

**DELHI HIGH COURT REPORTER
ITAT BAR ASSOCIATION, NEW DELHI**

**1. AKASAKI TECHONOLOGY PRIVATE LIMITED V. PRINCIPAL
COMMISSIONER OF INCOME TAX: 2025:DHC:10540-DB: 27.11.2025**

Section 144, Section 251 of the Income Tax Act, 1961

ASSESSMENT COMPLETED UNDER SECTION 144- NO NOTICE UNDER SECTION 143(2) ISSUED- CHALLENGED BEFORE CIT(A)- ASSESSEE REQUESTED FOR A REPORT FROM ASSESSING OFFICER TO VERIFY NON-ISSUANCE OF 143(2) NOTICE- CIT(A) SET ASIDE CASE BACK TO ASSESSING OFFICER FOR FRESH ADJUDICATION ON MERITS WITHOUT DECIDING THE JURISDICTIONAL ISSUE RAISED BY THE ASSESSEE-CHALLENGED BEFORE ITAT- ITAT AGAIN REMANDED BACK TO AO FOR FRESH ADJUDICATION WITHOUT DECIDING THE JURISDICTION ISSUE- APPEAL BEFORE HON'BLE HIGH COURT- CIT(A) ORDER AND ITAT ORDER SET ASIDE-APPEAL REMANDED TO CIT(A) AS THE JURISDICTIONAL ISSUE COULD ONLY BE DECIDED BY THE CIT(A) AND NOT ASSESSING OFFICER-HELD IN FAVOUR OF ASSESSEE

BRIEF FACTS

The case of the Assessee was reopened under section 147 of the Act wherein a notice under 142(1) was issued and as per Assessee same was complied with. However, the assessment was completed under section 144 which was challenged by the Assessee before CIT(A) by raising a jurisdictional issue that the Assessing Officer has not issued notice under section 143(2) hence the proceedings are invalid. Assessee requested the CIT(A) to call report from the Assessing Officer

and give an opportunity to the Assessee to file rejoinder thereto. CIT(A) without deciding the jurisdiction issue raised by the Assessee passed order under section 251 remanding the matter back to the Assessing Officer. Assessee challenged that before ITAT. At both the first appellate and second appellate stage, the submission of the Assessee was that the Order passed under section 144 is invalid as mandatory notice under section 143(2) was not issued therefore, CIT(A) erred in invoking section 251 for an invalid order. ITAT without deciding the core issue raised by the Assessee upheld the Order of CIT(A) and remanded the matter to Assessing Officer. Assessee filed appeal before High Court wherein High Court set aside the orders of CIT(A) and ITAT remanded the matter to CIT(A) for deciding all the issues of the Assessee since an infirmity has arisen at the level of the CIT(A), who was exercising jurisdiction under Section 251 of the Act, the issue raised need to be decided by the CIT(A) and not by the AO.

Relevant Paragraphs:

14. A perusal of the order would reveal that the ITAT does not deal with the pleas urged by the appellant before it. Even the CIT(A) without dealing with the submissions, has primarily by observing that the appellant had submitted that the assessment order was passed under Section 144 of the Act without issuing notice under Section 143(2) of the Act, has remanded the matter back to the AO. There is no finding of the CIT(A) on the said aspect inasmuch as it ought to have to come to the conclusion whether such a notice had in fact been issued, if not what is the effect and also, in such circumstances, the matter could have been remanded back to the AO, as it is the case of Mr. Krishnan that as no valid order under Section 144 of the Act was passed, the matter could not have been

remanded back to the AO. Similarly, the ITAT has also without deciding the issue as raised by the appellant, upheld the order passed by the CIT(A).

15. Since an infirmity has arisen at the level of the CIT(A), who was exercising jurisdiction under Section 251 of the Act, the issue raised need to be decided by the CIT(A) and not by the AO. We accordingly, set aside the order passed by the ITAT dated 07.05.2025 and also the order of the CIT(A) dated 25.10.2024 and remand the matter back to the CIT(A) who shall decide the appeal afresh including on the plea advanced by Mr. Krishnan, as noted above.

16. We answer the substantial questions of law as framed by us in favour of the appellant/assessee and against the respondent/Revenue.

2. PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI -1 V. AON CONSULTING PRIVATE LIMITED: 2025:DHC:10702-DB

SECTION 10A – ALLOCATION OF EXPENSES BETWEEN 10A AND NON-10A UNITS – AO APPORTIONED ROYALTY, MANAGEMENT FEE AND LEGAL/PROFESSIONAL EXPENSES ON REVENUE BASIS – CIT(A) DELETED DISALLOWANCE HOLDING EXPENSES WERE INCURRED ON ACTUAL BASIS AND NOT ATTRIBUTABLE TO 10A UNITS – ITAT UPHELD CIT(A) ORDER OBSERVING THAT ASSESSEE FOLLOWED REASONABLE AND CONSISTENT METHOD BASED ON ACCOUNTING STANDARDS (AS-17) – NO ADVERSE MATERIAL BROUGHT BY REVENUE – WHETHER APPORTIONMENT BY AO JUSTIFIED – HELD NO – ISSUE IS PURE QUESTION OF FACT – NO SUBSTANTIAL QUESTION OF LAW ARISES - DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS

The assessee, a company engaged in HR consulting, payroll outsourcing, and software/BPO services, operated both Section 10A eligible and non-eligible units. For AYs 2007–08 and 2008–09, the AO reallocated expenses such as royalty, management fee, and legal/professional charges to 10A units on a revenue basis, reducing the deduction claimed. The assessee contended that these expenses were incurred solely for non-10A units based on contractual terms and actual nexus. The CIT(A) accepted this and deleted the disallowance. The ITAT upheld the order, finding the allocation method reasonable and consistent with accounting standards, with no contrary material from the Revenue. Furthermore, this accounting methodology was already accepted by the revenue for Ay 2004-05, 2005-06, 2006-06 and 2009-10.

Relevant Paragraphs:

22. Having seen the findings drawn by the CIT (Appeals) in both the appeals for different AYs. In paragraph 9, the ITAT agrees with the findings of the CIT (Appeals). We agree with the conclusion drawn by the ITAT in the impugned orders. Mr. Vohra is justified in submitting that the findings of the CIT (Appeals) as upheld by the ITAT is not perverse. There is some basis for the CIT (Appeals) to arrive at the conclusion as it has done in its order.

23. Having heard the learned counsel for the parties at length, we are of the view that the proposed questions of law do not arise for consideration in the facts of this case. The judgments relied upon by Mr Rai, as noted by us in paragraph 14 above, are clearly distinguishable.

24. That apart, we find that the allocation as made by the respondent/assessee in the years 2004-05, 2005-06, 2006-07 and 2009-10 have been accepted by the appellant/Revenue.

25. As such, the present appeals are dismissed. The pending applications are also disposed of as having been become infructuous.

