009-10 and 2010-11 in ITA No. 1714/Hyd/2014, wherein under identical set of facts and on identical disallowance of amortization of

forex loss, the Tribunal deleted the additions. Therefore, he submitted that, the additions made by the A.O. should be deleted.

9. The learned CIT-DR for the Revenue, Dr. Narendra Kumar Naik, on the other hand, supporting the order of the Ld. CIT(A), submitted that, the assessee has borrowed foreign currency loans in the form of Foreign Currency Convertible Bonds on which it has incurred substantial foreign currency fluctuation loss and the same has been claimed over a period from 3 years starting from A.Y. 2009-10 to 2011-12. Since the assessee has incurred forex loss on FCCB loans and the same has been used for acquiring assets in India, the same should be capitalized to the assets. The A.O., after considering the relevant facts, has rightly disallowed amortization of forex loss of Rs. 7,30,66,667/-. The Ld. CIT(A), after considering the relevant facts, has rightly sustained the addition made by the A.O. Therefore, he submitted that, the order of the Ld. CIT(A) should be upheld.

10. We have heard both parties, perused the material available on record and had gone through the orders of the authorities below. The assessee had claimed amortization of forex loss of Rs. 7,30,66,667/- and debited the same under the head “Other General

Expenses". The above loss arises on account of fluctuation in foreign currency in respect of Foreign Currency Convertible Bonds worth USD 25 million received by the assessee in the financial year 2006-07. The assessee has incurred forex loss of Rs. 21.92 crores due to sudden rise in dollar rate for the above period and the same has been treated as forex loss and amortized over a period of 3 years starting from A.Y. 2009-10 to A.Y. 2011-12. The assessee has amortized the above loss on the basis of Notification No. GSR 225 E dated 31.03.2009 issued by the Ministry of Corporate Affairs, wherein it has been provided that, the company can debit to the profit and loss account, all foreign exchange losses which are incurred during the financial year 2008-09 due to fluctuation of foreign currency and companies can avail this benefit till 31.03.2011. Since the assessee has incurred foreign exchange loss on account of depletion in Indian rupee against US$ during the financial year 2008-09, in respect of foreign currency loans received by the assessee, in our considered view, the loss incurred by the assessee should be treated as revenue expenditure. Further, in respect of the arguments of the learned CIT-DR for the Revenue that, the assessee has availed foreign currency loans and utilized the

same for acquiring capital asset in India, in our considered view, there is no such finding from the A.O. in the assessment order regarding taking loans in foreign currency for the purpose of acquiring capital assets in India. Since the assessee has borrowed loans for the purpose of its business, the loss incurred on the said loans should be treated as revenue in nature. The A.O., without appreciating the relevant facts, simply disallowed amortization of forex loss incurred by the assessee for Rs. 7,30,66,667/- by treating the same as notional capital in nature.

11. We further note that, this issue is also covered by the decision of the Hon'ble ITAT, Hyderabad Bench, in the assessee's own case for A.Y. 2009-10 in ITA No. 1735/Hyd/2012, wherein under identical set of facts and also on identical amortization of forex loss claimed by the assessee, the Tribunal has held as under :

> *"6. As regards Grounds No. 11 to 18 are concerned, brief facts are that, during the F.Y 2006-07, the assessee company has raised term funds from international market by issuing Foreign Currency Convertible Bonds (FCCBs) 13 ITA.Nos.1689 & 1735 /Hyd/2012, M/s Country Club Hospitality and Holidays Ltd., Hyderabad. worth USD 25 Millions, which is having the convertible option to equity shares or repayment of bonds after 5 years. During the financial year relevant to the assessment year before us, the assessee stated that due to fluctuation of exchange currency, the company has incurred foreign exchange loss of Rs. 21,92,00,000/- on foreign currency convertible bonds (FCCB) and therefore the company has restated the bonds at the exchange rates prevailing at the year end and the difference is transferred to 'Foreign Currency Monitory Item Translation*

Difference Account' to be written off over a period of 3 years. The assessee also relied upon the notification dated 31.03.2009 of the Min of Corporate Affairs issued vide notification No. GSR 225(E) regarding foreign exchange loss, wherein it is provided that the company can debit to the profit and loss account, all foreign exchange losses which are incurred during the F.Y 2008-09 due to fluctuation of foreign currency and companies can avail this benefit till 31.03.2011 and therefore, in accordance with the said notification, the assessee company had transferred 1/3 of the difference amount to profit and loss account under the head gain/ loss account during the F.Y 2008-09. The A.O, however held that the CBDT instructions No. 3 of 2010, 14 ITA.Nos.1689 & 1735 /Hyd/2012, M/s Country Club Hospitality and Holidays Ltd., Hyderabad. dated 23.03.2010 had dealt the issue of "marked to market" i.e where the financial instruments are valued at market price so as to report the actual value on the reporting date which is required from the point of view of transparent accounting practices for the benefits to the shareholders of the company, but is notional loss as the asset continues to be owned by the company. She observed that the "marked to market" loss is given different accounting treatment by different assessees and a notional loss which should be contingent in nature cannot be allowed to be set off against the taxable income. Thus, she disallowed the claim of expenditure of Rs. 7,30,66,667/- claimed by the assessee as notional capital loss and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O and the assessee is in second appeal before us.

6.1 The Ld. Counsel for the assessee while reiterating the submissions made before the authorities below has placed reliance upon the following decisions in support of his contentions:

> *(a) CIT Vs PACT Securities & Financial Services Ltd., reported in 61 taxmann. com 192 (AP & TS). (b) Cooper Corporation Pvt Ltd., Vs DCIT, reported in ITA No. 866/PN/2014.*
> *(c) CIT Vs Woodward Governor India Pvt Ltd., reported 179 taxman.com 326 (SC)*
> *(d) Gati Limited Vs ITO, in ITA No. 1325/Hyd/2015.*
> *(e) Crane Software International Ltd., Vs. DCIT in ITA No. 741/Ban/2010.*

