2025:DHC:7788-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08.09.2025

\+ **ITA 267/2023**

WOODLAND (AERO CLUB) PRIVATE LIMITED
..... APPELLANT

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 49(1), NEW DELHI ..... RESPONDENT

Advocates who appeared in this case

For the Appellant	:	Mr. S. Ganesh, Sr. Adv. with Mr. Anukalp Jain, Mr. Abhijit Mittal, Mr. Anukalp Jain, Ms. Nishtha Nanda & Ms. Shaivya Singh, Advs.
For the Respondent	:	Mr. Siddhartha Sinha, SSC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V KAMESWAR RAO, J.

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 ("*the Act*" hereinafter), challenging the order dated 09.01.2023 passed by the Income Tax Appellate Tribunal ("*ITAT*" hereinafter) in ITA No.2293/DEL/2022 filed by the Revenue (respondent herein) in respect of Assessment Year (AY) 2019-20.

2. The appellant is a Partnership Firm engaged in the business of manufacturing, supply and export of leather products like leather shoes, leather garments under the name of Woodland.

3. On 30.11.2019 the appellant filed its return of income of ₹15,78,68,550/- electronically for assessment year 2019-20 under Section 139(1) of Act and same was selected for scrutiny by notice dated 17/12/2019 issued u/s 143(l)(a) of Act wherein adjustments to the tune of ₹4,14,22,293/- were proposed to be deducted from the income of the appellant by the APO, Centralized Processing Centre, Income Tax Department [The Assessment Officer (AO)] on account of payment of Provident Fund, Employer's State Insurance and Labour Welfare Fund to the extent of the disputed amount deposited beyond the due date of the relevant fund under the Act.

4. The appellant filed its reply on 16.01.2020 against the notice by giving reasons against the proposed adjustments/deductions. The appellant clarified that the said employees contribution deposited before filing of the ITR should have been admissible, even though the same was deposited after the due date as prescribed under the relevant acts. However, when the return was processed finally, an intimation notice/order dated 28.05.2020 was received under Section 143(1) of the Act, wherein the income of the appellant was enhanced by an amount of ₹4,14,22,293/-, thereby disallowing the deduction of the disputed amount under Section 36(1) (va) of the Act. The AO, arrived at the said conclusion on the basis that the said deposit was made after the due date as prescribed under the relevant law, though as per the appellant, the deposit was made prior to the due date of furnishing of the ITR under Section 139(1) of the Act.

5. Thereafter, the appellant filed an appeal dated 14.07.2020 under Section 246A of the Act bearing Appeal No. CIT(A), Delhi-17110041/2020-21 before the Commissioner of Income Tax (Appeals), Delhi ("*CIT(Appeals)*, hereinafter") contesting the deduction/adjustment of the disputed amount by the AO. Thereafter, several hearing notices dated 28.10.2021, 02.05.2022, 08.06.2022 were issued by the CIT(Appeals) under Section 250 of the Act. Against the said notice(s), the appellant filed its written submissions dated 31.07.2021, 11.11.2021, 05.05.2022 and 14.06.2022.

6. Mr. S. Ganesh, learned Senior Counsel appearing for the appellant submitted that it is an undisputed factual position that, in respect of the Employees' Provident Fund (EPF) and Employees State Insurance (ESI) contributions received by the appellant from its employees, there was a delay in making payment of these amounts to the funds in question, as compared to the due dates set out in the EPF/ESI Acts. However, it is also the undisputed position that the appellant made the said payments before the due date for the submission of the appellant's Income-tax Return.

7. In the assessment order made by the AO in the appellant's case under Section 143(1) of the Act, the AO made adjustments/additions in respect of these payments.

8. The Section 143(1) permits the AO to make adjustments/additions only in respect of arithmetical mistakes and clerical errors. In support of his submission, he has relied upon the judgment of the Supreme Court in ***Asst. Commissioner of Income-tax vs Rajesh Jhaveri Stock Brokers (P) Ltd – 2008 (4) SCC 208*** – para 11, in which the Supreme Court stated as under:-

> *"What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief"*

9. He has also referred to the judgment in ***C.I.T vs Amitabh Bachan Corporation Ltd – 261 ITR 45***, where the Bombay High Court explained the narrow and limited nature of the power of the AO under Section 143(1)(a) as under :-

> *"Whether an expenditure was on revenue account or capital account is required to be examined in the light of the totality of all facts for this purpose. Evidence would be required in the form of documents and accounts and also, it would require proper appreciation of the terms and conditions of the agreement between the assessee and the two actors. That, by merely looking at the balance-sheet and profit and loss account, one cannot infer the nature of the expenditure. That, such an exercise generally cannot be done by way of adjustments to the returns under Section 143(1)(a) of the Act. That, such a point cannot be deciphered by merely looking at the return, supported by balance sheet and profit and loss account. In the circumstances, the Tribunal was justified in coming to the conclusion that the Income-tax Officer was not right in disallowing the expenditure by way of adjustment under Section 143(1)(a). The judgment of the Bombay High Court in the case of Khatau Junkar Ltd. [1992] 196 ITR 55 is, therefore, squarely applicable".*