3. PR. COMMISSIONER OF INCOME TAX-1, DELHI V. BRAHMA CENTRE DEVELOPMENT PVT LTD.: 2025:DHC:8487-DB

SECTION 143(3)- FUNDS RAISED THROUGH CCDs FROM INVESTORS FOR SPECIFIC REAL ESTATE PROJECT – TEMPORARY PARKING OF SURPLUS FUNDS IN FDRs PENDING UTILIZATION – INTEREST ON FIXED DEPOSITS – WHETHER TAXABLE AS ‘INCOME FROM OTHER SOURCES’ OR CAPITAL RECEIPT – EXISTENCE OF NEXUS BETWEEN FUNDS AND PROJECT – ITAT HELD INTEREST IS INEXTRICABLY LINKED TO PROJECT AND LIABLE TO BE CAPITALIZED – APPEAL FILED BY REVENUE BEFORE HIGH COURT- ISSUE ALREADY COVERED BY *PRINCIPAL COMMISSIONER OF INCOME TAX, NEW DELHI V. BRAHMA CENTRE DEVELOPMENT PVT. LTD., [2021] 437 ITR 285 (DEL)* - DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS

The assessee company, engaged in real estate development, raised funds from non-resident investors through CCDs for acquisition of land. Pending utilization, surplus funds were temporarily parked in FDRs, earning interest. The Assessing Officer treated such interest as “income from other sources.” However, the ITAT,

relying on earlier orders in assessee's own case as affirmed by the jurisdictional High Court, held that the funds were inextricably linked to the project, and the interest was required to be capitalized. The High Court upheld this view and dismissed the Revenue's appeal.

Relevant paragraphs:

6. On the issue of taxability of interest from FDRs, the Tribunal relied upon the judgment in the assessee/respondent's own case decided by the ITAT being ITA No. 4341 & 4342/Del/2019 relatable to the Assessment Years („AYs”) 2012-13 and 2013-14. The observation of the ITAT in those appeals has been reproduced in paragraph 5 of the impugned order, which have already referred to above.

7. The conclusion of the ITAT in the impugned order is that the aforesaid was the observation made by the ITAT in the appeal against the order passed under Section 263 of the Income Tax Act, 1961 („the Act”) whereby the Principal Commissioner, Income Tax („PCIT”) exercising revisional powers had passed the order dated 20.03.2019, directing the Assessing Officer („AO”) to re-examine the treatment of interest on deposits for AYs 2012-13 and 2013-14. The ITAT quashed the order passed under Section 263 of the Act and allowed the appeal. It is the said order of the ITAT under Section 263 of the Act, which was challenged by the Revenue before this Court, this Court in ITA 116/2021 and ITA 118/2021 had adjudicated the issue, though in the context of Section 263 of the Act.

8. The submission of Mr. Sanjay Kumar, learned Senior Standing Counsel for the Revenue/appellant is primarily that the appeals which have been decided by this Court are related to an issue connected with Section 263 of the Act and cannot

have a bearing in so far as the impugned order is concerned as the impugned order is primarily passed in an appeal filed by the assessee/respondent challenging the order of the CIT (Appeals), against regular assessment under Section 143(3) of the Act.

9. This submission of Mr. Kumar is contested by Ms. Kavita Jha, learned Senior Counsel appearing for the assessee/respondent by drawing our attention to the order passed by this Court in the aforesaid appeals and has contended that even though the issue was relatable to Section 263 of the Act, one of the issues which was decided by this Court was whether the view taken by the AO in the given facts was a plausible view. In that context, the AO who had also dealt with the issue which has been canvassed by Mr. Kumar, the ITAT decided in favour of the assessee/respondent inasmuch as the funds generated by the assessee/respondent from non-resident shareholders/investors outside India, which were not due immediately by way of instalment payment, and had been deposited in the bank as FDR, were actually connected with the project in question i.e. for the purchase of land for which instalments were to be paid to HSIIDC.

*10. In this regard, she has relied upon the judgment of this Court in **Principal Commissioner of Income Tax, New Delhi and Brahma Centre Development Pvt. Ltd., [2021] 437 ITR 285 (Del)**, of the aforesaid two appeals dated 05.07.2021 in paragraphs 12, 12.1, 12.2, 12.3, 13 and 14.5*

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11. Though, Mr. Sanjay Kumar states that the said judgment has not been challenged by the Revenue/appellant before the Supreme Court on the ground of low tax effect, Ms. Jha, contests the submission by stating that out of the two AYs,

in AY 2012-13, the tax effect being Rs.3,07,26,903/-, which is more than Rs.2 crores and as per the circular issued by the CBDT is an appealable order, the same having attained finality shall also cover the case of the assessee/respondent in her favour. Hence, the appeal, being without any merit, is liable to be dismissed.

12. Having noted the submissions made by the counsel for the parties, we agree with the submission made by Ms. Jha, particularly, in view of the conclusion drawn by the Co-ordinate Bench of this Court in the aforesaid appeals.

13. Hence, we are of the view that no substantial question of law arises for consideration before this Court. The appeal being without any merit is dismissed against the Revenue/appellant, in favour of the assessee/respondent.

**4. COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION-1,
NEW DELHI V. CLIFFORD CHANCE PTE LTD: 2025:DHC:10838-DB:
DATED 04.12.2025**

ARTICLE 5(6) OF INDIA–SINGAPORE DTAA READ WITH SECTION 9 AND SECTION 90 OF THE INCOME TAX ACT, 1961 – SERVICE PERMANENT ESTABLISHMENT – WHETHER CONSTITUTED IN ABSENCE OF PHYSICAL PRESENCE OF EMPLOYEES OR BASED ON “VIRTUAL PRESENCE” – ASSESSEE, A NON-RESIDENT ENTITY, RENDERED LEGAL ADVISORY SERVICES TO INDIAN CLIENTS – EMPLOYEES PRESENT IN INDIA FOR LIMITED PERIOD – TRIBUNAL EXCLUDED VACATION, BUSINESS DEVELOPMENT AND COMMON DAYS AND HELD THRESHOLD OF 90 DAYS NOT

SATISFIED – ALSO REJECTED CONCEPT OF “VIRTUAL SERVICE PE” – HIGH COURT HELD THAT RENDITION OF SERVICES “WITHIN INDIA” THROUGH PHYSICAL PRESENCE OF EMPLOYEES IS ESSENTIAL UNDER DTAA – ONLY DAYS OF ACTUAL SERVICE RENDERING ARE RELEVANT – IN ABSENCE OF EXPRESS TREATY PROVISION, VIRTUAL PE CANNOT BE READ INTO DTAA – NO SERVICE PE IN AY 2020-21 AND 2021-22 – RECEIPTS NOT TAXABLE IN INDIA – NO SUBSTANTIAL QUESTION OF LAW – APPEALS DISMISSED – DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS

The assessee, a non-resident entity providing legal advisory services, rendered services to Indian clients partly through employees visiting India and partly from outside India. For AY 2020–21, employees were present in India for 120 days, though actual service days were fewer; for AY 2021–22, no employee was present in India. The Assessing Officer held that the assessee constituted a service/virtual PE and taxed the receipts. The ITAT held no PE existed. The High Court affirmed, holding that service PE requires physical presence of employees rendering services in India and that the concept of “virtual PE” is not recognized under the DTAA and cannot be read into it.

Relevant Paragraphs:

ANALYSIS AND CONCLUSION

28. Having heard the learned counsel for the parties and perused the record, at the outset, we may state that the issue that arises for consideration is whether the respondent/assessee has a service permanent establishment or a virtual service permanent establishment in India so as to be taxed on the gross total receipt for the two assessment years being AYs 2020-21 and 2021-22 to the extent of ₹15,55,45,693/- and ₹7,97,64,414/- respectively for providing legal advisory services to its clients in India.

29. Article 5(6) of the DTAA contemplates that an enterprise shall be deemed to have a permanent establishment in the contracting state through its employees or other personnel only if the activities within the contracting state continue for a period aggregating to 90 days in any fiscal year.