6.2 The Ld. DR, on the other hand, supported the orders of the authorities below and placed reliance upon the judgment of the Apex Court in the case of Sutlej Cotton Mills Ltd., reported in 116 ITR 1 (SC). Upon consideration of rival contentions and the material on record, we find that the A.O has disallowed the claim of the assessee on the ground that it is notional capital loss, while the Ld. CIT(A) confirmed the order of he A.O on the ground that it is to be allowed only at time of making payment and that the loss being capital in nature, cannot be allowed under any of the provisions of the Act. She also observed that the claim is not in accordance with the provisions of

Sec. 43A of the Act. Thus, we find that both the A.O as well as the CIT(A) were of the opinion that it is a notional loss and therefore is not allowable in the first place. This issue was considered by the Hon'ble Apex Court in the case of Woodward Governor India Pvt Ltd., (supra) and it was held that the expression 'expenditure' used in section 37 of the IT Act may, in the circumstances of a particular case, cover 16 ITA.Nos.1689 & 1735 /Hyd/2012, M/s Country Club Hospitality and Holidays Ltd., Hyderabad. an amount which is really a 'loss', even though said amount has not gone out from the pocket of the assessee. The facts of the case and the findings of the Hon'ble Court are reproduced hereunder for the sake of convenience and ready reference:

> *"5. The assessee filed its Return of Income on 28.1.1998 for the assessment year 1998-99 on a total income of Rs. 1,10,28,190.00. That return was processed under Section 143(1)(a) on 23.3.1999. On 16.8.1999 a notice under Section 143(2) was issued to the assessee stating that in the course of assessment proceedings under Section 143 it was noticed by the Department that the assessee had debited to its Profit & Loss Account a sum of Rs. 41,06,746.00 out of which a sum of Rs.29,49,088.00 was the unrealized loss due to foreign exchange fluctuation on the last date of the accounting year. The AO held that the liability as on the last date of the previous year under consideration was a contingent liability, it was not an ascertained liability and consequently it had to be added back to the total income of the assessee. Accordingly, he added back Rs. 29,49,088.00 being the unrealized loss due to foreign exchange fluctuation. In other words, the debit to the P&L account was disallowed. This order of the AO was upheld by the CIT(A) vide decision dated 29.11.2001. Being aggrieved, the assessee went in appeal to the Tribunal. By judgment and order dated 1.4.2005 the Tribunal relying on its earlier decision in the case of M/s Woodward Governor India P. Ltd. for the assessment years 1995-96, 1996-97 and 1997-98 held that the claim of the assessee for deduction of unrealized loss due to foreign exchange fluctuation as on the last date of the previous year had to be allowed. This decision of the Tribunal has been upheld by the Delhi High Court vide the impugned judgment dated 30.4.2007, hence, this Civil Appeal is filed by the Department.*
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> *6. Shri Parag Tripathi, learned Additional Solicitor General, appearing on behalf of the Department submitted that, in this case, the assessee(s) claims deduction under Section 37, which is a residuary provision, as there is no specific provision dealing with adjustment based on foreign exchange fluctuations on the Revenue account (akin to Section 43A, which deals with such adjustments in the Capital account). According to the 17 ITA.Nos.1689 & 1735 /Hyd/2012, M/s Country Club Hospitality and Holidays Ltd., Hyderabad. learned counsel, the essence of deductibility under Section 37 is that the increase in liability due to foreign exchange fluctuations must fulfill the twin requirements of "expenditure" and the factum of such expenditure having been "laid out or expended". According to the learned counsel, the expression "expenditure" is "what is paid out" and "something which is gone irretrievably". In this connection, learned counsel placed reliance on the judgment of this Court in the case of Indian Molasses Co. (Private) Ltd. v. CIT reported in 37 ITR 66. According to the learned counsel, the increase in*

liability at any point of time prior to payment cannot fall within the meaning of the word "expenditure" in Section 37(1). Therefore, according to the learned counsel, the requirement of expenditure is not met in this case. According to the learned counsel, similarly the requirement of money being "expended or laid out" is also not satisfied and thus additional liability arising on account of fluctuation in foreign exchange rate is not deductible under Section 37(1).

7. Shri C.S. Aggarwal, learned senior counsel appearing for M/s Woodward Governor India P. Ltd. (Civil Appeal arising out of S.L.P.(C) No. 593/08), submitted that the assessee had debited a sum of Rs. 41,06,748.00 to its P&L account of which a sum of Rs. 29,49,088.00 stood for the unrealized loss due to foreign exchange fluctuation. According to the learned counsel, the assessee has been following mercantile system of accounting. According to the learned counsel, under mercantile system of accounting, which is also known as accrual system of accounting, whenever the amount is credited to the account of the payee (creditor) liability stands incurred by the assessee even though the amount is actually not paid. In this connection, learned counsel placed reliance on the definition of the word "paid" in Section 43(2). According to the learned counsel, in the past in some years when the value of the rupee becomes stronger vis-`-vis US$, the Department had taxed the gains as income. Therefore, according to the learned counsel, when it comes to "income", the Department says that accrual is enough for taxability and "payment" is irrelevant but when it comes to "loss", the Department says that "payment" alone is relevant for taxability. According to the learned counsel, such double standards cannot be countenanced. Learned counsel further gave the following example in support of his contentions:

1. Where amount is borrowed and used in business:

2. The liability thus was, since by way of loan, the increased liability of Rs. 500/- was towards business increased by Rs. 500/- which resulted into business loss as a result of modification of existing liability. Likewise if on fluctuation, the dollar rate is reduced to Rs. 32/- per dollar, the liability will get reduced by Rs. 300/- and there would be a business gain of Rs. 300/-.

8. In the light of the above illustration, learned counsel urged that when the assessee(s) borrows 100 US$ on 1.4.1999 he incurs a crystallised liability, however, the value of that liability undergoes a change by 31.3.2000 on account of the fall in the rupee value. In other words, the rate of exchange fluctuated from Rs. 35 per dollar as on 1.4.1999 to Rs. 40 per dollar as on 31.3.2000, thus, increasing the liability of the assessee by Rs.500. According to the learned counsel, the assessee was entitled therefore to deduction under Section 37(1) for such enhanced liability. Similarly, if the dollar rate had reduced from Rs. 35 to Rs. 32 per dollar, then the assessee's liability would stand reduced by Rs. 300 and there would be a gain of Rs. 300 which would become taxable. From this hypothetical example, learned counsel urged that the liability stood incurred on the date on which the assessee borrows 100 $ which in the above example is 1.4.1999, however, on account of fluctuation in the dollar rate, the liability may enhance or may reduce by 31.3.2000. This has to be taken into account by the Department. The learned counsel submitted that whenever the dollar rate stood reduced,

the Department has taxed in the past the business gains, therefore, as a corollary, the Department has to allow deduction in the year in which the assessee incurs business loss on account of the increase in the dollar rate. Therefore, according to the learned counsel, there is no warrant for interfering in the impugned judgment of the High Court.

