सत्यमेव जयते

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.154 to 156/PUN/2025
Assessment Years : 2016-17 to 2018-19

Shriniwas Engineering Auto Components Pvt. Ltd., Office No.5, Mansara Apartments, Near LIC Building, Shivajinagar, Pune 411016 Maharashtra PAN : AAJCS8944F	Vs.	ACIT, Circle-6, Pune/ ITO, Ward-6(1), Pune/ NFAC, Delhi
Appellant		Respondent

आयकर अपील सं. / ITA Nos.1843, 1844/PUN/2024 and
ITA No.114/PUN/2025
Assessment Years : 2018-19, 2019-20 and 2020-21

ACIT, Circle-5, Pune	Vs.	Shriniwas Engineering Auto Components Pvt. Ltd., Office No.5, Mansara Apartments, Near LIC Building, Shivajinagar, Pune 411016 Maharashtra PAN : AAJCS8944F
Appellant		Respondent

आयकर अपील सं. / ITA Nos.1423 and 157/PUN/2025
Assessment Years : 2019-20 and 2020-21

Shriniwas Engineering Auto Components Pvt. Ltd., Office No.5, Mansara Apartments, Near LIC Building, Shivajinagar, Pune 411016 Maharashtra PAN : AAJCS8944F	Vs.	ACIT, Circle-6, Pune/ ITO, Ward-6(1), Pune/ NFAC, Delhi
Appellant		Respondent

Appellant by	:	Shri Hari Krishan
Respondent by	:	Shri Amit Bobde
Date of hearing	:	13.10.2025
Date of pronouncement	:	22.12.2025

आदेश / ORDER

PER BENCH :

The following appeals at the instance of assessee as well as Revenue are directed against the separate orders raising common grounds of appeal in some appeals :

ITA No.	*A.Y.*	*Appeal filed by*	*AO/Intimation order*	*Section*
ITA No.154/PUN/2025	*2016-17*	*Assessee*	*26.12.2018*	*143(3)*
ITA No.155/PUN/2025	*2017-18*	*Assessee*	*25.12.2018*	*143(3)*
ITA No.156/PUN/2025	*2018-19*	*Assessee*	*20.04.2021*	*143(3) r.w.s.144B*
ITA No.1843/PUN/2024	*2018-19*	*Revenue*	*02.10.2019*	*143(1)*
ITA No.1844/PUN/2024	*2019-20*	*Revenue*	*17.05.2020*	*143(1)*
ITA No.1423/PUN/2025	*2019-20*	*Assessee*	*17.05.2020*	*143(1)*
ITA No.114/PUN/2025	*2020-21*	*Revenue*	*20.12.2021*	*143(1)*
ITA No.157/PUN/2025	*2020-21*	*Assessee*	*20.12.2021*	*143(1)*

2. We will first espouse the appeals ITA Nos.154 to 156/PUN/ for the A.Yrs. 2016-17 to 2018-19. We take up ITA No.154/PUN/2025 for A.Y. 2016-17 as the lead case. Assessee has raised following grounds of appeal :

> *"The following grounds of appeal are taken independently and without prejudice to one another.*
>
> *1. The Ld. CIT(Appeals) has erred in dismissing the Ground No. 2 of the assessee in respect of disallowances of Rs.62,169/- and Rs.60,93,292/- made by the Assessing Officer on account of late payment of ESIC and PF beyond the period prescribed under the ESIC and PF Acts respectively.*
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> *2. The Ld. CIT(Appeals) has erred in dismissing the Ground No. 3 of the assessee in respect of the addition of Rs.43,20,39,280/- made by the Assessing Officer on account of the capital subsidy received*

from the Maharashtra Government under the Package Scheme of Incentives (2007), by treating it to be of revenue nature.

The CIT(Appeals) has erred in holding that the subsidy of Rs. 43,20,39,280/-is explicitly falling within the definition of income (i.e. revenue receipts) and therefore the action of the Assessing Officer in charging the same to tax is up held.

The CIT(Appeals) has failed to appreciate that, since the subsidy of Rs.43,20,39,280/- has been taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43, therefore by application of the explanation 10 to clause 1 of s. 43 of the Act, the amount of subsidy will not be treated as income u/s 2(24)(xviii) of the Act.

3. The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal."

3. Brief facts of the case are that the assessee is a Private Limited Company engaged in the business of manufacturing of High value casting and forging for Automobiles and other Engineering Industries mainly cylinder blocks, cylinder heads, gear box housing, wheel hubs, differential housing, hydraulic pump housing etc. Return of income for A.Y. 2016-17 furnished on 30.09.2016 declaring loss of ₹1,45,99,312/-. Return processed u/s.143(1)(a) of the Act. Subsequently, case selected for Compulsory Manual Scrutiny followed by validly serving notices u/s.143(2) and 142(1) of the Act. So far as the issue raised in the instant appeal is concerned, we note that ld. AO had examined the issue of subsidy received by the assessee from the Govt. of Maharashtra for Mega Projects under PSI, 2007 vide Industrial Energy and Labour department Resolution No.PSI-1707/(CR-50) IND-8, dated 30.03.2007 for Fixed Capital Investment by new units in under developed areas of the state. Assessee has claimed it as Capital receipt not liable to tax. Ld. AO after examining the issue in detail has observed that in the instant case subsidy received by the assessee is towards Exemption of Stamp Duty,

Exemption of Electricity Duty for a period of 7 years and Industrial Promotion Subsidy and the same has been granted to encourage the business by giving various exemptions which inturn will yield more profits to the assessee and subsidy is not related to any fixed asset therefore the subsidy granted is taxable u/s.2(24)(xviii) of the Act. Ld. AO has referred to plethora of decisions in the assessment order. It has been contended by the assessee that post amendment in section 2(24)(xviii) inserted by Finance Act, 2015 effective from 01.04.2016 assessee in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Act has already been taken into account the amount of subsidy for determination of the actual cost of assets for computing the depreciation in the computation of income filed along with return of income of income for the assessment year under consideration. However, ld. AO was not satisfied with these arguments and submissions and was of the firm view that subsidy in question is not for acquiring any fixed assets and it has been granted to the assessee for encouraging the business and generation of profits and is taxable for the year under consideration. Further, ld. AO has made other disallowances including disallowance made u/s.36(1)(va) of the Act for delay in deposit of Employees contribution to Provident Fund/Employees State Insurance (PF/ESI) of Rs.61,55,461/- along with the addition for subsidy received under PSI, 2007 of Rs.43,20,39,380/-. Income assessed at ₹36,62,36,830/-.

4. Similarly, ld. AO made addition of Capital Receipt for A.Ys. 2017-18 and 2018-19 at Rs.59.64 crore and ₹37.12 crore respectively. Ld. AO made addition on account of delay in

deposit of PF/ESI at Rs.26,95,154/- for A.Y. 2017-18 and Rs.60,93,292/- for A.Y. 2018-19.

5. Aggrieved assessee preferred appeal before ld.CIT(A). For the disallowance u/s.36(1)(va) of the Act, ld. CIT(A) affirmed the action of the Assessing Officer placing reliance on the judgment of Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. Vs. CIT (2022) 448 ITR 518 (SC)*. So far as the issue raised by the assessee against the addition made by ld. AO treating the subsidy as liable to be taxed during the year under consideration, ld. CIT(A) has affirmed the action of the AO. After discussing the incentives received under the Scheme of Govt. of Maharashtra, ld.CIT(A) has further referred to the judgments of Hon'ble Apex Court in the case of *Sahney Steel and Press Works Limited 228 ITR 253 (SC)* and in the case of *CIT Vs. Ponny Sugars and Chemicals Ltd. 306 ITR 392*. Ld.CIT(A) has also discussed the amendment in section 2(24)(xviii) effective from 01.04.2016 and has held that since the purpose of the subsidy is not towards acquiring of any new fixed assets therefore such subsidy cannot be reduced from the actual cost of the assets provided in Explanation 10 to section 43(1) of the Act and therefore taxable in the hands of assessee u/s.2(24)(xviii).