30. The contention of Mr. Rai is primarily that the respondent/assessee fulfills the requirement, having carried out the activities in AY 2020-21 through its employees in India for more than 90 days. Even otherwise, as the activities were also being virtually performed by the assessee from outside India, a virtual service permanent establishment has been established, meaning thereby that the receipts of AY 2021-22 would also be taxable in India.

31. At the cost of repetition, we note that the assessing officer while passing the assessment order on 28.07.2023 held that the assessee constituted a service permanent establishment owing to the physical presence of its employees in India and also a virtual service permanent establishment in terms of Article 5(6) of the DTAA. It was observed that the duration of physical presence of the employees in India is immaterial, in view of the fact that the aggregate duration of provision of services by the assessee exceeded 90 days.

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33. *The conclusion drawn by the DRP is that as long as the aggregate period of continuation of service within India is more than 90 days, the constitution of service permanent establishment gets triggered and consequent profits attributable to permanent establishment becomes taxable in India.*

34. *Allowing the appeals preferred by the assessee against the final assessment orders, the Tribunal has disagreed with the decision of the assessing officer and the DRP, relevant observations whereof have been reproduced by us in paragraph 4 above. The conclusion drawn by the Tribunal as stated above is that as per Article 5(6) (a) of the DTAA, actual performance of services in India by employees physically present in the country is necessary, and as the assessee has only rendered services to its clients for 44 days, excluding vacation, business development days and common days spent by its employees in India, it does not meet the 90 days criteria to constitute a service permanent establishment in India during AY 2020-21 as per the DTAA. Insofar as AY 2021-22 is concerned, the Tribunal held that the profits of the assessee are not taxable in India in the absence of a permanent establishment as per the DTAA, as no employee of the assessee was present in India.*

35. *It is not in dispute that as noted previously, two employees of the assessee, Mr. Rahul Guptan and Mr. Shashwat Tewary travelled to India for rendering services to its clients. It has come on record that they were present in India for a total of 120 days. It is the case of the assessee that they have rendered services only for a total of 44 days, since they spent 36 days on vacation, 35 days on business development, and 5 days were common days when the stay of both the employees coincided.*

36. The submission of Mr. Rai regarding AY 2020-21 is that the Tribunal erred in excluding 36 days from the total of 120 days by treating the same as vacation days. According to him, this is clearly erroneous as the assessing officer has given a categorical finding that the assessee failed to produce reliable documentary evidence to show that the employees were on leave for 36 days during assessment year 2020-21. According to him, nothing has been brought on record by the assessee to show that the employees did not provide any services during the business development days as well.

37. It may be stated here that in support of its case that the two employees have worked for 44 days each, the assessee has filed the time-stamp sheets of the employees before the assessing officer and the Tribunal, which depict the days on which the aforesaid two employees worked for the Indian clients, and also the details of bills made out to the clients in India and the amounts received thereof.

38. It follows that the contention of the Revenue that despite its demand, the assessee has not placed before it the entire e-mail correspondences of the two employees during their entire duration of stay in India would not have any material effect on the conclusion drawn by the Tribunal, as in any case the assessee had provided the time sheets for the employees wherein annual leave has been captured, and also the leave record extracted from its HR system. That apart, the assessee has also furnished a declaration that these employees did not work on client projects during their vacation period. All these indicate that if the vacation days are excluded from the total 120 days for which the employees of the assessee were present in India, the number of days would come to 84 days, which is less than the threshold of 90 days provided under Article 5(6)(a) of the DTAA for constitution of a service permanent establishment in India.

39. The Tribunal further held that business development days as well as common days comprising of 35 days and 5 days respectively also need to be excluded while computing the threshold of service permanent establishment. The reasoning given by the Tribunal for such a conclusion is that no services were provided by the employees to customers in India during the time spent on business development and that the computation should not be based on man days by aggregating the common days spent by more than one individual. In effect, the Tribunal found that actual services have been furnished only for 44 days out of the total duration of 120 days of their stay in India. It is only logical that only the days on which actual services were rendered by the employees of the assessee need to be considered while computing the threshold limit of 90 days. In fact, the Revenue themselves have raised a submission that what matters while examining the constitution of a permanent establishment is not the presence of the employees, but the actual services rendered by the assessee.

40. As such, the Tribunal was justified in holding that no permanent establishment of the assessee was constituted in AY 2020-21. We are in complete agreement with the decision and the reasoning given by the Tribunal.

41. Another issue that has been raised is that even when the employees were not physically present in India, services continued to be rendered virtually, for more than 90 days. That apart, in AY 2021-22, though the assessee did not have physical presence of any employees in India, services were still provided virtually by the assessee to its clients in India, and as such, it constituted a virtual service permanent establishment in India. The view of the assessing officer, as propounded by the Revenue before the Tribunal and before us, is that as a result of rapid digitalisation, services including consultancy services can be provided

virtually without the physical presence of employees in the contracting state. According to them, nothing in the DTAA requires the employees to be physically present in India for providing the services.

42. Article 5(6)(a) of the DTAA reads “An enterprise shall be deemed to have a permanent establishment in a Contracting State if it furnishes services... within a Contracting State through employees or other personnel...”. The words “within a Contracting State” and “through employees or other personnel” contemplates rendition of services in India by the employees of the non-resident enterprise, while mandating a fixed nexus; a physical footprint within India. The term „within” has a certain territorial connotation and in the absence of personnel physically performing services in India, there can be no furnishing of services „within” India. A plain reading of the whole provision would thus reveal that, it such rendition of services by employees present within the country which would constitute a service permanent establishment.

43. Mr. Rai has vehemently contended that receipts on account of virtual services rendered by the assessee must be held to be amenable to taxation in India, since a „virtual service permanent establishment” has been established. We find that no such eventuality is contemplated by the DTAA. The concept of a virtual service permanent establishment does not find mention anywhere in the DTAA. In the absence of any such provision, the argument of Mr. Rai would be at variance that the express provisions of the DTAA which we have already interpreted above.

44. At this juncture, we find it necessary to acknowledge that the Revenue may potentially be justified in raising concerns regarding taxability of foreign entities in the increasingly open global virtual economy, and the diminishing requirement

of physical presence of non-resident employees to furnish services. However, taxability of entities in such instances, as always, remains subject to the applicable provisions of law- both treaty and domestic.

45. The law insofar as the present controversy is concerned, is clear and unambiguous. The DTAA, which has been carefully drafted and executed after numerous rounds of bilateral deliberations and negotiations at the highest level, must necessarily be interpreted strictly. If something is conspicuous by its absence, the presumption is that it has deliberately been done so. It is not for courts to read in concepts which are not expressly provided for by the treaty. The guiding principle here is that language which is not explicitly included in treaty provisions cannot be artificially read into such provisions by way of judicial fiction.

46. As already stated, Article 5(6) of the DTAA only contemplates rendering of services by employees present within the country. If that be so, it is not for this Court to analyse the status or merits of a virtual service permanent establishment which does not find mention either in the DTAA or in the domestic Act. As such, the contention of the Revenue that a virtual service permanent establishment of the assessee has been established for AYs 2020-21 and 2021-22 cannot be accepted.