10. As stated above, on facts in the case of M/s Woodward Governor India P. Ltd., the Department has disallowed the deduction/debit to the P&L account made by the assessee in the sum of Rs. 29,49,088.00 being unrealized loss due to foreign exchange fluctuation. At the very outset, it may be stated that there is no dispute that in the previous years whenever the dollar rate stood reduced, the Department had taxed the gains which accrued to the assessee on the basis of accrual and it is only in the year in question when the dollar rate stood increased, resulting in loss that the Department has disallowed the deduction/debit. This fact is important. It indicates the double standards adopted by the Department.

13. As stated above, one of the main arguments advanced by the learned Additional Solicitor General on behalf of the Department before us was that the word "expenditure" in Section 37(1) connotes "what is paid out" and that which has gone irretrievably. In this connection, heavy reliance was placed on the judgment of this Court in the case of Indian Molasses Company (supra). Relying on the said judgment, it was sought to be argued that the increase in liability at any point of time prior to the date of payment cannot be said to have gone irretrievably as it can always come back. According to the learned counsel, in the case of increase in liability due to foreign exchange fluctuations, if there is a revaluation of the rupee vis-`-vis foreign exchange at or prior to the point of payment, then there would be no question of money having gone irretrievably and consequently, the requirement of "expenditure" is not met. Consequently, the additional liability arising on account of fluctuation in the rate of foreign exchange was merely a contingent/notional liability which does not crystallize till payment. In that case, the Supreme Court was considering the meaning of the expression "expenditure incurred" while dealing with the question as to whether there was a distinction between the actual liability in presenti and a liability de futuro. The word "expenditure" is not defined in the 1961 Act. The word "expenditure" is, therefore, required to be understood in the context in which it is used. Section 37enjoins that any expenditure not being expenditure of the nature described in Sections 30 to 36 laid out or expended wholly and exclusively for the purposes of the business should be allowed in computing the income chargeable under the head "profits and gains of business". In Sections 30 to 36, the expressions "expenses incurred" as well as "allowances and depreciation" has also been used. For example, depreciation and allowances are dealt with in Section 32. Therefore, Parliament has used the expression "any expenditure" in Section 37 to cover both. Therefore, the expression "expenditure" as used in Section 37 may, in the circumstances of a particular case, cover an amount which is really a "loss" even though the said amount has not gone out from the pocket of the assessee. 14. In the case of M.P. Financial Corporation v. CIT reported in 165 ITR 765 the Madhya Pradesh High Court has held that the expression "expenditure" as used in Section 37 may, in the circumstances of a particular case, cover an amount which is a "loss" even though the said

amount has not gone out from the pocket of the assessee. This view of the Madhya Pradesh High Court has been approved by this Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT reported in 225 ITR 802. According to the Law and Practice of Income Tax by Kanga and Palkhivala, Section 37(1) is a residuary section extending the allowance to items of business expenditure not covered by Sections 30to 36. This Section, according to the learned Author, covers cases of business expenditure only, and not of business losses which are, however, deductible on ordinary principles of commercial accounting. (see page 617 of the eighth edition). It is this principle which attracts the provisions of Section 145. That section recognizes the rights of a trader to adopt either the cash system or the mercantile system of accounting. The quantum of allowances permitted to be deducted under diverse heads underSections 30 to 43C from the income, profits and gains of a business would differ according to the system adopted. This is made clear by defining the word "paid" in Section 43(2), which is used in several Sections 30 to 43C, as meaning actually paid or incurred according to the method of accounting upon the basis on which profits or gains are computed under Section 28/29. That is why in deciding the question as to whether the word "expenditure" in Section 37(1) includes the word "loss" one has to read Section 37(1) with Section 28, Section 29 and Section 145(1). One more principle needs to be kept in mind. Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. One more aspect needs to be highlighted. Under Section 28(i), one needs to decide the profits and gains of any business which is carried on by the assessee during the previous year. Therefore, one has to take into account stock-in-trade for determination of profits. The 1961 Act makes no provision with regard to valuation of stock. But the ordinary principle of commercial accounting requires that in the P&L account the value of the stock-in- trade at the beginning and at the end of the year should be entered at cost or market price, whichever is the lower. This is how business profits arising during the year needs to be computed. This is one more reason for reading Section 37(1) with Section 145. For valuing the closing stock at the end of a particular year, the value prevailing on the last date is relevant. This is because profits/loss is embedded in the closing stock. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show increase profits before actual realization. This is the theory underlying the Rule that closing stock is to be valued at cost or market price, whichever is the lower. As profits for income-tax purposes are to be computed in accordance with ordinary principles of commercial accounting, unless, such principles stand superseded or modified by legislative enactments, unrealized profits in the shape of appreciated value of goods remaining unsold at the end of the accounting year and carried over to the following years account in a continuing business are not brought to the charge as a matter of practice, though, as stated above, loss due to fall in the price below cost is allowed even though such loss has not been realized actually. At this stage, we need to emphasise once again that the above system of commercial accounting can be superseded or modified by legislative enactment. This is where Section 145(2) comes into play. Under that section, the Central Government is empowered to notify from time to time the Accounting Standards to be

followed by any class of assessees or in respect of any class of income. Accordingly, under Section 209 of the Companies Act, mercantile system of accounting is made mandatory for companies. In other words, accounting standard which is continuously adopted by an assessee can be superseded or modified by Legislative intervention. However, but for such intervention or in cases falling under Section 145(3), the method of accounting undertaken by the assessee continuously is supreme. In the present batch of cases, there is no finding given by the AO on the correctness or completeness of the accounts of the assessee. Equally, there is no finding given by the AO stating that the assessee has not complied with the accounting standards.