6. Aggrieved assessee is now in appeal before this Tribunal.

7. So far as the issue of addition made on account of subsidy received under the PSI, 2007, ld. Counsel for the assessee vehemently argued referring to various submissions as well as paper book placed on record and has further made reference to the following synopsis of the submissions and

arguments filed before this Tribunal on 08.10.2025 as well as the written submissions filed at the time of hearing :

"1. The assessee has received the following subsidy from the Government of Maharashtra under the Package Scheme of Incentives (PSI) (2007) (Mega Project).

Sr. No.	*A.Y.*	*Amount of subsidy received*	*Amount of subsidy reduced from the actual cost of assets in the depreciation chart for Income Tax Purposes*	*Paper Book Page*
1	*2016-17*	*43.20 Cr.*	*44.57 Cr.*	*5,9,38 & 39*
2	*2017-18*	*59.64 Cr.*	*61.56 Cr.*	*5,9,55 & 56*
3	*2018-19*	*37.09 Cr.*	*37.09 Cr.*	*44, 46, 132, 152 & 159*
4	*2019-20*	*32.24 Cr.*	*33.24 Cr.*	*42,44,147,64 & 170*
5	*2020-21*	*43.41 Cr.*	*43.41 Cr.*	*6,10,72 & 73*

2. The Ld. Departmental Representative (DR) has argued that the subsidy received by the assessee from Government of Maharashtra under the Package Scheme of Incentives (PSI) (2007) (Mega Project) is taxable as income u/s 2(24)(xviii), because explanation (10) to Section 43 of the Income Tax Act is not applicable to the above subsidy for the reason that it is not relatable to the cost of any asset.

The argument of the Ld. Departmental Representative is that even though the assessee in terms of the explanation (10) to Section 43 of the Income Tax Act has taken into account the said subsidy for determination of the actual cost of the assets for claiming depreciation as per Income Tax, the said subsidy is nevertheless to be treated as income under clause (xviii) of Section 2(24) of the Income Tax Act as the subsidy is not relatable to any asset.

3. At the outset it is respectfully submitted that, if the argument of the Ld. Departmental Representative is to be accepted as correct and the subsidy is to be treated as income, the depreciation forgone/given up by the assessee by reducing the subsidy from the cost of the assets for Income Tax purposes, may be allowed to the assessee as alternate relief. Otherwise it will result in double taxation. In this regard reliance is placed on the judgement of the Hon'ble Supreme Court in the case of Mahalakshmi Textile Mills Ltd.

[1967] 66 ITR 710 (SC) and the judgement of Bombay High Court in the case of Ciba of India Ltd. (1989) 47 Taxman 366 (Bombay).

3.1 It is further respectfully submit that the argument of the Ld. Departmental Representative is incorrect for the following reasons.

Clause (XVIII) of section 2(24) was introduced in the Income Tax Act by Finance Act 2015 applicable from Assessment Year 2016-17, to include the Government Grants/Subsidy in the definition of income.

The Central Board of Direct Taxes (CBDT) has issued the explanatory notes to the Finance Act 2015, vide Circular No. 19/2015, F.No.142/14/2015-TPL dated 27-11-2015. Para 5.1 of the circular contains the explanatory note on clause (XVIII) to section 2(24) of the Income Tax Act. The said Para 5.1 is reproduced below.

"5.1 Alignment of provisions relating to taxation of Government Grants with the provisions of Income Computation and Disclosure Standards (ICDS).

5.1 Sub-section (2) of section 145 of the Income-tax Act provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessees or for any class of income. The Central Board of Direct Taxes (CBDT) notified ICDS-I to ICDS-X vide Notification No.S.O. 892(E) dated 31st March, 2015 after wide public consultations.

The ICDS-VII relating to Government grants provides that all Government grants except relating to depreciable asset shall be recognised as income in accordance with the provisions of the said ICDS. The existing provisions of Explanation 10 to clause (2) of section 43 of the Income-tax Act already contained the guidance for treatment of Government grants relating to acquisition of an asset.

However, there was no specific guidance available under the provisions of the Income-tax Act for treatment of other Government grants.

During the public consultations for ICDS, the stakeholders suggested that in order to avoid any future controversy in this matter, there should be specific provision in the Income-tax Act for treating these Government grants as income. The Accounting Standard Committee, which drafted the ICDS, has also examined the suggestions/comments received during public consultations and suggested that the issue of legislative amendment for bringing certainty in this matter may be examined.

In order to avoid any future litigation and controversy in this matter, the definition of income under clause (24) of section 2 of the Income-tax Act has been amended so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State

Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (2) of section 43 of the Income-tax Act."

A perusal of the above para clarifies that before introducing the said clause (XVIII) to Section 2(24) of the Income Tax Act, the existing provisions of explanation (10) to section 43(1) of the Income Tax Act contained the guidance for treatment of the Government Grants/Subsidy relating to depreciation assets. Section 43(1) defines "actual cost of the assets". The said explanation (10) mandates that if the cost of assets acquired by the assessee has been met by some Government Grants/Subsidy then the cost of the assets for the purposes of depreciation shall be reduced by the amount of the Government Grants/Subsidy.

The simple meaning of the explanation (10) is that the assessee will not be allowed depreciation to the extent of the Government Grants/Subsidy received by the assessee if the Government Grants/Subsidy is relatable to acquisition of depreciable asset.

The Central Board of Direct Taxes (CBDT) has notified ICDS-VII regarding income computation and disclosures relating to Government Grants. The said ICDS-VII provides that all Government Grants except relating to depreciable assets shall be recognized as income. Para 5.1 of the explanatory notes has explained that the existing provisions of explanation (10) of Section 43(1) of the Income Tax Act, already contains the guidance for treatment of the Government Grants relating to acquisition of assets. However there was no specific guidance available in the Income Tax Act for treatment of other Government Grants (grants not relating to acquisition of assets.

In other words the Central Board of Direct Taxes (CBDT) has explained that there was clear guidance in explanation (10) to Section 43(1) that the Government Grants/Subsidy which is relatable to a depreciable assets will be reduced from the cost of the assets for the purposes of computing depreciation in respect of that asset under the Income Tax Act. However there was no guidance in the Act about the treatment of the Government Grants/Subsidy that was not relatable to acquisition of asset. The amendment to Section 2(24) i.e. the introduction of Clause (xviii) to Section 2(24) of the Income Tax Act has been made to mandate that the Government Grants/Subsidy not relatable to acquisition of an asset shall be included in the definition of income, if the assessee has not reduced the amount of the Government Grants/Subsidy from the cost of the assets, for claiming depreciation for the Income Tax Act purposes.

In other words from Assessment Year 2016-17 onwards the legislature has given an option to the assessee to either reduce the amount of Government Grant/Subsidy, which is although not relatable to acquisition of assets, from the cost of assets for claiming

depreciation under the Income Tax Act, as per the method provided in explanation (10) to section 43(1) of the Income Tax Act for Government Grants/Subsidy relatable to acquisition of assets or in the alternative treat the said Government Grant/Subsidy as income. It is further respectfully submitted that the above option is not available to the assessee in respect of Government Grant/Subsidy which are relatable to acquisition of assets, which has to be compulsorily reduced from the cost of the assets for claiming depreciation under the Income Tax Act.