47. Much reliance has also been placed by the Revenue on the OECD Interim Report of 2018 to contend that though traditionally, physical presence of employees of the non-resident enterprise in the source country was required to establish a service permanent establishment, many jurisdictions are moving away from the same. The assessing officer in his order has provided examples of some countries including Saudi Arabia, Israel and Kuwait to show that in the

present digital economy, even if services are performed entirely offshore, it would constitute a service permanent establishment.

48. This, according to us, is primarily at variance with the treaty language of the DTAA, which expressly provides that a permanent establishment of an enterprise shall be deemed to have been established in the contracting state if it furnishes services „within_” the contracting state, through employees or other personnel”.

49. That being said, it is necessary to note that the comments made by India as recorded in the OECD Model Convention, and also the concept of Significant Economic Presence (SEP) brought about in the domestic tax jurisdiction through the Finance Act, 2018, do reflect a deliberate policy to capture digital or virtual economic participation outside the traditional permanent establishment framework. It may also be true that certain jurisdictions have moved away from the requirement of physical presence of employees to constitute a service permanent establishment. However, the same has not been administratively recognised by India, and in the absence of any changes made to the treaty provisions of the DTAA, such developments do not alter the interpretive constraints imposed by the wordings of the DTAA, which is applicable on all fours to the instant case. In fact, until Article 5(6) of the DTAA is renegotiated or supplemented, the existing treaty framework does not extend to virtual or digital services provided from abroad.

**5. COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION-1
NEW DELHI V. EXL SERVICE.COM INC (PRESENTLY KNOWN AS
EXL SERVICE COM LLC): 2025:DHC:11570-DB**

ARTICLE 5 AND ARTICLE 7 OF INDIA–USA DTAA READ WITH SECTION 9 OF THE INCOME TAX ACT, 1961 – PERMANENT ESTABLISHMENT (PE) – FIXED PLACE PE / SERVICE PE / AGENCY PE – BUSINESS PROCESS OUTSOURCING (BPO) MODEL – ASSESSEE, A US COMPANY, OUTSOURCED BACK-OFFICE AND CUSTOMER SUPPORT SERVICES TO ITS INDIAN SUBSIDIARY – AO HELD THAT INDIAN ENTITY CONSTITUTED PE AND ATTRIBUTED PROFITS – ITAT HELD NO PE EXISTS – HIGH COURT UPHELD FINDING AND HELD:

(i) MERE EXISTENCE OF INDIAN SUBSIDIARY OR OUTSOURCING OF SERVICES DOES NOT CREATE FIXED PLACE PE UNLESS PREMISES ARE AT DISPOSAL OF FOREIGN ENTERPRISE;

(ii) NO SERVICE PE AS NO SERVICES WERE RENDERED IN INDIA BY EMPLOYEES OF FOREIGN ENTITY;

(iii) NO AGENCY PE AS INDIAN ENTITY HAD NO AUTHORITY TO CONCLUDE CONTRACTS ON BEHALF OF FOREIGN ENTERPRISE;

(iv) WHERE TRANSACTIONS WITH INDIAN ENTITY ARE AT ARM'S LENGTH, NO FURTHER PROFIT ATTRIBUTION IS WARRANTED;

RELIANCE PLACED ON *DIT V. EFUNDS IT SOLUTION & ORS.*(2017), 399 ITR 34, *DIT V. MORGAN STANLEY & CO. INC.*: 292 ITR 416 AND OECD PRINCIPLES – NO SUBSTANTIAL QUESTION OF LAW – APPEALS DISMISSED – DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS

The assessee, a US-based company engaged in providing BPO and IT-enabled services, outsourced back-office and customer support functions to its Indian subsidiary, EXL India. The Assessing Officer held that the Indian entity constituted a fixed place, service and agency PE in India and attributed profits accordingly. The CIT(A) and ITAT deleted the additions, holding that the Indian entity merely provided support services and operated at arm's length. The High Court affirmed that no PE existed in India as the premises were not at the disposal of the assessee, no services were rendered in India by its employees, and no authority to conclude contracts existed with the Indian entity.

Relevant paragraphs:

16. The Tribunal concluded that, it is not the case of Revenue that the employees of foreign enterprises furnished services in India Nothing has been brought on record by the Revenue to show that there was secondment of employees by Assessee to Exl India. The findings of fact include that the service agreement shows that the foreign enterprise/Exl US is doing only marketing work and its contracts with the clients are assigned or sub-contracted to Indian entity i.e. Exl India.

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19. It is the conclusion of the Tribunal that in the facts, such conditions are not fulfilled, as Exl India has no authority to conclude any contract on behalf the US enterprise and all customers are based out of US and none of them is present in India. Hence, the Tribunal held that there is no PE....

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22. Hence, we are of the view that the conclusion drawn by the Tribunal in all three Assessment Years/appeals is justified. As, no substantial question of law arises in these appeals, the appeals being without any merit are dismissed.

6. PRINCIPAL COMMISSIONER OF INCOME TAX-1 V. FIS GLOBAL BUSINESS SOLUTIONS PVT LTD: 2025:DHC:8235-DB: DATED 17.09.2025

SECTION 92C, SECTION 92CC AND SECTION 92CD OF THE INCOME TAX ACT, 1961 – TRANSFER PRICING – ARM’S LENGTH PRICE – APPLICABILITY AND PERSUASIVE VALUE OF ADVANCE PRICING AGREEMENT (APA) TO NON-APA YEARS – ASSESSEE ENGAGED IN SOFTWARE DEVELOPMENT AND BPO SERVICES ENTERED INTO APA WITH CBDT FOR CERTAIN YEARS INCLUDING ROLLBACK YEARS – FOR YEAR UNDER CONSIDERATION, TPO MADE TP ADJUSTMENTS – ITAT DELETED ADJUSTMENTS BY RELYING ON APA TERMS –

HELD, WHERE THERE IS NO CHANGE IN FUNCTIONS PERFORMED, ASSETS EMPLOYED AND RISKS ASSUMED (FAR), APA THOUGH NOT DIRECTLY APPLICABLE HAS PERSUASIVE VALUE FOR OTHER YEARS – ARM’S LENGTH PRICE DETERMINED UNDER APA CAN BE USED AS GUIDANCE – WHEN ASSESSEE’S MARGIN IS HIGHER THAN APA MARGIN, NO TP ADJUSTMENT IS WARRANTED –

HIGH COURT UPHELD ITAT ORDER– NO SUBSTANTIAL QUESTION OF LAW – APPEAL DISMISSED – DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS

The assessee, engaged in software development and BPO services for its AEs, entered into various international transactions during AY 2010–11. The TPO made transfer pricing adjustments in respect of software services, ITES segment, and interest on loans to AEs. The CIT(A) partly reduced the adjustments. Before the ITAT, the assessee relied on an Advance Pricing Agreement (APA) entered with CBDT for subsequent and rollback years, contending no change in FAR. The ITAT deleted the adjustments, holding APA has persuasive value. The High Court upheld the ITAT order and dismissed the Revenue's appeal.

Relevant Paragraphs:

16. Suffice to state that the ITAT in paragraphs 22 to 27 stated as under:

22. We are of the considered view that contention raised by the Id. DR is not tenable for the reason that when undisputedly there is no change in the FAR of the taxpayer in the year under assessment vis-a-vis years covered under APA and consolidated margin (OP/OC) computed as per APA at 19.26% is much more than the consolidated margin agreed upon between the taxpayer and the CBDT for the years covered under APA at 16.60% for both the segments, APA though not specifically applicable to the year under assessment, is having persuasive value to the dispute between the parties for other years.