10. It is his submission that the AO under Section 143(1) cannot make any adjustment or addition in respect of any debatable or arguable matter. Further, in any event, no such adjustment or addition can possibly be made

contrary to a binding judgments of the Supreme Court or High Courts which has held the issue in question in favour of the assessee. In the present case, the Section 143(1) adjustment was made on 28/5/2020. At the point of time , there were two direct Supreme Court judgments, i.e., **CIT v. *Vinay Cement Ltd., 213 CTR 268*** and ***C.I.T. v.* Alom Extrusions *Ltd., [(2009 319 ITR 306]*** and also no less than 40 High Court judgments which laid down that where the assessee had made EPF or ESI payments after the due dates laid down in the EPF/ESI statute but before the last date permitted for filing his ITR, then such EPF/ESI payments cannot be disallowed in the assessee's assessment. The judgments were all in existence on 28.5.2020 when the impugned Section 143(1) adjustments were made by the AO. The said Section 143(1) adjustments were nothing short of a blatant act of contempt of court and were therefore, illegal and bad in law and null and void. The scheme of Section 143 of the Act is that where the AO wishes to made an addition in respect of a debatable or arguable issue, he can do so only by first issuing a notice under Section 143(2) of the Act and, thereafter making an assessment under section 143(3) of the Act. If the issue is covered in favour of the assessee by binding judgments, then the addition even in an assessment under Section 143(3) can only be made on a protective basis and the demand relating to such addition cannot be enforced by the AO. All these statutory provisions and settled legal principles have been thrown to the winds by the AO in the present case by making.

11. He further submitted that the ITAT has decided the matter against the appellants on the basis of the judgment of the Supreme Court in the case of ***Checkmate Services (P) Ltd. v. Commissioner of Income Tax [(2023) 6 SCC 451]***, which had placed reliance upon the amendment made to the Act

by the Finance Act, 2021 which added the following Explanation 5 to Section 43B with effect from April 1, 2021:-

"Explanation 5.- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies."

12. Under section 43B as it stood prior to 01.04.2021, including for AY 2019-20, to which the present case relates, it was expressly laid down in the proviso to Section 43B(1) that there would be no disallowance if the payment was made before the due date for furnishing the return of income. It was this provision which applied to AY 2019-20 and not Explanation 5 which came into effect only on 1.4.2021 and which was not given any retrospective effect, even though it used the words; "*For the removal of doubts*" and "*it is hereby clarified*". According to him, this legal position has been clarified by the Supreme Court in ***CIT v. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC) (Constitution Bench)*** and ***Sedco Forex International Inc v. C.I.T. [(2017) 399 ITR 1 SC].***

13. Though ***Checkmate Services (P) Ltd***. dealt with an Assessment Year prior to the AY 2021-22, there was no argument, discussion or decision in that judgment to the effect that it would apply to earlier Assessment Years. In fact, the judgments in ***Vatika Township (supra)*** and ***Sedco Forex (supra)*** were not even cited or considered with in ***Checkmate Services (P) Ltd***. ***(supra).*** It is his case that therefore, ***Checkmate Services (P) Ltd***. *(supra)* cannot be possibly considered to be an authority for the proposition. The legal position laid down in ***Checkmate Services (P) Ltd***. ***(supra)*** applies to past Assessment Years, and is completely *sub-silentio* on the issue that falls

for consideration in the facts of this case. He has referred to the judgments in ***Municipal Corporation of Delhi v. Gurnam Kaur [1989(1) SCC 101]***, (paras 11-12) and ***State of U.P. and Anr. v. M/S Synthetics and Chemicals and Anr., [1991 (4) SCC 139]***, (para 41) regarding the issue of *sub-silentio*. However, Mr. Ganesh submitted that he seeks to make it absolutely clear that the appellant is making the above-mentioned submissions only for the limited purpose of contending that, for this additional reason also, such an additional adjustment could not be made under Section 143(1). Even the judgment of this Court in ***Pr. Commissioner Of Income Tax-7 v. Pepsico India Holding Pvt. Ltd., [ITA No. 12/2023]*** which was relied upon by the respondent is silent on the issue whether such additions could be made.

14. That apart, he stated that the ITAT erred to observe that the Apex Court in the case of ***Checkmate Services (P) Ltd. (supra)*** appreciated the decision in the case of ***M.M. Aqua Technologies Ltd. v. Commissioner of Income Tax, Delhi,[AIR 2021 SC 3997]*** wherein it was held that a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication.

15. It is his contention that the ITAT erred in ignoring the fact that a provision cannot be given effect retrospectively unless the statute declares the same in clear and unambiguous words, or when the amended provision is declaratory in nature. Reliance in this regard is placed on ***Saurastra Agencies (P.) Ltd. v. Union of India [l990 186(ITR) 634].***

16. The arguments advanced by Mr Ganesh are summed up below:

a. The ITAT erred in dismissing the disallowance of the deduction of ₹4,14,22,293 from the income of the appellant for the year 2019-20.

b. The PF payment was made before the due date of filing of the ITR, thereby making the Appellant eligible for deduction under Section 36(l)(va) of the Act. Reliance in this regard was placed on the judgment of this Court in the case *of* ***PR Commissioner of Income Tax v. TV Today Network [ITA 227/2022].***

c. The statutory mandate provided under second proviso to Section 36(1)(va) of the Act inserted by the Finance Act, 2021 was to be made applicable from 01.04.2021. The ITAT erred in observing that the applicability of this proviso was never discussed in the case of ***Checkmate Services Pvt. Ltd. (supra).*** Hence, the entire impugned order is not only without any basis but is also out of context in the present case.

d. The decision of in ***Checkmate Services Pvt. Ltd. (supra)*** was rendered in the context of assessment framed under Section 143(3) of the Act and not Section 143(1) of the Act, thus, the same is not applicable to the facts of the instant case, as the same relates to assessment under Section 143(1) of the Act. The ITAT erred in ignoring the decision of ***P.R. Packaging Service v. CIT [ITA NO. 2376/Mum/2022]*** wherein the ITAT, Mumbai observed that the decision in ***Checkmate Services Pvt. Ltd. (supra)*** was rendered in the context where assessment was framed under Section 143 (3) of the Act and not under Section 143(1)(a).