Para 5.1 of the explanatory notes has explained the treatment to be given to the Government Grants/Subsidy not relating to acquisition of an assets view of the new clause (xviii) of Section 2(24), in contradiction to the treatment of Government Grants/Subsidy which is relatable to acquisition of depreciable assets.

Para 5.1 have referred to Government Grants relating to depreciable assets in contradiction to the Government Grants not relating to depreciable assets. Therefore the amendment is to be understood as concerning the subsidy not relating to any depreciable assets. Thus the newly introduced Clause (xviii) of Section 2(24) simply provides that the Government Grants even though not relating to depreciable assets, shall not be treated as income, if the subsidy has been reduced from the cost of assets for claiming depreciation under the Income Tax Act. Thus the new clause (xviii) in order to exclude the said subsidy from the definition of income does not require the assessee to relate the subsidy to any depreciable asset. It just requires the assessee to reduce the subsidy from the cost of depreciable assets to claim depreciation on the same for Income Tax purpose.

In other words, from Assessment Year 2016-17 the subsidy not relating to acquisition of assets which has been reduced from the cost of the assets for claiming depreciation as per the Income Tax Act, shall not be treated as income. If it is not reduced from the cost of acquisition of assets it will be treated as income under clause (xviii) of section 2(24). However the subsidy which is relatable to acquisition of depreciable asset has to be compulsorily reduced from the cost of asset for claiming depreciation.

4. In the present case as evidenced from the enclosed depreciation charts for Income Tax purpose, the assessee has duly reduced the amount of the subsidy for the all the five Assessment Years from the cost of assets and has not claimed depreciation to the extent of the amount of subsidy.

Legislature has given the option to the assessee to either not to claim depreciation on the amount of subsidy or offer the subsidy as income. The assessee in the present case has chosen not to claim depreciation on the subsidy from Assessment Year 2016-17 onward i.e. the Assessment Year from which the amendment was introduced, and not offer/treat the subsidy as income."

"Law has changed from A.Y. 2016-17 on the subject. From Assessment year 2016-17 government subsidy will be treated as income u/s 2 (24) (xviii) only if it is not accounted for, as required by explanation 10 to section 43 of the Act, in determination of the cost of the assets for claiming depreciation.

(a) The assessee has duly accounted for the subsidy from the cost of the assets, for determination of the actual cost of the assets for claiming depreciation as per Income Tax. (Paper Book page No. 5, 9 and 79 para 4.2) Accordingly clause (xviii) of section 2 (24) does not apply. Kindly refer to synopsis of the submissions and arguments (Annexure A).

(b) It was argued by the Ld. DR that since the government subsidy received in this case, is not relatable to any assets the explanation 10 to section 43 (1) of the Act does not apply in this case, and that the fact that the assessee has reduced the amount of subsidy from the cost of assets for claiming deprecation will not absolve the assessee from the rigour of clause (xviii) added to the definition of income u/s 2 (24) of the Act from A.Y. 2016-17.

As submitted in the synopsis of submissions enclosed at (annexure A), the amendment to section 2 (24) of the Act by adding the sub clause (xviii) itself has been brought to deal with such subsidy that are not relatable to any assets.

In this regard it is submitted that from A.Y. 2016-17 onward to decide as to whether the amount of government subsidy will be treated as income by application of the said clause (xviii) of section 2 (24) or not, the applicability of explanation 10 to section 43 (1) is not relevant. In order to exclude the government subsidy from the definition of income, u/s 2 (24) (xviii) the assessee is not required to show that explanation 10 to section 43 (1) is applicable. In other words there is no requirement that the subsidy in question should be relatable to assets.

What is required is that the assessee should reduce y the amount of subsidy from the cost of assets for the purposes of claiming depreciation. relevance of the explanation 10 to section 43(1) of the Income Tax Act is limited to the extent that the amount of subsidy is to be reduced as per the method provided in the explanation.

It is emphasised that the expression "In accordance with" used in sub clause (a) of clause (xviii) to section 2 (24) does not mean that in order to exclude the government subsidy from the definition of income the assessee has to established that the explanation 10 to section 43 (1) is squarely applicable to the subsidy i.e. the subsidy is relatable to assets.

(c) While interpreting the expression "in accordance with" the Hon'ble Supreme Court in para 96 of its judgement in the case of State of

Haryana Vs State of Punjab JT 2004 (5) SC 72, 2004 (6) Scale 75, (2004) 12 SCC 673 have held as fallows.

The phrase used is "in accordance with" and not "under". "In accordance with" in the context implies similarity or harmony but not identity.

(d) While deleting the adjustment made u/s 143 (1) (a) of the Act, in assessee's own case for A.Y. 2018-19, 2019-20 and 2020-21, the CIT (A) has held that where the assessee has accounted for the government subsidy from the cost of the asset for determination of the actual cost of asset for claiming depreciation, subsidy is not to be treated as income u/s 2 (24) (xviii) of the Act."

8. On the other hand, ld. Departmental Representative submitted that this Tribunal in assessee's own case in *ITA No.2992/PUN/2017, dated 27.04.2022 for A.Y. 2014-15* has held that the subsidy received by the assessee is not for acquiring any fixed assets and therefore it cannot be reduced from the cost of the asset and therefore has rightly been treated as income u/s.2(24)(xviii) of the Act and taxed during the year. Further, reliance placed on the following decisions :

1. *Serum Institute of India (P) Ltd. Vs. Union of India (2023) 157 taxmann.com 107 (Bombay)*
2. *Orican Enterprises Ltd. Vs. DCIT (2025) 176 taxmann.com 27 (Mumbai-Trib)*
3. *JCIT (SD) Vs. Kute Sons Dairys Ltd. (2025) 170 taxmann.com 636 (Pune Trib.)*
4. *The Thane Zilla Madhyamik Shikshak Sangh Sahakari Patpedhi Maryadit Vs. ACIT – ITA Nos. 1249 and 1250/MUM/2017 dated 17.05.2017*
5. *Atharva Polymers Private Limited Vs. DCIT – ITA No.1912/PUN/2019 dated 06.07.2022*
6. *The PCIT Vs. M/s. Welspun Steel Ltd. – Income Tax Appeal Nos. 1743, 1744, 1834/2016 and ITA No.15/2017, dated 26.02.2019*

9. We have heard the rival contentions and perused the record placed before us and have carefully gone through the submissions as well as the decisions/judgments relied on by both the sides. The issue before us is regarding the taxability of the subsidy of Rs.43,20,39,280/- received during the year by

the assessee from the Government of Maharashtra for Mega Projects under the Package Scheme of Incentive, 2007. Such type of subsidy has been received by the assessee in the past also and the assessee has been claiming it to be a Capital receipt not liable to be taxed and similar issue came up for our consideration for the immediately preceding A.Y. 2015-16 in ITA No.201/PUN/2025 dated 10.12.2025 and the appeal has been allowed by following the precedent of this Tribunal. Finding of this Tribunal reads as under :