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26. So, in view of what has been discussed above and following the orders (*supra*) passed by the coordinate Bench of the Tribunal, we are of the considered view that when in the APA entered into between the taxpayer and the CBDT though for the roll back years and subsequent years, application of most appropriate transfer pricing method and arm's length price of these transactions have already been agreed upon between the taxpayer and CBDT and there is no change in the FAR and nature of international transactions entered into during the year under consideration vis-a-vis earlier years and subsequent years, principle laid down in the APA for benchmarking the international transactions in question shall have a guidance value.

27. For the sake of repetition, it is brought on record by the taxpayers the consolidated margin (OP/OC) for the year under assessment as 19.26% as against ALP agreed upon between the parties to the appeal under APA at 16.60%. So, we are of the considered view that transfer pricing adjustment made by the AO/TPO/CIT(A) by applying Transfer Pricing principles is not sustainable, hence ordered to be deleted subject to the verification of computation of margin made by the taxpayer as per APA referred in the preceding para no.20.

17. We note from the above that the ITAT has also referred to the judgment of this Court in the case of *PCIT Vs. Ameriprise India Pvt. Ltd.*, ITA 206/2016, to hold that the AP Agreement entered into between the taxpayer and the CBDT under Section 92CC of the Act on 22.01.2016, where the 'cost plus pricing methodology' has been implicitly accepted, has persuasive value to the dispute in question for other years.

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19. In other words, in light of the decision of the Coordinate Bench of this Court in Springer India (supra) and the ITAT order, with which we concur the TPO ought to consider the FAR of the years in the AP Agreement for FAR of the year under scrutiny.

20. In view of the conclusion drawn by the ITAT, which we have reproduced above, no substantial question of law arises in this appeal. As the appeal is without merit, the same is dismissed.

7. PR COMMISSIONER OF INCOME TAX 4 DELHI V. HCL INFOTECH PVT LTD: 2026:DHC:1284-DB: DATED 10.02.2026

SECTION 244A READ WITH SECTION 154 AND SECTION 143(3) OF THE INCOME TAX ACT, 1961 – INTEREST ON REFUND – DENIAL OF INTEREST ON GROUND OF DELAY ATTRIBUTABLE TO ASSESSEE – ASSESSEE FILED REVISED RETURN CLAIMING TDS REFUND PURSUANT TO SCHEME OF AMALGAMATION – TDS NOT REFLECTED DUE TO TECHNICAL GLITCH – AO GRANTED REFUND ON RECTIFICATION BUT DENIED INTEREST UNDER SECTION 244A –

HELD, INTEREST UNDER SECTION 244A IS A STATUTORY RIGHT AND CAN BE DENIED ONLY WHERE DELAY IS ATTRIBUTABLE TO ASSESSEE – WHETHER DELAY IS ATTRIBUTABLE IS TO BE DECIDED BY SPECIFIED HIGHER AUTHORITY UNDER SECTION

244A(2) AND NOT BY AO – MERE TECHNICAL GLITCH OR PROCEDURAL DELAY NOT ATTRIBUTABLE TO ASSESSEE –

CIT(A) AND ITAT CORRECTLY HELD THAT THERE WAS NO FAULT ON PART OF ASSESSEE – AO ERRED IN DENYING INTEREST – NO SUBSTANTIAL QUESTION OF LAW – APPEAL DISMISSED – DECIDED IN FAVOUR OF ASSESSEE.

BRIEF FACTS:

The assessee filed its original return declaring loss and later filed a revised return pursuant to a scheme of amalgamation, claiming additional TDS refund. Due to a technical glitch, the TDS credit was not reflected, which was promptly reported to CPC and the Assessing Officer. The AO completed assessment but did not grant refund. On rectification under Section 154, refund was granted but interest under Section 244A was denied alleging delay attributable to the assessee. The CIT(A) and ITAT held that there was no fault on part of the assessee and allowed interest. The High Court upheld the same.

Relevant paragraphs:

35. According to us, if a natural meaning is given to sub-section (2) of Section 244A, it is clear that an assessee is entitled for interest under Section 244A of the Act of 1961 as a matter of course and it is only in exceptional circumstances that the same can be denied in the event of the assessee himself being in default or remaining at fault.

36. Looking at the language used in sub-section (2) of Section 244A of the Act of 1961, we are of the firm opinion that in case, the Assessing Officer is of the view that the delay in processing the request for refund has been caused for reasons attributable to the assessee, it is „Principal Chief Commissioner or Chief Commissioner“ or „Principal Commissioner or Commissioner“ who shall decide the question as to which period is to be excluded.

37. In other words, in case some period or a part of the period is to be excluded from the period for the purpose of calculation of interest, this issue has to be decided by the authorities prescribed under sub-section (2) of Section 244A. The Assessing Officer himself cannot take onto himself power and deprive an assessee from the interest payable under Section 244A of the Act of 1961.

.....

40. According to us, having recorded assessee's contention that the TDS was though reflected in the Form no.26AS of the respondent-assessee but was not reflected, when the revised return was filed, the AO ought not to have denied interest by saying that there was a lapse on the part of the assessee in claiming the same in its revised return of income.

41. According to us, the finding as recorded by Assessing Officer was completely erroneous.

42. Be that as it may. The CIT (A) has dealt with the facts of the case and given reasons and recorded a finding while accepting the assessee's explanation and held that there was no lapse on part of the assessee and since the Tribunal has also affirmed the same, we do not feel that any question of law, much less a substantial question of law arises, which warrants our interpretation or answer.

43. The appeal alongwith pending applications stands disposed of.

8. PCIT V. R.J. CORP. LTD. [2025: DHC:11351-DB] DATED 12.12.2025:

SECTION 14A - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME-AY 2011-12- THE DISALLOWANCE UNDER SECTION 14A IS TO BE RESTRICTED TO THE EXTENT OF THE EXEMPT INCOME EARNED. IT WAS FURTHER HELD THAT THE AMENDMENT TO SECTION 14A INTRODUCED BY THE FINANCE ACT, 2022 IS PROSPECTIVE IN NATURE, AS ALSO DECLARED IN THE EARLIER JUDGMENT IN *PR. CIT (CENTRAL) V. ERA INFRASTRUCTURE (INDIA) LTD. [2022] 448 ITR 674 (DELHI)*. ACCORDINGLY, THE SAID AMENDMENT SHALL NOT BE APPLICABLE TO THE YEAR UNDER CONSIDERATION.

“4. The Tribunal held that the amount of disallowance under Section 14A of the Act needs to be restricted to the extent of exempted income earned Rs.50,000/- (during the relevant Assessment Year). We also note that the Tribunal had relied upon the judgment in case of Joint Investments (P.) Ltd. v. CIT [\[2015\] 59 taxmann.com 295/233 Taxman 117/372 ITR 694 \(Delhi\)](#) to hold that the disallowance under Section 14A of the Act is to be restricted to the exempted income.

5. Mr. Ruchir Bhaita, SSC has fairly states that there is another aspect of the matter i.e. the applicability of the amendment carried out in terms of the Finance Act 2022, in as much as the same has been declared to be prospective in the judgment in the case of Pr. CIT (Central) v. Era Infrastructure (India) Ltd [\[2022\] 141 taxmann.com 289/288 Taxman 384/448 ITR 674 \(Delhi\)](#).