17. Mr. Siddhartha Sinha, SSC, learned Senior Standing Counsel for the respondent submitted that CIT(A), NFAC order dated 05.08.2022 allowed the appeal holding that employees' contribution deposited before the due date under Section 139(1) was allowable. ITAT order dated 09.01.2023 allowed the appeal of the Revenue, restoring the disallowance based on the Supreme Court's decision in ***Checkmate Services (P) Ltd. (supra)***, holding:

a. Employees' contribution must be deposited within the statutory due date under relevant Acts.

b. The principle applies irrespective of whether assessment is under Section 143(1) or Section 143(3).

18. On appeal before this Court, having regard to the concession by the counsel for the Appellant, this Court *vide* order dated 18.05.2023 held:

> *"4. Mr Jain submits that while a substantial part of the issue in the appeal is covered by the judgment of Supreme Court rendered in Checkmates Services Pvt. Ltd. vs Commissioner of Income Tax [2022 SCC OnLine SC 1423], there is one limb which still remains alive.*
> *5. According to him, in certain cases, the due date which arose under the subject statute for deposit of employees" contribution towards provident fund, arose on a National Holiday, for instance, 15th August, and the deposit was made on the following day.*
> *5.1 In support of the plea that this aspect is pending examination by the Court, Mr Jain has cited the order of the Coordinate Bench, which included one of us (Rajiv Shakdher, J.), dated 12.01.2023 passed in ITA No. 12/2023 titled as Pr. Commissioner Of Income Tax-7 vs. Pepsico India Holding Pvt. Ltd..*
> *5.2 Mr. Jain says that he would have to move an application for amendment, so that this aspect of the matter, which otherwise emerges from the record, is embedded in the grounds of appeal.*
> *5.3 Leave in that behalf is granted.*

19. By order dated 03.08.2023, this Court allowed the amended appeal to be taken on record with the following observation:

> *"3. This is an application filed on behalf of appellant/assessee seeking amendment of the appeal. The ground which the appellant/assessee*

seeks to incorporate in the appeal is extracted hereafter:

> *"J. BECAUSE the Hon'ble ITAT failed to consider that in certain instances, the due date for the payments under the Provident Fund and the payments under the ESI Act fell on 15.08.2018, which was a national holiday on account of Independence Day. That the payments in the said instances were made on the very next day i.e. 16.08.2018, details of which are already annexed as Annexure P-6(colly) to the Appeal."*

4. We are informed that this very issue arises for consideration in ITA 12/2023, titled PR. Commissioner of Income Tax v. Pepsico India Holdings Pvt. Ltd.

5. Accordingly, the prayer made in the application is allowed.

6. The amended appeal will now be taken on record."

20. Thus, this Court initially considered only one substantial question of law (National Holiday issue) based on the appellant's concession (Order dated 18.05.2023), and disposed of the appeal on 05.09.2023 following ***PCIT v. Pepsico India Holdings*** (ITA No. 12/2023) with the following observations:

> *"3. Resultantly, the appeal is admitted, and the following question of law is framed for consideration by the Court.*
>
> *(i) Whether the Income Tax Appellate Tribunal [in short, "Tribunal"] misdirected itself on facts and in*

law in failing to notice that Rs. 44,28,453/-, the amount payable towards the provident fund and Rs. 72,131/-, the amount payable towards the ESI, fell due on a National Holiday i.e., 15.08.2018 and therefore the deposit made on the following date i.e., 16.08.2018 was amenable to deduction?

4. We had the occasion to deal with a similar question of law in ITA No. 12/2023, titled Pr. Commissioner of Income Tax-7 vs Pepsico India Holding Pvt. Ltd. The observations made by us therein, being apposite, are extracted hereafter:

"5. Mr Deepak Chopra, learned counsel, who appears on behalf of the respondent/assessee, says that in this particular matter, since the deposit of the employee's contribution towards the provident fund was made on 16.08.2018, following a National Holiday i.e., 15.08.2018, the deduction claimed would have to be allowed, as steps had been taken by the respondent/assessee towards the deposit of the said amount on 14.08.2018.

6. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that since the respondent/assessee had deposited the employee's contribution towards the provident fund amounting to Rs. 1,56,12,404/- on 16.08.2018, the Assessing Officer (AO) had rightly disallowed the deduction, as the due date was 15.08.2018.

7. According to us, this submission advanced by Mr Rai cannot be accepted. Since the due date fell on a date which was a National Holiday, the deposit could have been made by the respondent/assessee only on the date which followed the National Holiday.

8. Mr Chopra, as noticed on 12.01.2023, was right that Section 10 of the General Clauses Act would help the respondent/assessee to tide over the objections raised on behalf of the appellant/revenue.

9. Therefore, the second question of law, as framed via the order dated 12.01.2023, which is extracted hereinabove, is answered against the appellant/revenue and in favour of the respondent/assessee.

10. Accordingly, the appeal is closed, in the aforesaid terms."

5. In view of what is stated hereinabove, the question of law, as framed, is answered in favour of the appellant/assessee and against the respondent/revenue."

21. Thereafter, the appellant approached the Supreme Court with a prayer that the concession recorded before this Court was incorrect and they intend to argue the case before this Court. Considering the submissions made by the appellant and without commenting on the merits of the case, the Supreme Court *vide* order dated 08.01.2025 held:

"*5. We have considered the arguments advanced at the bar and also the submission made by the learned senior counsel for the appellant to the effect that the learned counsel, who appeared on behalf of the appellant before the High Court erroneously contended that two substantial questions of law were covered by the Judgment of this Court in* ***Checkmate Services Pvt. Ltd.*** *(supra) against the Assessee, but that is not so.*

6. In the circumstances, we find that an opportunity must be given to the appellant herein to make submissions on those two substantial questions of law and for the purpose of reconsidering whether they were covered by the judgment of this Court in Checkmates Services Pvt. Ltd. (supra) against the Assessee or not.