15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference as on the date of the balance sheet is an item of expenditure under Section 37(1) of the 1961 Act. 16. In the light of what is stated hereinabove, it is clear that profits and gains of the previous year are required to be computed in accordance with the relevant accounting standard. It is important to bear in mind that the basis on which stock- in trade is valued is part of the method of accounting. It is well established, that, on general principles of commercial accounting, in the P&L account, the values of the stock-in-trade at the beginning and at the end of the accounting year should be entered at cost or market value, whichever is lower - the market value being ascertained as on the last date of the accounting year and not as on any intermediate date between the commencement and the closing of the year, failing which it would not be possible to ascertain the true and correct state of affairs. No gain or profit can arise until a balance is struck between the cost of acquisition and the proceeds of sale. The word "profit" implies a comparison between the state of business at two specific dates, usually separated by an interval of twelve months. Stock-in-trade is an asset. It is a trading asset. Therefore, the concept of profit and gains made by business during the year can only materialize when a comparison of the assets of the business at two different dates is taken into account. Section 145(1) enacts that for the purpose of Section 28 and Section 56 alone, income, profits and gains must be computed in accordance with the method of accounting regularly employed by the assessee. In this case, we are concerned with Section 28. Therefore, Section 145(1) is attracted to the facts of the present case. Under the mercantile system of accounting, what is due is brought into credit before it is actually received; it brings into debit an expenditure for which a legal liability has been incurred before it is actually disbursed. (see judgment of this Court in the case of United Commercial Bank v. CIT reported in 240 ITR 355). Therefore, the accounting method followed by an assessee continuously for a given period of time needs to be presumed to be correct till the AO comes to the conclusion for reasons to be given that the system does not reflect true and correct profits. As stated, there is no finding given by the AO on the correctness of the accounting standard followed by the assessee(s) in this batch of Civil Appeals.

17. Having come to the conclusion that valuation is a part of the accounting system and having come to the conclusion that business losses are deductible under Section 37(1) on the basis of ordinary principles of commercial accounting and having come to the conclusion that the Central

Government has made Accounting Standard-11 mandatory, we are now required to examine the said Accounting Standard ("AS").

6.3 Thus, it is clear that the loss on account of fluctuation of foreign currency on the date of balance sheet is not a notional loss as held by the A.O and the CIT(A) and in allowable as expenditure if it is on revenue account.

6.4 The other ground on which the loss has not been allowed is on the ground that it is capital loss. The co ordinate Bench of the Tribunal in the case of M/s Crane Software Ind Ltd., (supra) (to which, one of us, i.e JM is a signatory), has considered the issue as to whether the FCCB issue expenses are in the nature of capital or Revenue and has held as under:

"34.1. Next is whether FCCB issue expenses are capital or revenue in nature. The assessee company had incurred expenses in connection with the issue of foreign currency convertible bonds. Assessee claimed the expenses as deductible as the expenses were incurred to raise loan finance. The assessing authority held that the bond holders had the option to convert the bonds to equity shares and therefore, the collection of funds through the issue of bonds needs to be treated as to increase the capital and therefore the connected expenses would be capital in nature and hence disallowed.

34.2. We agree with the view of the Commissioner of Income tax(A) that the expenses are not capital in nature. As on 31.03.2006, the previous year ending for the asst. year 2006 07, the funds collected by the assessee company through the issue of FCCB, were in the nature of liability. The assessee company was bound to discharge the bonds on due dates. The assessee was paying interest to bond-holders. It is clear that the bond finance was in the nature of loan finance.

34.3. It becomes the capital of the company only when the bond holders exercise their option at the appropriate time in future. That conversion is only a future event, that mayor may not happen, depending on the option exercised by the bond-holders. Therefore, the possible equity character of the funds was contingent on the fact whether bonds would be converted or not in a future date. The nature of a present day loan fund cannot be held as equity fund on the basis of such contingency.

34.4. As far as the nature of the funds for the asst. year 2006 07 is concerned, it was a liability in the nature of loan, that too interest bearing loan. If the funds are treated as equity capital for asst. year 2006-07, how the payment of bond interest would be justified in law, as law does not permit payment of interest on a company's equity capital.

34.5. In the facts and circumstances of the case, the issue is decided in favour of the assessee".

6.5 Thus, it is clear that till the bonds are converted into share capital, they remain as a loan fund and cannot be held as equity fund and thus capital in nature. From the financial statements for the F.Y 2008-09, and schedule 4 thereof, it is seen that unsecured loans include FCCBs worth Rs.

101,72,00,000/-. Therefore, the above decision is clearly applicable to the facts of the case before us. In the case of Gati Ltd. (cited supra), this bench was considered the nature of the expenses incurred for issuance of FCCBs and it was held as under:

"2. Brief facts of the case are that the assessee company, which is in the business of Cargo Transport and Trading, filed its return of income for the A.Y. 2007- 08 on 31.10.2007 declaring a total income of Rs.15,54,67,315 and book profit of Rs.2,62,85,309 under section 115JB of the Act. During the assessment proceedings under section 143(3) of the I.T. Act, the income of the assessee was determined at Rs.16,36,43,200. Subsequently, the CIT assumed jurisdiction under section 263 of the I.T. Act and directed the A.O. (i) to bring to tax the gain on account of foreign exchange fluctuation of Rs.15,46,428 as income from other sources; (ii) to disallow gratuity of Rs.1,32,95,577; and (iii) to disallow expenditure amounting to Rs.2,69,26,757 relatable to issue of foreign currency convertible bonds. Aggrieved by the order of the Ld. CIT under section 263 of the I.T. Act, the assessee preferred an appeal before the ITAT. The ITAT vide orders dated 04.01.2013 in ITA.No.749/Hyd/2012 upheld the initiation of proceedings under section 263 of the I.T. Act and as far as the disallowability of FCCB related expenses, the Tribunal directed the A.O. to examine the issue of allowability or otherwise of the expenses, keeping in view the ratio of various decisions relied upon by both the parties and as discussed by the Tribunal in its order. Against the order of the ITAT, the assessee preferred an appeal before the Hon'ble High Court but the Hon'ble High Court dismissed assessee's appeal holding that there was no substantial question of law involved in the matter. Therefore, the A.O., while giving effect to the order of ITAT, re-examined the allowability of expenditure incurred by the assessee on issue of FCCBs and held that FCCB bonds were issued with an option to the bond holders to convert them to ordinary shares or to redeem their claim of bonds on 06.12.2011 at 147.882% of the principal. He observed that since the said bonds are convertible and have the characteristic of equity shares, proportionate expenditure on the issue of bonds has to be treated as capital expenditure. He further observed that the main purpose of FCCBs was for expansion of their business, i.e., investment in wide ranging capital investment projects and the advantage that would accrue to the assessee from such capital investment would be of an enduring nature. He further observed that the bonds were not meant to be part of profit earning process or a part of the working capital but was meant for investment in the capital field such as off-shore acquisition, acquisition/ purchase of scrips, / investment in wholly owned subsidiaries etc., He therefore, treated the expenditure of Rs.2,64,26,757 incurred on issue of the bonds as capital expenditure and accordingly, brought it to tax. Aggrieved, assessee filed an appeal before the Ld. CIT(A) who confirmed the order of the A.O. and the assessee is in second appeal before us. 3. The Ld. Counsel for the assessee, Mr. Y. Ratnakar, while reiterating the submissions made by the assessee before the authorities below, and submitted that the assessee company has issued unsecured Foreign Currency Convertible Bonds ("FCCB") on 05.12.2006 for $ 20,000 million US dollars and the bond holders were given an option to convert FCCBs into original shares on or before 05.11.2011 and in the event the bond holder is not opting for such conversion, he is entitled to redemption on 06.12.2014 at 147.882% of the bond amount. He submitted that the bonds were issued for securing funds for business purposes including expansion of the business and the amount received is thus an unsecured loan in the hands of the company. He submitted that the expenditure of Rs.2,64,26,757 incurred by the assessee company for issuing these bonds is therefore revenue expenditure. He

also submitted that during the F.Y. 2006-07 relevant to the A.Y. 2007-08, the funds collected by the assessee company continued to remain with the assessee only as a liability in the form of unsecured loans as none of the bond holders exercised any option for conversion of their bonds into shares during the relevant financial year. He, further submitted that in the F.Y. 2007-08, the bonds to the extent of 5 million US dollars were converted into share capital as the bond holders exercised their option for conversion during the said F.Y. 2007-08 and this was also declared in the public accounts for the F.Y. 2007-08. He has submitted that the remaining outstanding amount in respect of the balance FCCBs has been fully repaid on 31.12.2011 with premium to the bond holders which fact has also been taken note of by the Commissioner in his order under section 263 of the I.T. Act. He has submitted that as the bonds were issued only for the purpose of securing loan finance, the assessee has not obtained any asset or advantage of any enduring nature and the expenditure made is for securing the use of money in business for certain period. He has submitted that it is irrelevant to consider the object for which the loan is obtained so long as it is for the business purposes of the assessee, to consider the same as revenue expenditure. According to him, the utilisation of FCCB proceeds has nothing to do with capital of the company and therefore, is allowable as revenue expenditure. Thus, according to him, the findings of the A.O. as well as the Ld. CIT(A) are erroneous. He placed reliance upon the following decisions in support of his contention.

1. India Cements Ltd., vs. CIT (1966) 60 ITR 52 (SC)
2. CIT vs. Tumus Electric Corpn. Ltd., (1990) 49 Taxman 249 (MP) (HC)
3. CIT vs. East India Hotels Ltd., (2001) 119 Taxman 235 (Cal.)
4. CIT vs. South India Corpn. (Agencies) Ltd., (2007) 164 Taxman 249 (Mad.)
5. CIT vs. First Leasing Co. of India Ltd., (2008) 304 ITR 67 (Mad.)
6. CIT vs. Secure Meters Ltd., 321 ITR 611
7. CIT vs. ITC Hotels Ltd., 334 ITR 109
8. M/s. Crane Software International Ltd. vs. DCIT, Bangalore Order dated 08.02.2011 in ITA.Nos. 741 & 742/Bang/2010.
9. CIT vs. Havells India Ltd., 352 ITR 376
10. DCIT vs. UAG Builders (P) Ltd., Delhi (2012) 25 taxmann.com 205 (Del.)

3.1. Further he has also relied upon the CBDT circular No.56 dated 19th March, 1971 on the provisions of section 35Dwherein it was clarified that the provisions of section 35D will not have the effect of bringing the expenditure covered by the decision of the Hon'ble Supreme Court in the case of India Cements Ltd., reported in (1966) 60 ITR 52 within the scope of the expenditure to be amortized against profits over ten year period under section 35D of the Act. Thus, according to him, the expenditure on the issue of FCCB is allowable as revenue expenditure.

4. The Ld. D.R., on the other hand, supported the orders of the A.O. and has placed reliance upon the findings of the A.O. and the CIT(A).

5. Having regard to the rival contentions and the material on record, we find that the only dispute is to the nature of expenditure incurred by the assessee on issue of FCCBs. The Hon'ble Supreme Court in the case of "India Cements" (cited supra) was considering the allowability of claim of

expenditure of the assessee therein, incurred by it, on stamps, registration fees etc., for securing a loan, as business expenditure under section 37(1) of the Act, and held that loan obtained cannot be treated as an asset or advantage of an enduring nature for the benefit of the business of the assessee, as, a loan is a liability and has to be repaid and it is therefore, erroneous to consider the liability as an asset or an advantage. It was further held that the nature of the expenditure incurred in raising a loan would not depend upon the nature or purpose of the loan as the loan may be intended to be used for the purchase of raw material when it is negotiated but the company may, after raising the loan, change its mind and spend it on secured capital assets. Therefore, the purpose for which the loan was required was irrelevant to the consideration of the question, whether the expenditure for obtaining the loan was a revenue expenditure or capital expenditure and therefore, it was held that the expenditure incurred for availing loan is allowable undersection 37(1) of the Act. This decision of the Hon'ble Supreme Court has been followed by various High Courts in the cases cited by the Ld. Counsel for the assessee cited supra. The Hon'ble Madhya Pradesh High Court in the case of CIT vs. Tumus Electric Corpn. Ltd., (1990) 49 Taxman 249 (MP) (cited supra), after considering the above judgment of the Hon'ble Supreme Court has held that the expenditure incurred by the assessee therein in connection with the execution of a mortgage deed to secure a loan was revenue expenditure as there was no regulation regarding the application of capital subsidy to any specific purpose.