6. If that be so, concedingly the appeal concerns the Assessment Year 2011-12 and as such the applicability of the Section 14A being prospective the said amendment shall not be applicable to the case in hand. As no substantial questions of law as proposed, would not arise for consideration in this appeal, the appeal is dismissed.”

9. PCIT V. SANJAY JAIN [2026: DHC:585-DB] DATED 22.01.2026:

SECTION 90 OF THE INCOME-TAX ACT, 1961 READ WITH ARTICLE 26 OF DTAA BETWEEN INDIA AND HONG KONG ALONG WITH SECTION 153B– EXCHANGE OF INFORMATION AND LIMITATION ISSUE- ASSESSMENT YEAR 2017-18- WHERE, FOLLOWING SEARCH IN AMQ GROUP, ASSESSING OFFICER MADE FT&TR REFERENCE SEEKING HONG KONG INFORMATION FOR ASSESSMENT YEAR 2017-18, SINCE INDIA–HONG KONG DTAA EFFECTIVE FROM 30-11-2018, PERMITTED EXCHANGE OF PRIOR INFORMATION ONLY IF IT IS RELEVANT TO A FISCAL YEAR OR TAXABLE EVENT AFTER THE TREATY’S EFFECTIVE DATE (30.11.2018), SUCH REFERENCE FOR THE AY 2017-18 WAS IMPERMISSIBLE AND ACCORDINGLY, ASSESSING OFFICER COULD NOT GET ADVANTAGE OF EXTENSION OF LIMITATION PERIOD BY A YEAR, AS PROVIDED IN CLAUSE (ix) OF EXPLANATION TO SECTION 153B.

Relevant Facts:

A search was conducted on 27.02.2017, and based on seized material, proceedings were initiated against the assessee for multiple assessment years. The statutory time limit for passing the assessment order was 31.12.2018; however, the AO made a reference to FT&TR on 04.12.2018 to seek information from Hong Kong authorities. Consequent to reference made to FT&TR, the limitation for passing the assessment order got extended up to 31-12-2019 by virtue of clause (ix) of the explanation to section 153B. On appeal, the Commissioner (Appeals) affirmed the addition made by the Assessing Officer. On appeal, the Tribunal allowed the appeal filed by the assessee by following the judgement of *Pr. CIT, Central -1 v. Smt. Sneh Lata Sawhney [2025] 174 taxmann.com 593 (Delhi)*.

On Appeal before the High Court:

The Department contended that under the India–Hong Kong treaty, information could be sought even for prior periods, and therefore, extension of limitation under Section 153B (by one year) was valid. It was argued that unlike the Swiss treaty (in *Sneh Lata Sawhney*), the Hong Kong treaty permitted exchange of prior information, making the reference legally valid.

The High Court, however, held that Clause 5(c) of the protocol allows prior information only if it is relevant to a fiscal year or taxable event after the treaty's effective date (30.11.2018). Thus, information could be sought only for transactions relating to FY 2019–20 (AY 2020–21 onwards), not earlier years like AY 2017–18. Consequently, the reference made to FT&TR for earlier years (in this case AY 2017-18) was held to be invalid and impermissible in law.

Since the reference itself was invalid, the AO could not claim the benefit of extended limitation under Section 153B. The assessment orders were therefore held to be barred by limitation.

The Court clarified that even though the Tribunal relied on **Sneh Lata Sawhney** (supra) on different facts, the conclusion remained correct in law.

Accordingly, the Revenue's appeals were dismissed, affirming that invalid reference cannot extend limitation.

Relevant paras are reproduced below:

“14. We have heard learned counsel for the appellant and perused the material on record. At the first look, it may appear that the Tribunal was not justified in allowing the appeals simply following the judgment of this Court in the case of Sneh Lata Sawhney (supra), as the treaties in question are different and also because the Tribunal has not considered the provisions of the treaty between India and Hong Kong, which were substantially different.

15. Be that as it may. We have examined and delved into the relevant provisions of the protocol between two countries, namely Swiss Confederation vis-a-vis the treaty with Hong Kong. It will not be out of place to reproduce the corresponding and relevant part of both the treaties, for ready reference and comparative analysis.

16. So far as the relevant part of the protocol between India and Switzerland is concerned, Article 14 thereof is relevant, for which purpose it is reproduced as under:-

"Notwithstanding paragraph 2 of this Article, with respect to Article 26 of the Agreement, the exchange of information provided for in this Amending Protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of signature of this Amending Protocol. "

(emphasis supplied)

17. In contrast to the aforesaid protocol to Article 26 particularly para no.5 of the treaty between India and Hong Kong, is reproduced hereunder:-

"With reference to Article 26 (Exchange of Information) of the Agreement, it is understood that:

(a) Information exchanged shall not be disclosed to any third jurisdiction.

(b) The competent authority of India may disclose information to:

(i) Parliamentary Committees;

(ii) Special Investigation Team (SIT) constituted by Government; and

(iii) Any other oversight bodies mutually agreed upon in writing.

(c) The requested Contracting Party shall disclose any information that precedes the date on which the Agreement has effect for the taxes covered by the Agreement, insofar the information is foreseeably relevant for a fiscal year or taxable event following that date.

(d) in addition to the taxes covered by the Agreement, the provisions of this Article also apply to the following taxes that are administrated and enforced in India:

(i) the wealth tax;

(ii) the excise and customs duties;

(iii) the goods and services tax (GST); and

(iv) the sales and value added taxes."

(emphasis supplied)

18. A close and comparative reading of the relevant parts, which have been bolded by us, reveals that the treaty between India and Swiss Confederation, provides that the protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of its signature.

19. The expression therefore, means that the Article 26 of Treaty of India and Swiss Confederation would apply to any information relatable to the fiscal year, after 01.01.2011 (date of amendment being 30.08.2010) meaning thereby 01.04.2011.

20. Whereas clause 5(c) of the Protocol applicable to Article 26 of the treaty between India and Hong Kong if interpreted, clearly suggests that it provides for disclosure of information that precedes the date on which the agreement was signed, **but such clause is qualified by the expression that the information should be relevant for a fiscal year or taxable event following that date.**

21. In other words, Clause 5(c) of the Protocol to Article 26 of the treaty between India and Hong Kong, which came into force on 30.11.2018 provides that the information can be provided for a fiscal year or taxable event falling after such date. Hence, the information can be elicited for a transaction having taxable event after 01.04.2019 or at best after 30.11.2018.

22. Needless to observe that in the case of tax under the Income Tax Act, the taxable event is the first day of the assessment year or in other words first date following the end of financial year.

23. If the aforesaid Clause 5(c) of Article 26 of the treaty between India and Hong Kong is taken into account, it clearly postulates that the Income Tax Department

can elicit any information relevant to Financial Year 2019-20 or for the Assessment Year 2020-21 in respect of the transaction taking place after 01.04.2019 or a transaction qua which the taxable event is 01.12.2018

24. As an upshot of the discussion foregoing, we are of the considered view that the AO could not demand any information for the Assessment Year 2017-18.

25. Hence, may be for different reason that has been recorded by the Tribunal, the reference made to FT&TR was improper and impermissible in the eye of law. Therefore, the AO cannot get the advantage of extension of limitation period by a year, as provided in clause (ix) of the explanation to Section 153(B) of the Act of 1961.

26. To this limited extent only, the judgment of this Court rendered in the case of Sneh Lata Sawhney (supra) is relevant regardless of the covenants.