7. For the aforesaid purpose, we have no option but to set aside the order dated 05.09.2023, although the said order has been accepted by both sides and there is no challenge to the same in the context of there being any error in the said order, but being assailed only for the purpose of seeking to assail the order dated 18.05.2023 and for seeking restoration of ITA

NO.267 of 2023 on the file of the High Court of Delhi at New Delhi on setting aside the order dated 05.09.2023.

8. In the circumstances, we do not wish to consider this case on the merits of the order dated 05.09.2023 passed in ITA NO.267 of 2023 by the High Court of Delhi for the simple reason that the same has been accepted by both sides. However, the said order has to be set aside as it is a final order of the High Court, so as to enable ITA No.267 of 2023 being restored on the file of the High court. Consequently, we also set aside the interim order dated 18.05.2023.

9. In the result, ITA No.267 of 2023 is restored on the file of the High Court. The parties are at liberty to advance their arguments on all substantial questions of law which have been raised by the appellant herein. The High Court is now requested to dispose of the said appeal in accordance with law. All contentions on behalf of both sides are reserved to be advanced before the High court."

22. Mr. Sinha stated that this Court, allowed the CM Application No. 15107 of 2025 and took the amended memo of parties on record. While admitting the appeal on the modified questions of law (suggested by the assessee), *vide order* dated 24.03.2025 it was observed as under:

"1. Admit.

2. The following questions of law arise in the present appeal:

(i) Whether the ITAT erred in law in upholding the adjustment/addition of ₹4,14,22,293/- made to the appellant's income under Section 143(1)(a) of the Income Tax Act, 1961 for the assessment year 2019-20?

(ii) Whether, in any event, the ITAT erred in law in not upholding the appellant's claim for deduction under Section 36(1)(v)(a) of the Act concerning the amount of ₹44,28,453/- pertaining to provident fund and ₹72,151/- pertaining to ESI, which was deposited on 16.08.2018, as the due date fell on a national holding, that is, 15.08.2018?"

23. On the question of adjustment under Section 143(1)(a), Mr. Sinha has referred to the following observations in the impugned order of the ITAT.

> *"4. The undisputed fact in the captioned appeals is that there was a delay in depositing the employees' contribution and the contribution has been deposited beyond the date stipulated under the relevant Fund Act.*
> *5. Though the quarrel is no more res integra, as it has been settled by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd 143 Taxmann.com 178. But, before us, the decision of the co-ordinate bench at Mumbai has been placed in the case of PR Packaging Service in ITA No. 2376/MUM/2022 and it has been seriously argued that the co-ordinate bench has considered the decision of the Hon'ble Supreme Court and yet decided the quarrel in favour of the assessee and against the Revenue.*
> *6. Another argument taken before us is that the disallowance made by the CPC Bengaluru while processing the return u/s 143(1) of the Act is beyond the scope of provisions of section 143(1(a) of the Act and, therefore, cannot be sustained.*
> *……..*
> *9. With our utmost respect to the findings of the co-ordinate bench [supra], we are of the considered view that the co-ordinate bench has ignored the binding ratio decidendi of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd [supra]. It would be pertinent to refer to the most relevant observations of the Hon'ble Supreme Court on the impugned quarrel which read as under:*
> *……..*
> *10. In our understanding, the aforementioned binding observations of the Hon'ble Supreme Court cannot be brushed aside simply because the decision was rendered in the context where the assessment was framed u/s 143(3) and not u/s 143(1)(a) of the Act. In our considered opinion, the decision of the Hon'ble Supreme Court is in the context of allowability of deposit of PF/ESI after due date specified in the relevant Act.*
> *11. The Hon'ble Supreme Court has categorically held that the employees' contribution deposited after respective due date*

cannot be allowed as deduction, and, therefore, it would be incorrect to say that the decision of the Hon'ble Supreme Court is applicable only in the case of an assessment farmed u/s 143(3) of the Act. In our considered view, the ratio decidendi is equally applicable for the intimation framed u/s 143(1) of the Act.

12. Now coming to the challenge that the impugned adjustment is beyond the powers of the CPC Bengaluru u/s 143(1) of the Act is also not correct. In light of the aforementioned decision of the Hon'ble Supreme Court [supra], as mentioned elsewhere, it cannot be stated that the impugned adjustment u/s 143(1) of the Act is beyond the powers of the CPC, Bengaluru.

…….

12. A perusal of the afore-stated provisions show that at every stage in sub-section (1) of the Act, the return submitted by the assessee forms the foundation, with respect to which, if any of the inconsistencies referred to in various sub-clauses are found, appropriate adjustments are to be made. It is an open secret that hardly 3 to 5% of the returnsare selected for scrutiny assessment, out of which, more than 50% are because of AIR Information under CASS and the Assessing Officer cannot go beyond the reasons for scrutiny selection and such cases are called Limited Scrutiny cases and only the remaining returns are taken up for complete scrutiny u/s 143(3) of the Act.

13. Meaning thereby, that exercise of power under sub-section (2) of section 143 of the Act leading to the passing of an order under subsection (3) thereof, is to be undertaken where it is considered necessary or expedient to ensure that the assessee has not understated income or has not computed excessive loss, or has not under paid the tax in any manner,

14. If any narrow interpretation is given to the decisions of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd [supra], it would not only defeat the very purpose of the enactment of the provisions of section 143(1) of the Act but also defeat the very purpose of the Legislators and the decision of the Hon'ble Supreme Court would be made redundant because there would be discrimination and chaos, in as much

as, those returns which are processed by the CPC would go free even if the employees' contribution is deposited after the due date and in some cases the employer may not even deposit the employees' contribution and those whose returns have been scrutinized and assessed u/s 143(3) of the Act would have to face the disallowance.