6. In the case of CIT vs. East India Hotels Ltd., (cited supra), the Hon'ble High Court of Calcutta was considering the allowability of the expenditure on account of issue of debentures and the applicability of Section 35D to such expenses and it was held that Section 35D has been introduced w.e.f. 01.04.1971 to give benefit to the assessees in case of capital expenses but a deduction, which is otherwise allowable as revenue expenditure, cannot be denied after insertion of Section 35D. The Hon'ble High Court also took note of the CBDT Circular No.56 dated 19.03.1971 which clarified the provision of section 35D and the amortization allowable and the said provision has further been clarified that it is not intended to supersede any other provision of the I.T. Act, under which such expenditure is admissible as a deduction. In the case before the Hon'ble Calcutta High Court, 20% of the debentures was payable by the end of three years from the date of issue of debentures by way of issue of shares and the balance 20% at the end of 8th, 9th , 10th and 11th years from the date of allotment of debentures by payment in cheques. The Hon'ble High Court held the above facts of conversion of 20% of the debentures into shares by the end of 3 years to make the debentures more lucrative/attractive does not change the character of repayment of the loan within 11 years as it retains the character of a loan.

7. In the case of CIT vs. South India Corporation (Agencies) Ltd., (cited supra), the Hon'ble High Court of Madras was seized of the issue as to whether the expenditure incurred on issue of debentures was capital or revenue and after considering the decision of the Hon'ble Supreme Court in the case of India Cements (cited supra) as well as the Delhi High Court decision in the case of CIT vs. Thirani Chemicals Ltd., reported in 290 ITR 196, held that the expenditure incurred on the issue of debentures is

permissible deduction under section 37 of the I.T. Act. Similar view was expressed by the Hon'ble High Court of Madras in the case of First Leasing Company & India Limited (cited supra).

8. The Hon'ble Karnataka High Court in the case of ITC Hotels Ltd., (cited supra) has also considered the judgment of the Rajasthan High Court in the case of Secure Metres Ltd., (cited supra), to hold that even if the debentures were to be converted into the shares at a later date, the expenditure incurred on such convertible debentures has to be treated as revenue expenditure. We find that 'A' Bench of this Tribunal at Bangalore in the case of M/s. Crane Software International Ltd., Bangalore vs. DCIT, Circle-11(2) (cited supra), has considered whether FCCB issue expenses are in the nature of capital or revenue and has held the same to be revenue in nature. Similar view has been expressed by the Hon'ble Delhi High Court in the cases of CIT vs. Havells India Ltd., (cited supra) and also DCIT vs. UAG Builders (P.) Ltd., Delhi (cited supra). We, therefore, find that this issue is fairly covered by the above cited decisions. Hence, we hold that the expenditure incurred by the assessee on issue of FCCB is revenue expenditure allowable under section 37(1) of the I.T. Act.

6.6 Further the Hon'ble Supreme Court in the case of CIT Vs Woodward Governor India Pvt Ltd., (supra) has held that the expression 'expenditure' as used in Sec. 37 of the Act, covers the amount which is really a loss, even though the said amount has not gone out from the pocket of the assessee, and that the loss suffered by the assessee on account of foreign exchange difference as on date of balance sheet, is an item of expenditure allowable u/s 37(1) of the Act. The Hon'ble Supreme Court had also taken note of the fact that in the previous years, whenever the dollar rates would be reduced, the department had taxed the gains which accrued to the assessee therein on the basis of accrual and it was only in the relevant year when the dollar rates increased resulting in a loss, that the department disallowed the deduction / debit and that it indicated the double standards adopted by the department. Even in the case before us, the assessee has stated that the disallowance is made only in A.Y 2009.10, whereas the balance of the expenditure which has been claimed in subsequent assessment years, has been allowed as a deduction in the assessment completed u/s 143(3) r.w.s 147 of the IT Act for the A.Y 2010-11. Respectfully following the above decisions (cited supra), we hold that the assessee, which is following a uniform and consistence method of accounting, and has claimed the expenditure in accordance with the notification of the Min of Corporate Affairs and the A.O has allowed the same in the subsequent assessment years, the revenue cannot take a contrary stand only for the A.Y 2009-10."

12. Further, this issue is also covered by the decision of the Hyderabad Bench in the assessee's own case for A.Y. 2010-11 in ITA No. 1714/Hyd/2014, wherein the Tribunal, while following its earlier decision for A.Y. 2009-10, deleted the additions made by the A.O.

13. In this view of the matter and considering the facts and circumstances of the case, and also by following the decision of the ITAT, Hyderabad Bench, in the assessee's own case, we direct the A.O. to delete the addition made towards disallowance of amortization of foreign exchange loss of Rs. 7,30,66,667/-.

14. The next issue that came up for our consideration from Ground No. 17 of the assessee's appeal is addition of Rs. 7,30,66,667/- towards disallowance of foreign exchange amortization loss to book profit under Section 115JB of the Income-tax Act, 1961.

15. We find that, the addition made by the A.O. towards disallowance of amortization of foreign exchange loss of Rs. 7,30,66,667/- to the normal income computed by the assessee has been deleted by us in the preceding paragraph nos.10 to 13. Since the addition made by the A.O. has been deleted, in our considered view, the adjustment made by the A.O. towards disallowance of

foreign exchange loss to book profit computed under Section 115JB of the Act, cannot be upheld. Thus, we direct the A.O. to delete the addition made towards disallowance of amortization of foreign exchange loss of Rs. 7,30,66,667/- while computing book profit under Section 115JB of the Income-tax Act, 1961.

16. The next issue that came up for our consideration from Ground Nos. 18 and 19 of the assessee's appeal is disallowance of belated payment of PF and ESI contributions under Section 36(1)(va) r.w.s. 2(24)(x) of the Income-tax Act, 1961 amounting to Rs. 15,61,389/-.

17. The learned counsel for the assessee submitted that, the Ld. CIT(A) erred in sustaining the addition made towards delayed payment of employees' contribution towards PF and ESI, even though the assessee has paid the said contributions on or before the due date for furnishing return of income under Section 139(1) of the Income-tax Act, 1961. The learned counsel for the assessee, further referring to the decision of the ITAT, Hyderabad Bench in the case of Dondapti Sudhakara Rao in ITA No. 701/Hyd/2025, submitted that, the addition made by the A.O. towards disallowance of employees' contribution towards PF and ESI under Section 36(1)(va) r.w.s.