27. The appeals, therefore, fail. All pending applications also stand disposed of.”

10.PCIT V. NTPC LTD. [2026: DHC:1220-DB] DATED 09.02.2026:

SECTIONS 147 AND 148, OF THE INCOME-TAX ACT, 1961- THE INITIATION OF THE REASSESSMENT PROCEEDINGS ON THE BASIS OF AUDIT PARTY'S OBJECTION OR OPINION CAN AT THE BEST BE CONSTRUED TO BE AN OPINION OF EXPERT. THE AUDIT OBJECTION IS, THEREFORE, NOTHING BUT AN OPINION AND CONSEQUENTLY, THE INITIATION OF REASSESSMENT PROCEEDINGS TOO IS NOTHING MORE THAN A CHANGE OF OPINION.

“16. There is no gainsaying the fact that the reassessment proceedings have been kick-started pursuant to the objection raised by the audit party on the issue of adding

back the corporate expenses qua some of the combined cycle gas power plants and also the fact that during scrutiny proceedings and reassessment proceedings under Section 143(3) of the Act of 1961, the AO had already conducted threadbare inquiry and disallowed the exemption.

*17. Although, he disallowed the exemption under Section 80-IA of the Act of 1961 on different counts and maybe he did not think it appropriate to disallow the exemption on the ground of corporate expenses being added back as opined by the audit party, but in any case the same was an opinion of the audit party. **The initiation of the reassessment proceedings on the basis of audit party's objection or opinion can at the best be construed to be an opinion of expert. The audit objection is, therefore, nothing but an opinion and consequently, the initiation of reassessment proceedings too is nothing more than a change of opinion.***

18. As per the law in vogue at the relevant time, the provision expressly used the language 'reason to believe' and the same has been interpreted by Hon'ble the Supreme Court and this Court that 'reason to believe' must be of the AO himself and must be based on sound reasoning. The reason and satisfaction has to be that of the authority exercising jurisdiction and not borrowed.

19. So far as the judgments relied upon by Mr. Nishchay Kantoor are concerned, we find that the issue in hands has been dealt by Hon'ble the Supreme Court in its judgment rendered in the case of Indian and Eastern Newspaper Society (supra), wherein it has been held that the Assessing Officer while dealing with any objection or opinion on law rendered by the audit party has to reasonably believe for himself if the income has escaped assessment on the basis of his true evaluation of the law. The Assessing Officer must independently evaluate the legal position and form his own belief that income has escaped assessment. A mere change of opinion on the

same material already considered cannot justify reopening as the "Information" precedes and gives rise to the "reason to believe".

20. Having gone through the first assessment order and taking note of the fact that the issue of allowability of exemption under Section 80-IA of the Act of 1961 had been thoroughly examined by the AO from various angles rather all angles which the AO could conceive, if for one reason or the other, the AO could not envisage this fact or had omitted to consider it while rejecting or partially rejecting respondent's claim, the same cannot confer a right upon the AO to invoke provisions of Section 147/148 of the Act of 1961.

21. The Income Tax Department could have perhaps taken recourse to proceedings under Section 263 of the Act of 1961 on such count subject of course to the statutory inhibitions, but resorting to the provisions of Section 147/148 of the Act of 1961 was impermissible in law.

22. Mr. Shlok Chandra, has cited in the case of Dalmia (P.) Ltd. v. CIT [\[2011\] 14 taxmann.com 106/202 Taxman 312/\[2012\] 348 ITR 469 \(Delhi\)](#) . A reproduction of para no. 19 would be gainful, which reads as under :-

"19. It is well settled that audit objection on the point of fact can be a valid ground for reopening of assessment. In the case of New Light Trading Co. v. CIT [\[2001\] 117 Taxman 741/\[2002\] 256 ITR 391 \(Delhi\)](#) , a Division Bench of this court after referring to the decision of Supreme Court in CIT v. P.V.S. Beedies (P.) Ltd. [\[1999\] 237 ITR 13/103 Taxman 294](#) , has held as under (at page 393):

"In the case of P. V. S. Beedies Pvt. Ltd. [\[1999\] 237 ITR 13](#) , the apex court held that the audit party can point out a fact, which has been overlooked by the Income-tax Officer in the assessment. Though there cannot be any interpretation of law by the

audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. As the Tribunal has rightly noticed, this was not a case of the Assessing Officer merely acting at the behest of the audit party or on its report. It has independently examined the materials collected by the audit party in its report and has come to an independent conclusion that there was escapement of income. The answer to the question is, therefore, in the affirmative, in favour of the Revenue and against the assessee."

23. A simple look at the above judgment reveals that in said case, the audit party had pointed out a new fact whereas in the instant case, the audit party has not pointed out or unravelled a new fact. As a matter of fact, it brought to the notice of the AO, a new aspect of the matter, which is nothing but an expression of opinion, on the same factual background.

24. Though we have dealt with the case cited by Mr. Chandra, but we are not oblivious of the legal position that no re-assessment proceedings can be triggered on the basis of an audit objection. For which, a host of judgments have been cited by learned counsel for the respondents.

25. Learned Senior Standing Counsel has submitted that a huge demand was created against the assessee and if the appeal is rejected, it would be a big loss to the exchequer. To this we will only respond—however big may be the amount but nothing is bigger than the letter of law.

26. As an upshot of discussion foregoing, we do not find any illegality in the impugned orders dated 16.02.2024 passed by the Tribunal."

**11.PCIT-CENTRAL-1 V. SOM HARI INFRASTRUCTURE PVT. LTD. [2026:
DHC:120-DB] DATED 07.01.2026**

SECTION 153A READ WITH SECTION 68-THE ASSESSING OFFICER (AO) MADE AN ADDITION OF RS. 21,00,00,000 TO THE RETURNED INCOME OF THE RESPONDENT-ASSESSEE FOR ASSESSMENT YEAR (AY) 2012–13, INTER ALIA, ON THE GROUND THAT THE CONCERNED FIRM LOCATED IN KOLKATA LACKED CREDITWORTHINESS. HOWEVER, SINCE NO INCRIMINATING MATERIAL WAS FOUND BY THE AO DURING THE COURSE OF THE SEARCH, THE ADDITION FOR AY 2012–13 WAS IMPERMISSIBLE IN LAW, AS THE PROCEEDINGS EMANATED FROM A SEARCH. THE FINDINGS OF THE LOWER AUTHORITIES WERE AFFIRMED BY THE HIGH COURT, RELYING ON THE DECISION IN KABUL CHAWLA [2015] 61 TAXMANN.COM 412 (DELHI), WHICH WAS SUBSEQUENTLY UPHELD BY THE HON'BLE SUPREME COURT IN PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-3 VS. ABHISAR BUILDWELL PRIVATE LIMITED (2024) 2 SCC 433.

“1. The present appeal relates to the addition of a sum of Rs.21,00,00,000/- to the returned income in the hands of the respondent-assessee for the Assessment Year (AY) 2012-13, which was made by the Assessing Officer (AO) holding, inter alia, that the concerned firm located in Kolkata did not have creditworthiness.

2. The Commissioner of the Income Tax (Appeals)-24 (hereinafter referred to as ‘CIT(A)’) set aside the aforesaid addition vide his order dated 22.06.2020 holding that there was no incriminating material unearthed during the search

proceedings. And the conclusion that the firm at Kolkata, which had advanced sum of Rs.21,00,00,000/- did not have creditworthiness was drawn only during the assessment proceedings. The CIT(A) also relied upon judgment of this Court in the case of Commissioner of Income-tax (Central)-III vs. Kabul Chawla, reported in [2015] 61 taxmann.com 412 (Delhi) and deleted the addition so made.