15. This can neither be the intention of the Legislators nor the decision of the Hon'ble Supreme Court has to be interpreted in such a way so as to create such discrimination amongst the tax payers. Such interpretation amounts to creation of class [tax payer] within the class [tax payer] meaning thereby that those tax payers who are assessed u/s 143(3) of the Act would have to face disallowance because of the delay in deposit of contribution and those tax payers who have been processed and intimated u/s 143(1) of the Act would go scot- free even if there is delay in deposit of contribution and even if they do not deposit the contribution.

16. We are of the considered view that the ratio decidendi of the Hon'ble Supreme Court is equally applicable to the intimation u/s 143(1) of the Act and, therefore, the decision of the co-ordinate bench relied upon by the assessee is distinguishable. Therefore, respectfully following the binding decision of the Hon'ble Supreme Court [supra], all the three appeals of the assessee are dismissed and that of the revenue is allowed."

24. He stated that on this issue for the same Assessment Year, i.e. AY 2019-20, while considering the whether such disallowances can be allowed under Section 143(1), this Court has already taken a similar view in order dated 12.01.2023 passed in ITA No. 12/2023. He has also referred to a decision of the Chhattisgarh High Court in ***BPS Infrastructure v. Income Tax Officer : (2025) 473 ITR 357.***

25. It is his submission that in any case, the law with regard to the subject has been succinctly laid down by the Supreme Court in ***Checkmate Services (P) Ltd. (supra)***.

26. A perusal of the judgment would clearly indicate that the Supreme Court has rendered the decision after considering the intent of the legislation and plain words of the statute. Thus, the argument of the appellant that the decision of the Supreme Court has been rendered considering the amendment which was inserted with effect from 01.04.2021 is prima facie erroneous. On the contrary, the Supreme Court has only made a passing reference of the amendment to ensure its applicability for all Assessment Years. This is also evident from the fact that the Assessment Year involved before the Supreme Court pre-dates AY 2021-22. Further, in relation to the additions under Section 143(1), the Appellant has placed reliance on the decision of the Supreme Court in ***CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd., (2008) 14 SCC 208*** to contend that such an addition could not have been made under the statutory mandate of Section 143(1). In this regard, it is submitted that the provisions of Section 143(1) do permit an addition in certain instances. Reference is made to Section 143(1):

> *"143(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of Section 143, such return shall be processed in the following manner, namely;-*
>
> *(a) The total income or loss shall be computed after making the following adjustments, namely;-*
>
> *(i) Any arithmetical error in the return;*
>
> *(ii) An incorrect claim, if such incorrect claim is apparent from any information in the return;*

(iii) Disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
(iv) Disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
(v) Disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain income", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or
(vi) Addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return;"

27. Accordingly, it is submitted that Section 143(1)(a)(ii) permits adjustment in relation to an incorrect claim, if such incorrect claim is apparent from any information in the return. Employees' contribution to PF/ESI deposited beyond the due date under the relevant law is disallowable under Section 36(1)(va), as now conclusively settled by ***Checkmate Services (P) Ltd.*** *(supra)*. It also needs to be appreciated that the dates of deposit were disclosed in the tax audit report (Form 3CD). Since the due dates under the respective welfare laws are fixed, the delay was apparent from the record. Furthermore, the ratio of ***Checkmate Services (P) Ltd.*** *(supra)* that employees' contributions are distinct from employers' contributions and Section 43B does not override Section 36(1)(va), is an interpretation of substantive law, not dependent on the nature of assessment. This principle governs adjustments even in intimation under Section 143(1)(a).

28. Further, he submitted that the reliance of the appellant on the Constitution Bench decision of the Supreme Court in ***Vatika Township (P) Ltd.,*** is not appropriate. The issue for consideration before the Supreme

Court was in relation to insertion of a proviso which by its very nature is a condition or exception that qualifies, restricts or modifies the application of the main clause to which it is attached. On the contrary, the amendment in the present case relates to an insertion of an "Explanation" without any changes in the main clause. It needs to be appreciated that insertion of an Explanation only clarifies or elucidates the meaning of the main clause without altering its scope or adding new conditions. This is further strengthened by the phrase used in the Explanation: "For the removal of doubts, it is hereby clarified……"

29. On the issue of prospective or retrospective application of the decision of the Supreme Court, it is submitted that the law on this aspect is settled that decisions of the Supreme Court are retrospective unless stated otherwise. Reliance is placed on the decision of the Supreme Court in ***Manoj Parihar v. State of J&K, (2022) 14 SCC 72*** and ***Kanishk Sinha v. State of West Bengal, 2025 SCC OnLine SC 443***.

30. Further on the issue of National Holidays and Section 10 of the General Clauses Act, 1897, he has submitted that this Court in ***Pepsico India Holding Pvt. Ltd. (supra)*** has decided the issue in favour of the appellant and the same was not appealed. Further, the Explanation to Section 36(1)(va) defines "*due date*" as per the respective labour law (EPF Act/ESI Act). The Payment of Wages and PF/ESI Rules specify exact calendar dates; there is no provision for extension if the date falls on a holiday. Section 10 applies where an act is required to be done within a prescribed "time" and the court/office is closed. In the present case, the deposit is to be made to the fund's account electronically, and no "*office closure*" prevented compliance. Electronic payments could have been made on or before the due date. The

extension under Section 10 of General Clauses Act, 1897 cannot override the explicit statutory definition in Section 36(1)(va).

31. He has sought dismissal of the appeal.

32. Having heard the learned counsel for the parties, at the outset, we may state that this appeal was earlier disposed of by this Court on 05.09.2025 as observed in Paragraph 20 above.