2(24)(x) of the Income-tax Act, 1961 is debatable in nature and therefore, the A.O. cannot make adjustment while computing income of the assessee.

18. The learned CIT-DR for the Revenue, on the other hand, supporting the order of the Ld. CIT(A) submitted that, this issue is now covered in favour of the Revenue by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Private Limited Vs. CIT (supra), wherein the Hon'ble Supreme Court clearly held that, delayed payment of employees' contribution towards PF and ESI is not allowable under Section 36(1)(va) r.w.s. 43B r.w.s. 2(24)(x) of the Income-tax Act, 1961. The learned CIT-DR for the Revenue, further referring to the decision of the ITAT, Hyderabad Bench in the case of M/s. Sri Lakshmi Road Transport Company Vs. DCIT in ITA No. 1209/Hyd/2025 dated 26.11.2025, submitted that, in a subsequent decision, the Tribunal, by considering the decision of the jurisdictional High Court of Telangana in the case of Synergies Castings Ltd Vs. ACIT 173 taxmann.com 503, held that, delayed payment of employees' contribution towards PF and ESI deposited after the due date specified under the respective Acts, cannot be allowable, even if such contribution is made before the due date

under Section 139(1) of the Income-tax Act, 1961. Therefore, he submitted that, the addition made by the A.O. should be upheld.

19. We have heard both parties, perused the material available on record and had gone through the orders of the authorities below. There is no dispute with regard to the fact that, the assessee has deposited employees' contribution towards PF and ESI beyond the due date specified under the respective Acts. Further, it was the only contention of the assessee before the lower authorities that, the PF and ESI have been deposited on or before the due date provided under Section 139(1) of the Income-tax Act, 1961, for filing return of income. We find that, the above dispute has been settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (supra), wherein the Hon'ble Supreme Court, after considering the relevant provisions of the Act, and also various decisions on this issue, held that, belated payment of employees' contributions towards PF and ESI cannot be allowed as deduction under Section 36(1)(va) r.w.s. 43B r.w.s. 2(24)(x) of the Income-tax Act, 1961.

20. The Coordinate Bench of the Tribunal, by following the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (supra) and also the decision of the jurisdictional High Court of Telangana in the case of Synergies Castings Ltd Vs. ACIT (supra), has held that, belated payment of employees' contributions to PF and ESI deposited after the due date provided under the respective Acts, is not allowable, even if such contribution is made before the due date under Section 139(1) of the Income-tax Act, 1961. The relevant findings of the Tribunal are as under :

> *"8. We have considered the rival submissions and perused the material available on record. In this regard, we have gone through para no. 6 to 14 of the order of the Hon'ble jurisdictional High Court in Synergies Castings Ltd. (supra), which is to the following effect:*
>
> > *"6. An intimation under Section 143(1) of the Act was issued to the assessee on 18.05.2020 by which a sum of Rs.1,85,76,482/- was disallowed on account of assessee's contribution under the ESI and PF and the total income of the assessee was determined at Rs.1,85,76,482/- and the tax payable on this income was computed at Rs.55,72,944/-. The credit of TDS of Rs.72,87,370/- was allowed and the refund was determined at Rs.11,61,797/-.*
> >
> > *7. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'). The CIT(A), by order dated 18.12.2023, dismissed the appeal. The assessee thereupon approached the Tribunal. The Tribunal, by the impugned order dated 13.03.2024, inter alia held that the issue involved in the appeal is covered by a decision of the Supreme Court in Checkmate Services (P) Ltd. v. CIT [2022] 143 taxmann.com 178/290 Taxman 19/448 ITR 518 (SC) and held that since the assessee had not remitted the employees' contribution to PF and ESI within the statutory dates, the amount cannot be claimed as a deduction. It was further held that, admittedly, the assessee had*

not deposited the employees' PF and ESI within the statutory dates but has deposited the same beyond the statutory dates. Accordingly, the Tribunal dismissed the appeal preferred by the assessee. Hence, this appeal.

8. Learned counsel for the assessee submitted that the issue involved in the appeal has not attained finality and is debatable. Therefore, the appeal should be admitted.

9. We have considered the submission made by learned counsel for the assessee and have perused the record.

10. The Supreme Court, in Checkmate Services (P) Ltd. (supra), in paragraph 52, has held as under:

"When Parliament introduced Section 43B of the Income Tax Act, 1961, 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 desperate 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 stature) 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 outgoings 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."

11. The relevant portion of Para 54 is extracted below for the facility of reference:

"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."

12. Thus, from a perusal of the aforesaid relevant extracts of the decision of the Supreme Court in Checkmate Services (P) Ltd. (supra), it is evident that the assessee has to make payment of the contribution to PF and ESI before the statutory dates in order to claim the amount as deduction. Admittedly, the assessee has not paid the aforesaid amount on or before the statutory dates. The findings of fact has been recorded by the assessing officer, CIT(A) as well as by the Tribunal. The aforesaid finding of fact cannot, by any stretch of imagination, be said to be perverse.

13. It is not the case of the assessee that the aforesaid finding of fact is perverse. It is well settled in law that this Court, in exercise of powers under Section 260A of the Act, cannot interfere with the finding of fact until and unless the same is demonstrated to be perverse. (see Syeda Rahimunnisa v. Malan Bi by LRs (2016) 10 SCC 315 and Pr. CIT v. Softbrands India (P.) Ltd. [2018] 94 taxmann.com 426/406 ITR 513 (Karnataka)).

14. In view of the preceding analysis, no substantial question of law arises for consideration in this appeal. The same fails and is, hereby, dismissed. No costs."