> *"8. We have heard the rival contentions and perused the record placed before us. We observe that the assessee has received Subsidy from the Government of Maharashtra under the Package Scheme of Incentives, 2007 at ₹37,84,89,268. We also note that assessee has credited the said Subsidy in its profit and loss account but while computing the income to file income-tax return the same has been reduced it from the Net Profit claiming it to be Capital Receipt not liable to tax. As submitted by ld. Counsel for the assessee that this issue has come up before this Tribunal in assessee's own case on number of occasions, we take note of the decision of this Tribunal in ITA No.2992/PUN/2017 dated 27.04.2022 for A.Y. 2014-15 (supra), wherein also subsidy of ₹36,08,69,697 was received and claimed as a Capital Receipt. For A.Y. 2014-15 Revenue was in appeal raising a ground that since there is direct link to the investment in Fixed Asset by the eligible unit therefore as per Explanation 10 to section 43(1) of the Act since the cost of asset has been met directly or indirectly by the Central Govt, State Govt. or any authority then so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset. We further find that this Tribunal has dismissed the Revenue's appeal observing as follows :*
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> > *"10. We heard the rival submissions and perused the material on record. We have carefully gone through the Package Scheme of Incentives, 2007, the preamble of the scheme, extracted above, clearly indicates the intention behind grant of subsidy was to encourage the setting up the new industries in under developed region in the State of Maharashtra. Indisputably, it is not the case of the Assessing Officer that the subsidy is revenue in nature, as the Assessing Officer himself had invoked the provisions of Explanation 10 to section 43(1) of the Act. Therefore, the issue that arises for our consideration in the present appeal is whether the amount of subsidy received from the Government of Maharashtra shall go to reduce the actual costs of assets u/s 43(1) for the*

purpose of allowing the depreciation u/s 32 of Act. No doubt, the subsidy was granted in terms of the certain percentage of fixed assets to be disbursed in the form of refund of octroi, electricity duty exemption, entry tax refund, VAT etc. over a period of 8 years. Then the next question, that arises for consideration in such circumstances is that, can be it said that subsidy is granted to meet the cost of the actual fixed assets, merely because the amount of subsidy is calculated in term of certain percentage of investment in fixed assets. The Hon'ble Supreme Court had an occasion to consider the identical issue in the case of CIT vs. P.J. Chemicals Ltd., 210 ITR 830 and after review of the case law on the point, the Hon'ble Supreme Court held as under :-

> *"Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the 'actual cost. The expression 'actual cost in section 43(1) of the Income-tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from 'actual cost'. The amount of subsidy is not to be deducted from the 'actual cost' under section 43(1) for the purpose of calculation of depreciation etc."*

11. The Hon'ble Gujarat High Court in the case of CIT vs. Swastik Sanitary Works Ltd., 286 ITR 544 (Guj.) following the principle laid down by the Hon'ble Supreme Court in the case of P.J. Chemicals Ltd. (supra) held that the subsidy is intended as an incentive to encourage entrepreneurs to move and establish industries,, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost" as defined under the provisions of section 43(1) of the Act. Similarly, the Hon'ble Bombay High Court in the case of PCIT vs. Welspun Steel Ltd., 264 Taxman 252 followed the ratio of the decision of the Hon'ble Gujarat High Court (supra).

12. As regards to the applicability of Proviso to Explanation 10 to section 43(1) which was inserted in the Statute w.e.f. 1.4.1999 by the Finance Bill (2) of 1998, the Proviso take cares of situation where such subsidy, grant or reimbursement is such nature that subsidy, grant or reimbursement cannot be directly relatable to the assets acquired by an assessee. In such a situation, the Proviso envisages that so much of amount which bears to the total

subsidy, reimbursement or grant, the proportion as such assets bears to all the assets in respect of or with reference to which subsidy or grant is so received shall be deducted in the actual cost of the asset of the assessee. Thus, the proviso envisages adjustment of subsidy in the assets of the assessee. In case the subsidy grant is not directly relatable to particular asset. Since in the preceding paras we held that the provisions of Explanation 10 to section 43(1) have no application to the facts of the present case, the question of applicability of Proviso does not arise. In the light of the above, we hold that the amount of subsidy is not to be deducted from the actual cost u/s 43(1) for the purpose of calculation of depreciation and the provisions to Explanation 10 to section 43(1) have no application to the facts of the present case. We are forfeited in taking this view by the decision of the Hon'ble Bombay High Court in the case of Welspun Steel Ltd. cited supra. This decision being that of Jurisdictional High Court is binding on us. Therefore, it is not necessary for us to deal with the decision of the Hon'ble Delhi High Court in the case of Steel Authority of India Ltd. (supra) and the Hon'ble Karnataka High Court in the case of Shree Renuka Sugars Ltd. (supra) relied upon by the ld. CIT-DR. Therefore, we do not find any merit in the ground of appeal no.2 and 3 filed by the Revenue. Accordingly, ground of appeal no.2 and 3 stands dismissed."

9. From perusal of the above finding of this Tribunal, we find that the same is squarely applicable on the facts of the instant case and this Tribunal has held that since the provisions of Explanation 10 to section 43(1) have no application to the case of the assessee, the question of applicability of proviso to Explanation 10 to section 43(1) of the Act does not arise. In other words, the Tribunal has held that since the alleged subsidy received by the assessee is not relatable to any Fixed Asset, therefore, Explanation 10 to section 43(1) will not apply. Further, the Tribunal taking consistent view has held that the subsidy received by the assessee from the Government of Maharashtra under the Package Scheme of Incentives, 2007 is a Capital Receipt. Finding of ld.CIT(A) is reversed. Grounds of appeal raised by the assessee are allowed.

10. We further note that an amendment has been brought in from 01.04.2016 inserting section 2(24)(xviii) of the Act which reads as under :

"2(24)xviii) : Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,—

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;

11. In the above provision, reference is made to Explanation 10 section 43(1) of the Act which reads as under :

"Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee

Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."

12. Now post amendment, assessee has changed the procedure Upto A.U. 2015-16 it was shown as Capital receipt and the total amount was claimed as exempt but from A.Y. 2016-17 onwards assessee has reduced the subsidy from the cost of the assets and as a result of which the depreciation claim has been reduced. Whether such treatment given by the assessee is correct or not needs to be examined.

13. We note that post amendment in section 2(24)(xviii) of the Act, the subsidy is required to be treated as income for the year other than the subsidy or grant which is taken into account for determination of the actual cost of the asset in

accordance with the provisions of Explanation 10 to clause (1) of section 43 subsidy or grant by the Central Govt. for the purpose of the corpus of a trust or institution established by the Central Govt. or a State Govt. as the case may be. Claim of the assessee is that it falls under clause (a) of section 2(24)(xviii) and therefore it has reduced the subsidy from the actual cost of the asset in accordance with the provisions of Explanation 10 to section 43(1) of the Act. We note that Explanation 10 to section 43(1) comes into operation where the subsidy is received by the assessee towards acquiring of the fixed assets. It only deals with two situations, firstly where the subsidy is received specifically for a particular asset, then in such case so much such cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost with the assessee. However, in case the subsidy granted is specifically not relatable to a particular asset but it is granted for acquiring the fixed assets then in such case so much it bears the total subsidy or reimbursement of grant the same proportion as such asset bears to all the assets in respect of all or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of asset by the assessee.

14. The assessee in the instant case has made out its case that it falls under proviso to Explanation 10 to section 43(1) of the Act and has done the treatment accordingly apportioning the subsidy on the total fixed assets and after reducing it from fixed assets has claimed depreciation.