33. The appellant thereafter has filed Civil Appeal No.294/2025 which was allowed by the Supreme Court vide order dated 08.01.2025 and the order dated 05.09.2024 was set aside and the matter was remanded back by restoring the appeal on the file of this Court.

34. Pursuant thereto, this Court has framed the following substantial questions of law for the consideration of this Court in this appeal:-

> *"(i) Whether the ITAT erred in law in upholding the adjustment/ addition of ₹4,14,22,293/- made to the appellant's income under Section I43(I)(a) of the Income Tax Act, 1961 for the assessment year 2019-20?*
> *(ii) Whether, in any event, the ITAT erred in law in not upholding the appellant's claim for deduction under Section 36(I)(v)(a) of the Act concerning the amount of ₹44,28,453/- pertaining to provident fund and ₹72,I5I/- pertaining to ESI, which was deposited on 16.08.2018, as the due date fell on a national holding, that is, 15.08.2018?"*

35. The submission of Mr Ganesh, learned senior counsel for the appellant is that Explanation 5 to Section 43B of the Act having brought about in terms of the Finance Act, 2021, which was given effect from 01.04.20214, the same shall be effective prospective and shall have no bearing in respect of the assessment pertaining to AY 2019-20.

36. His submission is also that the judgment of the Supreme Court in ***Checkmate Services (P) Ltd***. (supra) having been delivered on 12.10.2022, much after the assessment order dated 28.05.2020. The AO under Section 143(1) of the Act cannot make any adjustment or additions in respect of the debatable or arguable matter as the said adjustment or additions shall be contrary to the judgments of the Supreme Court and High Courts, which at the time held the fort in favour of the assessee.

37. The submissions made by Mr Ganesh are without merits. The same is on a misreading of the judgment of the Supreme Court in the case of ***Checkmate Services (P) Ltd.*** (*supra*). This we say so for the simple reason that this Court had interpretated Sections 2(24), 36, 15A and 43(B) of the Act without considering the effect of Explanation 5, which was added in terms of the Finance Act, 2021 effect from 01.04.2021. The relevant portions of the judgment are reproduced as under:

> *"36. The factual narration reveals two diametrically opposed views in regard to the interpretation of Section 36(1)(v-a) on the one hand and proviso to Section 43(b) on the other. If one goes by the legislative history of these provisions, what is discernible is that Parliament's endeavour in introducing Section 43-B (which opens with its non obstante clause) was to primarily ensure that deductions otherwise permissible and hitherto claimed on mercantile basis, were expressly conditioned, in certain cases upon payment. In other words, a mere claim of expenditure in the books was insufficient to entitle deduction. The assessee had to, before the prescribed date, actually pay the amounts — be it towards tax liability, interest or other similar liability spelt out by the provision.*
>
> *xxxx xxxx xxxx*
>
> *39. <u>The significance of this is that Parliament treated contributions under Section 36(1)(v-a) differently from those under Section 36(1)(iv). The latter (hereinafter "employers'</u>*

contribution") is described as "sum paid by the assessee as an employer by way of contribution towards a recognised provident fund". However, the phraseology of Section 36(1)(v-a) differs from Section 36(1)(iv). It enacts that "any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of Section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date." The essential character of an employees' contribution i.e. that it is part of the employees' income, held in trust by the employer is underlined by the condition that it has to be deposited on or before the due date.

…….

53. A discussion on the principles of interpretation of tax statutes is warranted. In Ajmera Housing Corpn. v. CIT [Ajmera Housing Corpn. v. CIT, (2010) 8 SCC 739] this Court held as follows : (SCC p. 755, para 36)

> *"36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See Cape Brandy Syndicate v. IRC [Cape Brandy Syndicate v. IRC, (1921) 1 KB 64] and Federation of A.P. Chambers of Commerce & Industry v. State of A.P. [Federation of A.P. Chambers of Commerce & Industry v. State of A.P., (2000) 6 SCC 550] In interpreting a taxing statute, the Court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. (Also see CST v. Modi Sugar Mills Ltd. [CST v. Modi Sugar Mills Ltd., (1961) 2 SCR 189 : AIR 1961 SC 1047])"*

…….

55. One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain

conditions, the conditions are to be strictly complied with.[See e.g., Eagle Flask Industries Ltd. v. CCE, (2004) 7 SCC 377] This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations.

56. That deductions are to be granted only when the conditions which govern them are strictly complied with. This has been laid down in State of Jharkhand v. Ambay Cements [State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368] as follows : (SCC p. 378, paras 23-26)

> *"23. ... In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood changed on account of any subsequent event the exemption would not operate.*
>
> *24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.*
>
> *25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.*
>
> *26. Whenever the statute prescribes that a particular Act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior*

permission is mandatory, therefore, noncompliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

This was also reaffirmed in a number of judgments, such as CIT v. Ace Multi Axes Systems Ltd. [CIT v. Ace Multi Axes Systems Ltd., (2018) 2 SCC 158]

57. The Constitution Bench, in Commr. of Customs v. Dilip Kumar & Co. [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1] endorsed as following : (SCC pp. 19 & 23-24, paras 24 & 34)

"24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution ["265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

*** *** ***

34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi & Sons Ltd. [CIT v. Kasturi & Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter

referred to as Kesoram Industries case, for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

'(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.'"

……..

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

marked distinction has to be borne while interpreting the obligation of every assessee under Section 43-B.