9. On a perusal of the above, we observe that the Hon'ble High Court, has dealt with a situation where the intimation under section 143(1) of the Act was passed on 18.05.2020 (para no. 6 of the order), i.e., before the decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (Supra) and the assessee before the Hon'ble High Court had also raised the debatable

issue (para no. 8 of the order). The Hon'ble High Court nevertheless rejected the assessee's argument and held that employees' contribution to PF/ESI deposited beyond the statutory due dates is not allowable under section 36(1)(va) of the Act. We have also examined the order of this Tribunal in Dondapati Sudhakar Rao vs. ITO (supra) relied upon by the assessee. It is noticed that while deciding that matter, the Tribunal did not have the benefit of the binding jurisdictional High Court judgment in Synergies Castings Ltd. (supra). Therefore, the decision in Dondapati Sudhakar Rao (Supra) has been rendered without considering the authoritative pronouncement of the Hon'ble jurisdictional High Court and hence cannot prevail over the jurisdictional High Court's judgment. It is a well-settled proposition that this Tribunal is bound to follow the judgment of the Hon'ble Telangana High Court. The Hon'ble Telangana High Court in Synergies Castings Ltd. (supra) under the similar circumstances has categorically held that employees' contribution to PF and ESI deposited after the due dates specified under the respective Acts is not allowable, even if such contribution is made before the due date under section 139(1) of the Act. Accordingly, following the binding decision of the Hon'ble Jurisdictional High Court, we hold that the employees' contribution deposited by the assessee beyond the statutory due date is not allowable under section 36(1)(va) of the Act. In view of the above, we find no infirmity in the order of the Ld. First Appellate Authority as well as the adjustments made by CPC under section 143(1) of the Act."

21. In this view of the matter and by respectfully following the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (supra) and also the decision of the jurisdictional High Court of Telangana in the case of Synergies Castings Ltd. Vs. ACIT (supra), we are of the considered view that, delayed payment of employees' contribution to PF and ESI cannot be allowed as deduction under Section 36(1)(va) r.w.s. 43B r.w.s. 2(24)(x) of the Income-tax Act, 1961. The Ld. CIT(A), after considering the relevant facts, has rightly sustained the addition

made by the A.O. Thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject the grounds taken by the assessee.

22. The next issue that came up for our consideration from Ground No. 21 of the assessee's appeal is addition of Rs. 51,28,500/- towards foreign exchange fluctuation loss.

23. The A.O. disallowed a sum of Rs. 51,28,500/- towards foreign exchange fluctuation loss on the ground that, the above disallowance has been made in the order passed under Section 143(3) of the Income-tax Act, 1961 dated 18.03.2014 and the assessee has not challenged the addition made by the A.O.

24. It was the argument of the learned counsel for the assessee that, the proceedings under Section 143(3) of the Act, and the proceedings under Section 143(3) r.w.s. 147 of the Act are different and the theory of merger does not apply to both the proceedings and therefore, whatever the additions were considered in the assessment proceedings under Section 143(3) of the Act, cannot be added in the reassessment proceedings under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961.

25. The learned CIT-DR for the Revenue, on the other hand, submitted that, in the original assessment order passed under Section 143(3) dated 18.03.2014, the A.O. had disallowed Rs. 56,98,338/- towards foreign exchange fluctuation loss and the assessee has not challenged the said disallowance. However, while computing the total income, only Rs. 5,69,838/- was added and therefore, income to the extent of Rs. 51,28,500/- had escaped assessment. Since the assessee has accepted the disallowance made in the original assessment order, the A.O. is justified in bringing the escaped portion of income to tax in the reassessment proceedings under Section 143(3) r.w.s. 147 of the Act and the Ld. CIT(A) has rightly sustained the addition.

26. We have heard both parties, perused the material available on record and had gone through the orders of the authorities below. There is no dispute with regard to the fact that the A.O. made addition of Rs. 51,28,500/- on the ground that, in the assessment order passed under Section 143(3) of the Act on 18.03.2014, the A.O. made disallowance of Rs. 56,98,338/- towards foreign exchange fluctuation loss, as the assessee failed to furnish details regarding

the nature of loss incurred, whether it is capital or revenue. However, in the computation of total income, only Rs. 5,69,838/- was disallowed against Rs. 56,98,338/-. The assessee has also not preferred further appeal against such disallowance made by the A.O. Therefore, added a sum of Rs. 51,28,500/- to the total income. From the above reasons of the A.O., it is abundantly clear that, the A.O. made addition towards foreign exchange fluctuation loss only on the ground that, the said addition has been made in the order passed under Section 143(3) and the assessee has not challenged the additions. In our considered view, the proceedings under Section 143(3) and the proceedings under Section 143(3) r.w.s. 147 of the Act are different and the theory of merger does not apply to these proceedings. Therefore, the A.O. cannot consider any additions made in the assessment order passed under Section 143(3), in the assessment order passed under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961. If at all the A.O. had made any addition towards any expenditure in the assessment order under Section 143(3) and the assessee has not challenged the said addition, then the A.O. is required to collect taxes as per the assessment order passed under Section 143(3) of the Act, and consequent demand

notice issued in pursuance to the said order. However, he cannot make further addition towards disallowance made in the order passed under Section 143(3) while completing the assessment under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961, because it amounts to making additions towards the expenditure twice. Therefore, in our considered view, the addition made by the A.O. towards disallowance of foreign exchange fluctuation loss, in the assessment order passed under Section 143(3) r.w.s. 147 of the Act, on the basis of addition made in the assessment order passed under Section 143(3) of the Act, cannot be upheld. The Ld. CIT(A), without considering the relevant facts, simply sustained the addition made by the A.O. Thus, we set aside the order of Ld. CIT(A) on this issue and direct the A.O. to delete the addition made towards disallowance of foreign exchange loss Rs. 51,28,500/-.

27. Ground nos.1 to 10 of assessee's appeal are general in nature and require no adjudication and therefore, the same are dismissed.

28. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 27th March, 2026.

Sd/- (श्री रवीश सूद) **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**	**Sd/-** (मंजूनाथ जी) **(MANJUNATHA G.)** **लेखा सदस्य/ACCOUNTANT MEMBER**

Hyderabad, dated 27.03.2026.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Country Club Hospitality & Holidays Limited, C/o. 6-3-655/2/3, P. Murali and Co., Chartered Accountants, Somajiguda, Hyderabad – 500082.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Central Circle 1(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

TIRUPATI YAMINI NAGA MALLESWARI

Digitally signed by TIRUPATI YAMINI NAGA MALLESWARI
Date: 2026.03.27 17:01:51 +05'30'

Sr. Private Secretary
ITAT, Hyderabad