15. Now at this juncture, we would like to take note of the decision of this Tribunal which has been rendered for A.Y.

2014-15 and has been followed by this Tribunal for A.Y. 2015-16 and the same already stands extracted (supra). For the sake of repetition, we again reference to para 12 of this Tribunal's decision in *ITA No.2992/PUN/2017, dated 27.04.2022 for A.Y. 2014-15* :

> *"12. As regards to the applicability of Proviso to Explanation 10 to section 43(1) which was inserted in the Statute w.e.f. 1.4.1999 by the Finance Bill (2) of 1998, the Proviso take cares of situation where such subsidy, grant or reimbursement is such nature that subsidy, grant or reimbursement cannot be directly relatable to the assets acquired by an assessee. In such a situation, the Proviso envisages that so much of amount which bears to the total subsidy, reimbursement or grant, the proportion as such assets bears to all the assets in respect of or with reference to which subsidy or grant is so received shall be deducted in the actual cost of the asset of the assessee. Thus, the proviso envisages adjustment of subsidy in the assets of the assessee. In case the subsidy grant is not directly relatable to particular asset. Since in the preceding paras we held that the provisions of Explanation 10 to section 43(1) have no application to the facts of the present case, the question of applicability of Proviso does not arise. In the light of the above, we hold that the amount of subsidy is not to be deducted from the actual cost u/s 43(1) for the purpose of calculation of depreciation and the provisions to Explanation 10 to section 43(1) have no application to the facts of the present case. We are forfeited in taking this view by the decision of the Hon'ble Bombay High Court in the case of Welspun Steel Ltd. cited supra. This decision being that of Jurisdictional High Court is binding on us. Therefore, it is not necessary for us to deal with the decision of the Hon'ble Delhi High Court in the case of Steel Authority of India Ltd. (supra) and the Hon'ble Karnataka High Court in the case of Shree Renuka Sugars Ltd. (supra) relied upon by the ld. CIT-DR. Therefore, we do not find any merit in the ground of appeal no.2 and 3 filed by the Revenue. Accordingly, ground of appeal no.2 and 3 stands dismissed."*

16. In the above finding of this Tribunal, it has been clearly held that the amount of subsidy is not to be deducted from the actual cost u/s.43(1) of the Act for the purpose of calculation of depreciation and the provisions of Explanation 10 to section 43(1) have no application to the facts of the present case. This is a clear cut factual finding of this Tribunal holding that assessee's case does not fall in Explanation 10 to section 43(1)

of the Act. Even during the course of hearing before this Tribunal also, ld. Counsel for the assessee stated that the subsidy is not relatable to any particular fixed assets and they have only apportioned it to various assets on the proportionate basis of total amount of fixed assets.

17. Ld. DR relied on the decision of Coordinate Bench, Mumbai in the case of *The Thane Zilla Madhyamik Shikshak Sangh Sahakari Patpedhi Maryadit Vs. ACIT – ITA Nos. 1249 & 1250/Mum/2017 order dated 17.05.2017* and referred to para 3.3 wherein it was held that "*it is said that one of the basic principles of tax-administration is that a litigant cannot and should not be allowed to urge the reverse of what was pleaded before the statutory forum/court. In other words, it should not be allowed to blow hot and cold at the same time. It is a part of rule of evidence (Estoppel rule) which bars a party from denying or alleging certain facts owing to his/its previous conduct, allegation or denial.*" Ld. DR in support of its argument referring to the judgment of Hon'ble Jurisdictional High Court in the case of The *PCIT Vs. M/s. Welspun Steel Ltd. dated 26.02.2019* drew the attention of the Bench to para Nos. 9 to 12 which read as under :

> *"9. The second question raised by the Revenue is consequent of the first question, in which, the Revenue argues that, if the subsidy is treated as a capital in nature, the same must bring down assessee's costs of acquisition of plant and machinery. The assessee's claim of depreciation to that extent must shrink. Assessee argues that, the Tribunal correctly held that, the subsidy had not been given in relation to acquisition of plant or machinery and that, therefore, same cannot be adjusted towards cost of acquisition.*
>
> *10. It is undoubted that, the subsidy had no relation to the assessee's acquisition of plant or machinery. It was to be granted to an industry which had set up the new industrial unit in the District*

of Kutch. In such back-ground, question arises whether such subsidy would be adjustable towards assessee's costs of acquisition of capital assets. We may notice that, a similar question was considered by Division Bench of Gujarat High Court in case of CIT v/s. Grace Paper Industries Pvt. Ltd., reported in 183 ITR 591. The Court noted that, the subsidy was granted by the Government for development of industries in back-ward areas. It was not part of the actual cost of plant or machinery. The Court, therefore, held that it could not have been deducted towards costs of acquisition. The Court held as under:-

> *"We have carefully considered the provisions relating to the grant of cash subsidy under the schemes framed by the Central Government and the State Government. The Central Government as well as the State Government noticed that areas specified as backward areas and tribal areas were undeveloped or under-developed. Entrepreneurs were not willing to set up industries in such undeveloped or under-developed areas. The industries were concentrating only in urban areas. In other words, rapid urbanization was taking place. So far as the State of Gujarat is concerned, there was rapid industrial growth in cities like Baroda, Ahmedabad and Surat resulting in strain on municipal services. Urbanization created several problems such as pollution, growth of slums etc. It was also necessary to have balanced growth of industry in different regions. However, as pointed out above, entrepreneurs were reluctant to set up industries in backward areas. These areas were identified as backward because there was un-development or under-development of industries in these areas. It was, therefore, that the Government decided to give financial incentives to encourage and induce entrepreneurs to move to backward areas and establish industries there so that the region may develop and promote the welfare of the people living in that region. One of the incentives which the Government decided to grant was cash subsidy so that entrepreneurs could utilize such cash subsidy for any purpose connected with the establishment of industries in the backward areas. Once the decision to give cash subsidy was taken, the Government had to work out some method to determine the quantum of such subsidy. In other words, the question as to how the amount of cash subsidy should be determined had to be considered by the Government. The Government, in order to determine the amount of cash subsidy, decided to follow one of the recognized methods of working it out on the basis of the amount invested by an entrepreneurs in acquiring capital assets as cash subsidy. The scheme does not say as to in what manner the subsidy was granted is to be utilized. In other words, the entrepreneur to whom the subsidy was granted was free to utilize it in any manner he liked. It would, therefore, appear that quantification of subsidy on the basis of investment was a measure adopted by the Government for*

convenience to work out the subsidy. If subsidy could be utilized by the entrepreneur in any manner he liked, could it be said that it was granted for meeting the cost of the capital assets? In our opinion, taking an overall view of the various provisions of the scheme, it is difficult to hold that cash subsidy was granted to entrepreneur to meet the cost of the fixed assets or part thereof. The cost of the fixed assets was merely adopted as a measure for working out subsidy. In fact, a careful examination of the scheme reveals that it is the value of the fixed assets and not its cost which is adopted as the basis for computing the amount of the subsidy. Emphasis on value and not the cost is evident from the fact that land and building already owned by an industrial unit, cost of tools, jigs, dies and moulds, transport charges, insurance premium, erection cost, value of second-hand machinery purchased by an industrial unit etc. were to be taken into account while computing the value of fixed assets for the purposes of subsidy. In other words, it was the value of the fixed assets which formed the basis for computation of subsidy to be granted under the scheme. Subsidy, in our opinion, did not meet the cost of the fixed assets directly or indirectly. Under the scheme of the Central Government or the scheme of the State Government, cash subsidy was quantified by determining the same at a specified percentage of the value/ cost of the fixed assets. Therefore, as observed above, the basis adopted for determining the cash subsidy with reference to the cost or value of fixed assets was only a measure for quantifying the subsidy and it could not be said that the subsidy was given for the specific purpose of meeting any portion of the cost of the fixed assets. The subsidy was granted to compensate the entrepreneur for the hardship and inconvenience which he might encounter while setting up industries in backward areas."