63. In the opinion of this Court, the reasoning in the impugned judgment [CIT v. Checkmate Services (P) Ltd., 2014 SCC OnLine Guj 12521] that the non obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non obstante clause has to be understood in the context of the entire provision of Section 43-B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions— which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory payout. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non obstante clause under Section 43-B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

64. In the light of the above reasoning, this Court is of the opinion that there is no infirmity in the approach of the impugned judgment [CIT v. Checkmate Services (P) Ltd., 2014 SCC OnLine Guj 12521]. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this Court does not find any reason to interfere with the impugned judgment [CIT v. Checkmate Services (P) Ltd., 2014 SCC OnLine Guj 12521]. The appeals are accordingly dismissed.

[emphasis supplied]

38. From a reading of the judgment, the following becomes apparent:

i. Employer's contributions under Section 36(1)(iv) and employees' contributions covered under Section 36(1)(va) read with Section2(24)(x) are fundamentally different in nature and must be treated separately.

ii. Employees' contribution deducted from their salaries are deemed to be income under Section 2(24)(x) and are held in trust by the employer. The employers can claim deduction only if they deposit these amounts on or before the statutory due date under Section 36(1)(va).

iii. The *non-obstante* clause in Section 43B cannot be applied to employees' contributions governed by Section 36(1)(va).

iv. ***Alom Extrusions*** (supra) has been distinguished as the same has not considered Sections 2(24)(x) and 36(1)(va).

v. Explanation 5 to Section 43B was not considered at all while arriving at the decision that employees' contribution must be deposited on or before the due dates under relevant statutes.

39. It can also be seen that the Supreme Court has upheld the impugned judgment of the Gujarat High Court, wherein, in similar facts to the present case, the High Court had refused relief to the assessee, in view of its earlier judgment in ***Tax Appeal No. 637 of 2013*** titled ***Commissioner Of Income Tax II v. Gujarat State Road Transport Corporation,*** wherein it was held as under:-

> *"7.06. Considering the aforesaid provisions of the Act, as per section 2(24)(x), any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees shall be treated as an 'Income'. Section 36 of the Act deals with the deductions in computing the income referred to in section 28 and as per section 36(1)(va) such sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 apply, the assessee shall be entitled to deduction of such amount in computing the income referred to in section 28 if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the "due date" i.e. date by which the assessee is required as an employer to credit the employee's contribution to the employee's account in the relevant fund, in the present case, the provident fund and ESI Fund under the Provident Fund Act and ESI Act. Section 43B is with respect to certain deductions only on actual payment. It provides that notwithstanding anything contained in any other provisions of the Act, a deduction otherwise liable under the Act in respect of..... (B) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him. It appears that prior to the amendment of section 43B of the Act vide Finance Act, 2003, an assessee was entitled to deductions with respect to the sum paid by the assessee as an employer by*

way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees (employer's contribution) provided such sum – employer's contribution is actually paid by the assessee on or before the due date applicable in his case for furnishing return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return. It also further provided that no deduction shall, in respect of any sum referred to in clause (B) i.e. with respect to the employer's contribution, be allowed unless such sum is actually been paid in cash or by issue of cheque or draft or by any other mode on or before the due date as defined in explanation below clause (va) of sub-section (1) of section 36 and where such sum has been made otherwise that in cash, the sum has been realised within 15 days from the due date. By the Finance Act 2003, Second Proviso of section 43B of the Act has been deleted and First Proviso to section 43B has also been amended which is reproduced hereinabove. Therefore, with respect to employer's contribution as mentioned in clause (b) of section 43(B), if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B on actual payment and such deduction would be admissible for the accounting year. However, it is required to be noted that as such there is no corresponding amendment in section 36(1) (va). Deletion of Second Proviso to section 43B vide Finance Act 2003 would be with respect to section 43B and with respect to any sum mentioned in section 43(B) (a to f) and in the present case, employer's contribution as mentioned in section 43B(b). Therefore, deletion of Second Proviso to section 43B and amendment in first proviso to section 43B by Finance Act, 2003 is required to be confined to section 43B alone and deletion of second proviso to section 43B vide amendment pursuant to the

Finance Act, 2003 cannot be made applicable with respect to section 36(1)(va) of the Act. Therefore, any sum with respect to the employees' contribution as mentioned in section 36(1)(va), assessee shall be entitled to the deduction of such sum towards the employee's contribution if the same is deposited in the accounts of the concerned employees and in the concerned fund such as Provident Fund, ESI Contribution Fund, etc. provided the said sum is credited by the assessee to the employees' accounts in the relevant fund or funds on or before the 'due date' under the Provident Fund Act, ESI Act, Rule, Order or Notification issued thereunder or under any Standing Order, Award, Contract or Service or otherwise. It is required to be noted that as such there is no amendment in section 36(1) (va) and even explanation to section 36(1)(va) is not deleted and is still on the statute and is required to be complied with. Merely because with respect to employer's contribution Second Proviso to section 43B which provided that even with respect to employers' contribution [(section 43(B)b], assessee was required to credit amount in the relevant fund under the PF Act or any other fund for the welfare of the employees on or before the due date under the relevant Act, is deleted, it cannot be said that section 36(1)(va) is also amended and/or explanation to section 36(1)(va) has been deleted and/or amended.

It is also required to be noted at this stage that as per the definition of "income" as per section 2(24)(x), any sum received by the assessee from his employees as contribution to any Provident Fund or Superannuation Fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of the such employees is to be treated as income and on fulfilling the condition as mentioned under section 36(1) (va), the assessee shall be entitled to deduction with respect to such employees' contribution. Section 2(24)(x) refers to any sum received by the assessee from his employees as contribution and does not refer to employer's contribution. Under the circumstances and so long as and with respect to any sum received by the assessee from any of his employees to which provisions of sub-clause (x) of sub-section 24 of section 2 applies, assessee shall not be entitled to deduction of such sum

in computing the income referred to in section 28 unless and until such sum is credited by the assessee to the employees' account in the relevant fund or funds on or before the due date as mentioned in explanation to section 36(1)(va). Therefore, with respect to the employees contribution received by the assessee if the assessee has not credited the said sum to the employees' account in the relevant fund or funds on or before the due date mentioned in explanation to section 36(1) (va), the assessee shall not be entitled to deductions of such amount in computing the income referred to in section 28 of the Act..."