11. Similar issue came up for consideration again before the Gujarat High Court in CIT v/s. Swastik Sanitary Works Ltd., reported in 286 ITR 544. It was a case in which, the Government subsidy was intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries. In such a case, specified percentage of the fixed capital cost, which was the basis for determining the subsidy, would be granted. The Court held that, such basis for determining the subsidy was only a measure adopted under the scheme to quantify the financial aid and it was not a payment, directly or indirectly to meet any portion of the actual cost of acquisition of capital asset. It was held and observed as under:-

> *"In so far as question No.2 is concerned, this court finds that the same is squarely covered by the decision of the Supreme Court in CIT v. P. J. Chemicals Ltd., [1994] 210 ITR 830. In the said case, after review of the law on the point, the Supreme Court has held as under (headnote):*

"Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the 'actual cost'. The expression 'actual cost' in section 43(1) of the Income Tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from 'actual cost'. The amount of subsidy is not to be deducted from the 'actual cost' under section 43(1) for the purpose of calculation of depreciation etc."

No question of law, therefore, arises in this respect.

12. Question No.3 itself records that the issue at hand is covered by the decision of this Court in case of HDFC v/s. DCIT reported in 366 ITR 505 but that, the department has not accepted the decision of the High Court. In that view, this question also is not required to be entertained."

18. Now once it has been clearly held in the decision of this Tribunal in assessee's own case for A.Y. 2015-16 that the subsidy received by assessee is not relatable either directly or indirectly to the fixed assets acquired by the company for carrying out the manufacturing process, then such fact remains unchanged despite the amendment brought in from 01.04.2016 inserting section 2(24)(xviii) of the Act. So the only purpose for which subsidy is granted has been rightly observed by the AO in the assessment order, that it has been granted towards Electricity duty exemption for a period of 7 years, exemption from payment of stamp duty and industrial promotion subsidy. We also take note of the Industrial Promotion Subsidy which means an amount equivalent to the percentage of 'Eligible investments' which has been agreed to as a part of the customised package or the amount of tax payable under Maharashtra Value Added Tax Act (MVAT),

2002 and Central Sales tax (CST) Act, 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjustment of set off or other credit available for such period as may be sanctioned by the State Govt., less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp duty (as may be specified by the Government) availed by the eligible Mega Projects under PSI, 2001/2007 whichever is lower and also the claim of subsidy is required to be made on annual basis. On depth analysis of the Package Scheme of Incentives for Mega Projects by the assessee under the consideration, we find that alleged subsidy received by assessee is not relatable to any fixed asset and therefore the case of the assessee is not falling in Explanation 10 to section 43(1) of the Act and therefore section 2(24)(xviii) of the Act comes into operation and the subsidy received by the assessee is to be treated as income liable to be taxed for the year under consideration. We therefore fail to find any infirmity in the order of ld.CIT(A) and the common grounds of appeal No.2 raised by the assessee for the Assessment Years 2016-17 to 2018-19 relating to taxability of Subsidy are dismissed.

19. Now we come to the second issue regarding the disallowance u/s.36(1)(va) of the Act for which the assessee has commonly raised this ground in ITA No.154 to 156/PUN/2025 for A.Y. 2016-17 to A.Y.2018-19 including Cross appeals ITA Nos. 1423 and 157/PUN/2025 for A.Y. 2019-20 and A.Y.2020-21. Assessee has also raised the additional grounds for A.Yrs. 2016-17 to A.Y. 2020-21 before this Tribunal which reads as under :

"Common Ground for A.Y. 2016-17 to A.Y. 2018-19 (except figures). Ground No.1 raised for A.Y. 2016-17 is reproduced below :

1. The ld.CIT(Appeals) has erred in dismissing the Ground No.2 of the assessee in respect of disallowances of Rs.62,169/- and Rs.60,93,292/- made by the Assessing Officer on accuont of late payment of ESIC and PF beyond the period prescribed under the ESIC and PF Acts respectively.

Grounds for A.Y. 2019-20 (cross appeal by assessee) :

The following grounds of appeal are taken independently and without prejudice to one another.

1. The Ld. CIT(Appeals) has erred in dismissing the Ground No. 2 of the assessee in respect of disallowances of Rs. 78,78,997/-made by the Assessing Officer on account of late payment of employee's contribution to ESIC and PF beyond the period prescribed under the ESIC and PF Acts respectively.

2. The total payments of Rs. 78,78,997/- made by the assessee to the government account in respect of the employee's contribution to Provident Fund and ESI of Rs. 78,78,997/- disallowed by the department for the reasons that the said payments have been made after the due dates falling in a particular month; say April 2018 may be treated as payments made against the due dates of payments of the employee's contribution to ESI and the employee's contribution to the provident Fund falling in the next month; say May 2018 and so on for all the months in the Financial Year and the deduction may be allowed for the same u/s 36 (1) (va) of the Income Tax Act.

3. The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal."

Grounds for A.Y. 2020-21(cross appeal by assessee) :

"1. The ld. Addl/Joint CIT(Appeals) has erred in confirming the addition of Rs.62,32,826/- made by the Assessing Officer on account of late payment of PF and ESIC into the relevant funds.

2. The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal."

Commonly raised Additional Ground for A.Ys. 2016-17 to 2020-21 (except figures). Additional Ground raised for A.Y. 2016-17 is reproduced below:

"The total payments of Rs.61,35,312/-made by the assessee to the government account in respect of the employee's contribution to ESI of Rs.41,707/- and the employee's contribution to the Provident Fund of Rs.60,93,605/-disallowed by the department for the

reasons that the said payments have been made after the due dates falling in a particular month; say April 2015 may be treated as payments made against the due dates of payments of the employee's contribution to ESI and the employee's contribution to the provident Fund falling in the next month; say may 2015 and so on for all the months in the Financial Year and the deduction may be allowed for the same u/s 36 (1) (va) of the Income Tax Act.

4. The above additional ground of appeal could not be taken at the time of filing the appeal, as the matter could not be appreciated from this perspective. The additional ground however does not require any verification of new facts. All the facts for allowing the deduction are already available on record. The additional ground goes to the root of the deduction u/s 36 (1) (va) of the Act.

The statements of the payments totalling to Rs.61,35,312/- are attached herewith.

5. PRAYER

It is accordingly prayed that the above additional ground of appeal may be admitted for adjudication of the appeal in the interest of justice.

In this regard reliance is placed on the following judgements.

(i) NTPC Ltd. [2017] 88 taxmann.com 561 (SC).

(ii) Jute Corpn. of India Ltd. [1990] 53 Taxman 85 (SC).

(iii) Ahmedabad Electricity Co. Ltd. [1993] 66 Taxman 27 (Bombay).”

20. Ld. Counsel for the assessee has submitted that even though the judgment of Hon’ble Apex Court in the case of *Checkmate Services Pvt. Ltd. Vs. CIT (supra)* is applicable on the assessee for the delay in deposit of Employees Contribution towards PF /ESI, the only argument is that the Employees contribution disallowed for delay in deposit in the first month of the financial year is like an advance amount for the dues of the following month and if there is delay in deposit of amount of following month then the disallowed amount of previous month can be adjusted as advance payment of following month. He also gave an example that for the month

of April, 2015 the due date to deposit the contribution towards PF/ESI is 15.05.2015 and the assessee has deposited the amount on 18.05.2015. Now in such case, the employees contribution towards PF/ESI in April 2015 has to be disallowed. However, for the subsequent month again there is delay but the contribution for PS/ESI for April, 2015 which has been deposited in the month of May, 2015 and the assessee has not received benefit for such contribution and therefore the same can be considered as advance payment for the Employees contribution towards PF/ESI for the month of May, 2015. Similar analogy has been drawn for the remaining amount as well as other assessment years under appeal. The only prayer is that the matter may please be restored to the file of ld. Jurisdictional Assessing officer who can carry out necessary verification and if contention is accepted then the assessee is eligible to part relief. Submission of ld. Counsel for the assessee reads as under :

> *"2. The above disallowance has been challenged by the assessee before the Hon'ble Tribunal vide ground No. 1 of its appeal. On receipt of the notice of hearing from the Hon'ble Tribunal, on verification/appreciation of the matter while preparing the appeal, it has been realized that the payment of the above dues to the government account in the month of April 2015, though was made after the due dates falling in April 2015 as specified by the ESI Act and Provident Fund Act, these payments would qualify as payments u/s 36 (1) (va) of the Act against the respective amounts due for payment in the next month of May 2015, as these payments disallowed for the month of April 2015 have been made before the due dates of payment falling in the month of May 2015. Similarly, the respective payments made after the due dates in May 2015 and disallowed for that reason would qualify for deduction as payments made before the due dates for payments falling in the next month of June 2015 and so on, for all the months in the Financial Year. In other words, the payments made in the month of April 2015 after the due dates and disallowed for that reason, should be treated as payments made before the due dates falling in the month of May 2015 and so on."*

21. On the other hand, ld. DR supported the order of ld.CIT(A).

22. We have heard the rival contentions and perused the record placed before us. Admittedly, post judgment of Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. Vs. CIT (supra)* in case there is delay in deposit of Employees contribution towards PF/ESI same is liable to be charged as income u/s.2(24)(x) r.w.s.36(1)(va) of the Act. Now the contribution towards PF/ESI received from employees are on the basis of the monthly salary and the assessee is required to deposit the Employees contribution deducted in the subsequent month before the due date prescribed under the relevant Act of PS/ESI. In case there is delay of even a day or more, then such contribution is required to be added in the hands of assessee u/s.2(24)(x) of the Act. Now the assessee has made out a case before us that on account of delay in deposit, the amounts which have been treated as income of the assessee, stands deposited with the particular Department and for income tax purpose such delayed payments may be considered as advance payment for the liability of Employees contribution for the subsequent periods. This issue has been raised before this Tribunal for the first time and was never raised before the lower authorities. Certainly for the amount which has been disallowed u/s.2(24)(x) r.w.s.36(1)(va) of the Act assessee has not received any benefit and that amount remains deposited, however, whether such deposited amounts which have been disallowed for the particular month for which it was deposited can be taken as advance deposit for the subsequent months needs to be examined by the Revenue authorities on due consideration of details to be filed by the

assessee. We therefore deem it appropriate to set aside this issue raised in Common Grounds for A.Y.2016-17 and A.Y. 2017-18, Additional Grounds of appeal for the A.Yrs. 2016-17 to 2020-21 and Ground No.1 for Cross Appeals for A.Yrs. 2019-10 and 2020-21 to the file of ld. Jurisdictional Assessing Officer for necessary adjudication. Needless to mention that ld. JAO shall afford reasonable opportunity to the assessee. Additional Grounds of appeal raised by the assessee are allowed for statistical purposes.

23. Apart from the above two issues, the only issue not common for all the assessment years 2016-17 to 2018-19, is the one raised in A.Y. 2018-19 in Ground No.1 that ld.CIT(A) erred in upholding the addition of Rs.3,11,609/- on account of alleged understated receipt by way of duty draw back.

24. Apropos this issue, we observed that this issue has arisen as ld. AO took the amount of duty draw back received by the assessee as per Export/Import data at Rs.16,57,423/- whereas the assessee has shown duty draw back at Rs.13,45,814/- therefore ld. AO observed that the assessee understated the receipts. Observation of ld. AO has been affirmed by ld.CIT(A) by the First Appellate proceedings.

25. Before us, ld. Counsel for the assessee has submitted that reconciliation chart has been prepared and there is no difference in the figure of duty draw back shown by the assessee in the books as against the Export/Import data received from CBEC and a prayer has been made for granting an opportunity to place those details before ld. JAO for deciding the issue afresh in accordance with law. We therefore

in light of submissions made by ld. Counsel for the assessee deem it appropriate to restore the issue to the file of ld. JAO for carrying out necessary exercise after examining the details to be furnished by the assessee. Needless to mention that ld. JAO shall afford reasonable opportunity to the assessee. Ground No.1 raised by the assessee is allowed for statistical purposes.

26. In the result, ITA Nos. 154 to 156/PUN/2025 are partly allowed and the Cross appeals ITA Nos. 1423 and 157/PUN/2025 filed by the assessee are allowed for statistical purposes as per the terms indicated above.

27. Now we take up the appeals filed by the Revenue for the A.Ys. 2018-19, 2019-20 and 2020-21 wherein common grounds have been agitated before this Tribunal.

28. In ITA No.1843/PUN/2024 for A.Y. 2018-19 Revenue has raised following grounds of appeal :

> *"1. On the facts and circumstances of the case and in law, the Ld. Addi/JCIT(A) has erred in deleting the adjustment made by the CPC u/s.143(1)(a) (ii) of the Act of Rs.37,09,24,467/- by holding that the same was not an incorrect claim as defined in Explanation to the said provision, without appreciating that there was inconsistency with regard to the amount claimed as exempt, as per item 5C of Schedule BP and item 6 of Schedule 'EI' of the ITR and therefore, the claim was clearly covered under sub-clause (i) of clause (a) of the said Explanation.*
>
> *2. On the facts and circumstances of the case and in law, the Ld. Addl/JCIT(A) erred in holding that the assessee has reduced the subsidy/incentive received by the assessee from the cost of receipts as per Explanation 10 to Sec.43(1) and therefore, the same cannot be deemed as income in terms of Sec.2(24)(xviii), without actually examining the actual nature of the said receipt and that whether the same was granted/utilized for acquiring any asset so as to cover under the said Explanation.*
>
> *3. Without prejudice to the above, on the facts and circumstances of the case and in law, the Id. Addl./Jt.CIT erred in deleting the*

impugned adjustment made by the CPC without appreciating that the assessee was not obligated to spend the subsidy received from the Govt. of Maharashtra under the Package Scheme of Incentive, 2007 in the form of interest subsidy, electricity duty exemption, royalty refund, octroi/entry tax refund etc., for any specific purpose which meant that the resulting greater profitability was an incentive for investors to establish/expand units promoting industrialization and employment opportunities and therefore, such receipts are liable to be taxed as revenue receipts, in terms of Section 2(24)(xviii) of the Income Tax Act, 1961 as the same did not fall under the exceptions provided in clause (a) or (b) of the said provisions.

4. The appellant craves leave to add to, amend, alter any of the above grounds of appeal."

28.1 Identical grounds have been raised by the Revenue in ITA Nos. 1844/PUN/2024 and ITA No.114/PUN/2025 for A.Y. 2019-20 and 2020-21 respectively.

29. The common issue raised by the Revenue against the finding of ld.CIT(A) is regarding the prima-facie adjustment made by the CPC u/s.143(1)(a) of the Act disallowing the assessee's claim of exempt income in the form of subsidy received from the Govt. of Maharashtra for Mega Projects under Package Scheme of Incentive, 2007 and secondly against the finding of ld.CIT(A) allowing the assessee's appeal on merit hold that the assessee has rightly reduced the subsidy from the Fixed Assets and has claimed depreciation on the reduced amount of Fixed Assets.