40. The above mentioned judgment of the Gujarat High Court is of the year 2014, which predates the 2021 amendment by several years. As such, the interpretation of the Sections 2(24) (x), 36(1)(iv), 36 (1)(v)(a) and 43B by the Gujarat High Court was before the introduction of Explanation 5 to Section 43B of the Act. This would further show that Explanation 5 is clarificatory in nature, elucidating the position of law/provisions of the Act, as existed. Therefore, the contention of Mr Ganesh that Explanation 5 shall be prospective and would not have any bearing on earlier assessment years, i.e., AY 2019-20 in this case, is clearly misconceived.

41. In fact, it is clear from the observations of the Supreme Court that while examining the issue whether for the benefit of deductions to be made available to the assessee, the employees' contributions have to be deposited on or before the due date, there was no occasion to even consider Explanation 5 to Section 43B of the Act. As such, the plea of *sub silentio*, is totally misplaced. The ITAT is justified in relying upon ***Checkmate Services (P) Ltd.*** *(supra)* while dismissing the appeal filed by the appellant. As a necessary corollary of our conclusion, the judgments relied upon by Mr

Ganesh in the case of ***Vatika Township*** *(supra)* and ***Sedco Forex*** *(supra)* would have no applicability to the facts of this case.

42. In fact, the Supreme Court in ***Checkmate Services (P) Ltd.*** *(supra)* had also considered ***Alom Extrusions Ltd.*** *(supra)* and distinguished the same by observing that the judgment had not considered Sections 2(24)(x) and 36(1)(va), and also the separate provisions for employers' and employees' contributions under Section 36(1) of the Act. It is necessary to reproduce the observation of the Supreme Court in ***Checkmate Services (P) Ltd.*** *(supra):*

> *"51. There is no doubt that in Alom Extrusions, this Court did consider the impact of deletion of second proviso to Section 43-B, which mandated that unless the amount of employers' contribution was deposited with the authorities, the deduction otherwise permissible in law, would not be available. This Court was of the opinion that the omission was curative, and that as long as the employer deposited the dues, before filing the return of income tax, the deduction was available.*
> *52. A reading of the judgment in Alam Extrusions, would reveal that this Court, did not consider Sections 2(24)(x) and 36(1)(v-a). Furthermore, the separate provisions in Section 36(1) for employers' contribution and employees' contribution, too went unnoticed. The Court observed inter alia, that: (SCC p. 496, paras 22-24)…"*

43. The judgment of the Supreme Court in ***Checkmate Services (P) Ltd***. *(supra)* in effect had conclusively interpreted the provision of Section 43B of the Act.

44. Insofar as the submission of Mr Ganesh that the AO under Section 143(1) of the Act could not have passed the order dated 28.05.2020 is concerned, it is to be noted that at the time when the AO proposed the deductions, the judgment of the Gujarat High Court in ***Gujarat State Road***

Transport Corporation was in existence, which has been affirmed by the Supreme Court in ***Checkmate Services (P) Ltd.*** *(supra).*If that be so, it cannot be now said that the AO had erred in passing the order. In fact, the ITAT had rightly upheld the same by relying upon the judgment in ***Checkmate Services (P) Ltd.*** *(supra).* As such, we are not inclined to accept this submission of Mr Ganesh.

45. In view of the above discussion it is held the ITAT is justified in passing the order dated 09.01.2023. We find no infirmity in the same. The first question of law is decided against the appellant.

46. Insofar as the issue whether the ITAT erred in law in not upholding the appellant's claim for deduction under Section 36(1)(va) of the Act for an amount of ₹44,28,453/- pertaining to Provident Fund and ₹72,151/- pertaining to ESI which was deposited on 16.08.2018, as the due date fell on a National Holiday i.e., 15.08.2018, is concerned, though Mr. Ganesh has not pressed the issue, since we have already framed the question of law we may proceed to decide the same. This issue has been settled by a co-ordinate Bench of this Court in ***Pepsico India Holding Pvt. Ltd.*** (supra) by holding as under:

> *"5. Mr Deepak Chopra, learned counsel, who appears on behalf of the respondent/assessee, says that in this particular matter, since the deposit of the employee's contribution towards the provident fund was made on 16.08.2018, following a National Holiday i.e., 15.08.2018, the deduction claimed would have to be allowed, as steps had been taken by the respondent/assessee towards the deposit of the said amount on 14.08.2018.*
>
> *6. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that since the respondent/assessee had deposited the employee's contribution*

towards the provident fund amounting to Rs. 1,56,12,404/- on 16.08.2018, the Assessing Officer (AO) had rightly disallowed the deduction, as the due date was 15.08.2018.

7. According to us, the submission advanced by Mr Rai cannot be accepted. Since the due date fell on a date which was a National Holiday, the deposit could have been made by the respondent/assessee only on the date which followed the National Holiday.

8. Mr Chopra, as noticed on 12.01.2023, is right that Section 10 of the General Clauses Act would help the respondent/assessee to tide over the objections raised on behalf of the appellant/revenue.

9. Therefore, the second question of law, as framed via the order dated 12.01.2023, which is extracted hereinabove, is answered against the appellant/revenue and in favour of the respondent/assessee."

47. If that be so, the second question of law is answered in favour of the appellant and against the Revenue.

48. The appeal is accordingly disposed of.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 08, 2025
rk