30. Now against the adjustment made by CPC assessee preferred appeal before ld.CIT(A) and was able to succeed as ld.CIT(A) on one hand has held that the contention of the appellant that it was not an incorrect claim as defined u/s.143(1) of the Act is accepted and has also allowed the relief to the assessee on merit observing that since the assessee has deducted the amount of subsidy received from

the cost of the asset, therefore it is not to be assessed as income as per the provisions of section 2(24(xviii) of the Act.

31. Aggrieved Revenue is now in appeal before this Tribunal

32. Ld. DR firstly contended that incorrect claim was made by the assessee in the return by the assessee showing it as exempt income and on the other hand has reduced it from the actual cost of the fixed assets and due to mismatch in the income tax return CPC has made the adjustment. So far as merits of the case are concerned, ld. DR has referred and relied on the decision of this Tribunal in *ITA No.2992/PUN/2017, dated 27.04.2022 for A.Y. 2014-15*.

33. On the other hand, ld. Counsel for the assessee submitted has referred to the following written submissions :

> *(A) On merits the subsidy is not chargeable income as the assessee has deducted the amount of Rs. 37.09 Crore from cost of assets for claiming the written depreciation. Please refer submissions in Annexure 'A' to Assessment Year 2016-17 and 2017-18.*
>
> *(B) The adjustment made is outside the scope of the specific items of adjustments permitted u/s 143(1)(a) of the Income Tax Act.*
>
> *has (ii) The reasons given in the adjustments made under section 143(1)(a) made under the Act can neither be called as any arithmetical error in the return or an incorrect claim apparent from any information in the return or any inconsistency in the return.*
>
> *As per Para 28.2 of the CBDT Circular No. 1 of 2009 dated 27-03-2009 of Income Tax Act these were basically the 2 items of adjustments that were envisaged by the legislature while introducing the amendment to section 143(1) of the Income Tax Act, the Processing the return through centralised processing of returns, in the Finance Act, 2008.*
>
> *(iii) As per the 1st proviso to section 143(1)(a), nno be made unless of the proposed adjustment shall communication/notice adjustments is given to the assessee to file its response within 30 days from the issuing of the communication/notice. In this case though the communication (Annexure H) has been issued, but it does not*

contain any query regarding application of section 2(24) (xviii) or about any mismatch.

The Reliance is placed on the following judgments in this regards.

A. Arham Pumps [2022] 140 Taxmann.com 204 (Ahmedabad - Trib.).

B. Camellia Educare Trust [2023] 152 taxmann.com 304 (Kolkata - Trib.).

C. Kailash Narayan Shridhar [2025] 177 taxmann.com 755 (Ahmedabad - Trib.).”

34. We have heard the rival contentions and perused the record placed before us. Two fold issues have been raised by the Revenue, firstly the adjustment made by CPC adding the amount of subsidy received by the assessee during the year as income has rightly been made under the provisions 143(1)(a) of the Act and such *prima-facie* adjustment by CPC has been made correctly and secondly on merits of the case submitted that the subsidy received by the assessee is taxable u/s. 2(24)(xviii) of the Act. So far as second fold of contention is concerned, we have already dealt this issue while dealing with the assessee’s appeals for assessment years 2016-17 to 2018-19 in ITA Nos.154 to 156/PUN/2025 and have held that the subsidy received by the assessee during the year from the Govt. of Maharashtra for Mega Projects under PSI, 2007 is neither directly nor indirectly relatable for acquiring any fixed assets and therefore Explanation 10 to section 43(1) has no application and that the total subsidy received by the assessee is to be treated as Income for the year u/s.2(24)(xviii) of the Act.

35. So far as the correction of *prima-facie* adjustment by CPC is concerned, we take note of the return of income filed by the assessee on ITR-6. Details are available on pages 1 to 70 of

the paper book for A.Y. 2018-19 furnished on 31.12.2024. In the ITR-6 under Part A-P and L – Profit and Loss Account for the F.Y. 2017-18 under column B(x) assessee has mentioned about Package Scheme Incentive subsidy of Rs.37,09,24,467/-. Thereafter in Schedule BP of the computation of income from Business or Profession assessee under column 5(c) has mentioned the subsidy as exempt income. However, on page 63 of ITR-6 under Schedule EI which requires the assessee to fill details of exempt income assessee has not mentioned any detail of exempt income. Schedule EI is left blank. This clearly shows that on one hand the assessee has claimed the income as exempt under Schedule BP but then no details have been filed in Schedule EI which requires the assessee to furnish details of exempt income. This is a clear mismatch of information in the ITR itself and for claiming any exempt income assessee is required to enter the particular section under which it is claiming it as exempt income. In absence of such section/detail mentioned in the ITR the computer software processing the ITR can only draw an inference that an incorrect claim has been made in the return. In the online processing system, the information has to be provided as required in the particular columns and if any of the detail is not mentioned properly or if it is incomplete then such adjustments arise u/s.143(1)(a) of the Act. In our considered view section 143(1)(a)(ii) of the Act clearly comes into action which provides that the adjustment is required to be made for any incorrect claim if such incorrect claim is apparent from any information in the return. As discussed above, there is an apparent mistake in the ITR where on one hand the assessee is claiming a particular income to be

exempt under Schedule BP for the Income from Business or Profession and on the other hand he has not mentioned any detail under the relevant column EI which requires the assessee to furnish details of exempt income, nature of income and the section under which such exemption is claimed.

36. We also observe that such adjustment has arisen because the assessee is itself not clear as to whether he wants to claim subsidy as exempt income or it wants to reduce it from the cost of assets. We have gone through the audited financial statements where we find that the assessee has credited the total subsidy received during the year in the profit and loss account and has not reduced it from the assets and the same is verifiable from the Fixed Asset chart attached to the balance sheet. Assessee has not reduced the cost of assets in its books of account. However, while filing the ITR on one hand it is claiming it as exempt income but simultaneously for the purpose of claiming depreciation as per the Income Tax Act it has reduced the subsidy from the cost of depreciable assets on the basis of proportion of the total assets and has made such claim and such claim is appearing in the Fixed Asset chart attached to the Tax Audit Report on Form No.3CD placed at pages 129 to 153 of the paper book. Therefore, it is clearly evident that there were certain apparent mistakes in the ITR filed by the assessee and due to not providing of correct information as per the format of ITR form and details of exempt income not filled properly, the alleged adjustment has been made by CPC. Therefore, we fail to find any infirmity in the adjustment made by CPC u/s.143(1)(a)(ii) of the Act. Finding of ld.CIT(A) is reversed. Even otherwise so far as merits of the case are concerned, we have already held that

the subsidy in question is not directly or indirectly relatable to the Fixed Assets of the assessee company and Explanation 10 to section 43(1) of the Act is not applicable and is to be treated as income u/s.2(24)(xviii) on annual basis as and when received. Thus, Grounds of appeal raised by the Revenue for A.Yrs. 2018-19 to 2020-21 are allowed.

37. In the result, ITA Nos. 154 to 156/PUN/2025 filed by the assessee are partly allowed for statistical purposes, ITA No.1843, 1844/PUN/2024 and ITA No.114/PUN/2025 filed by the Revenue for A.Ys. 2018-19 to 2020-21 are allowed. ITA Nos.1423/PUN/2025 and ITA No.157/PUN/2025 filed by the Assessee for A.Y. 2019-20 and A.Y. 2020-21 are allowed for Statistical purposes.

Order pronounced on this 22nd day of December, 2025.

Sd/-	Sd/-
(VINAY BHAMORE)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 22nd December, 2025.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.