3. It is to be noted that the judgment of this Court rendered in the case of Kabul Chawla (supra) has been affirmed by Hon'ble the Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell Private Limited reported in (2024) 2 SCC 433.

4. In an appeal filed by the Department, against the above referred order of the CIT(A) dated 22.06.2020, the Income Tax Appellate Tribunal, (Delhi Bench 'G' New Delhi) also took the same view vide order dated 30.04.2025 and recorded a finding that since there was no incriminating material with the AO during the search and hence, therefore, addition for the Assessment Year 2012-13 was impermissible in law as the proceedings emanated from search.

5. Having heard learned counsel for the appellant and upon perusal of the orders under consideration, we are of the firm view that the issue is essentially that of facts and does not involve question of law.

6. That apart, it is a settled position of law that in case no incriminating material is found for the relevant assessment year, the AO cannot make addition as has been held in Kabul Chawla (supra). “

**12.COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION-2,
NEW DELHI V. HYUNDAI ROTEM COMPANY, [2025:DHC:9430-DB]
DATED 29.10.2025 :**

SECTION 144C(13) – LIMITATION FOR PASSING FINAL ASSESSMENT ORDER PURSUANT TO DRP DIRECTIONS – AY 2018-19 – WHERE DRP DIRECTIONS ARE UPLOADED ON THE ITBA PORTAL, THE SAME CONSTITUTES VALID “RECEIPT” BY THE ASSESSING OFFICER AND THE PERIOD OF LIMITATION SHALL COMMENCE FROM SUCH DATE OF UPLOADING – PHYSICAL RECEIPT OF DIRECTIONS IS IRRELEVANT – CONSEQUENTLY, THE ASSESSMENT ORDER PASSED BEYOND ONE MONTH FROM THE END OF THE MONTH OF SUCH UPLOADING IS BARRED BY LIMITATION AND LIABLE TO BE SET ASIDE AS NULL AND VOID. FURTHER HELD THAT INTERNAL PROCEDURAL DELAYS OR DEPARTMENTAL COMMUNICATION ISSUES CANNOT EXTEND THE STATUTORY LIMITATION PERIOD.

Relevant Facts

The assessee, a Korean company, was subjected to assessment proceedings for AY 2018-19 wherein, pursuant to reference to the Transfer Pricing Officer, certain adjustments were proposed and a draft assessment order was issued. The assessee filed objections before the Dispute Resolution Panel (DRP), which issued directions on 24.05.2022 and the same were uploaded on the ITBA portal on 26.05.2022. Thereafter, the Assessing Officer passed the Final Assessment Order on 01.07.2022. The assessee challenged the validity of the assessment on the ground that the same was barred by limitation under Section 144C(13), contending that the period of limitation was to be reckoned from the date of uploading of DRP directions on the portal, whereas the Revenue contended that limitation should be computed from the

date of physical receipt of DRP directions by the Assessing Officer. The Hon'ble High Court upheld the view that uploading of DRP directions on the ITBA portal constitutes valid "receipt" by the Assessing Officer and triggers the limitation period under Section 144C(13). Consequently, the assessment order passed beyond the prescribed time limit was held to be barred by limitation and void.

Relevant paras are reproduced below:

"37. Having heard the learned counsel for the parties and perused the records, the short issue for consideration is whether the ITAT is the justified in setting aside the Final Assessment Order (FAO) dated 01.07.2022, stating that the FAO ought to have been passed by the AO by 30.06.2022, and hence the same is barred by limitation.....

39. The issue which falls for consideration in the given fact is no more res-integra in view of the judgment of this court in the case of Louis Dreyfus Company India Private Limited(supra) wherein, this Court on identical facts has by referring to the judgment of the Bombay High Court in Vodafone Idea Ltd(supra), wherein, an affidavit has been filed by the Chief Commissioner of Income Tax and Joint Commissioner of Income Tax, on the aspect of uploading, of orders, notices and decisions, as per E Assessment of 2019, had concluded, as under:-.....

40. In Vodafone Idea Ltd(supra), the Revenue has made it clear that once DRP directions are uploaded with DIN number on the ITBA Portal, the same is visible to the AO.

41. In fact, the intimation letter to respondent dated 26.05.2022 having a DIN number, would affirm that the same is the date of uploading of the DRP directions.

The ITAT records a finding on the uploading of DRP directions on 26.05.2022 and the same has not been disputed by the Revenue/appellant. As is noted from the affidavit filed before the Bombay High Court, it is in addition to the uploading that the DRP directions are sent through speed post to the AO. It follows, the plea that the physical copy of the DRP order was received only on 01.06.2022 is inconsequential; as the directions along with DIN were already uploaded and available on 26.05.2022. As such, the time for the AO to pass assessment order starts running from 01.06.2022, and expired on 30.06.2022. The assessment order in the present case having been made/passed on 01.07.2022, is clearly barred by limitation.

43. One of the contentions of Mr. Agarwal is that the date of “receipt” of DRP directions is the statutory basis for commencement of limitation period available to the AO for the passing of FAO. In other words, it is his submission that the limitation starts from the date the AO is in receipt of DRP order i.e., the date of receipt of DRP order in dak on 01.06.2022. On this issue, it is apposite to consider Section 144C (13) read with Section 282(1)(C) of the Act and Section 13 of the Information and Technology Act, 2000.

44. On this proposition, the High Court of Telangana in Rapiscan Systems Pvt. Ltd. (Supra), while referring to E-Assessment Scheme of 2019, Louis Dreyfus Company India Private Limited (Supra) and Vodafone Idea Lts. (Supra) has held that once the DRP directions are uploaded on the portal, it would mean that the DRP/originator has lost control over it on the date and time the directions were uploaded on the portal and it must be treated to be “receipt” by the recipient i.e., AO on the same date. The relevant paragraphs of the judgment are reproduced as under:-.....

45. In fact, Ms. Kapoor has referred to the judgment of this Court and other High Courts dealing with Section 144 C (13) of the Act, in support of her submissions, as reproduced above. We agree with the submission of Ms. Kapoor that the date of uploading of the order of the DRP will ipso facto be considered as service to the recipient, more so when the DRP proceedings are also assessment proceedings and vide order dated 26.05.2022, the necessary documents were uploaded on the ITBA Portal for the perusal of the assessee and the Assessment Unit/ AO by providing DIN credentials.

46. Suffice it to state, paragraph 4(2) of E-Assessment Scheme of 2019 was referred in the judgment of this Court in Louis Dreyfus Company India Private Limited (Supra), to draw a conclusion that, as per the provisions of the E- Assessment Scheme of 2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA Portal. As part of the larger Faceless Assessment Regime, all filed and uploaded directives of the DRP would be construed to be sufficient service and the period of limitation as prescribed under Section 144C (13) of the Act, would be liable to be computed from the date of uploading of the order and the AO shall pass the Assessment Order, bearing that crucial date in mind.

47. If that be so, the crucial date being 26.05.2022 and the date of one month from the end of the month on which DRP order/ directive was received by the AO would be 30.06.2022. In the case of the appellant/Revenue, the FAO was passed only on 01.07.2022, which is clearly barred by limitation as contemplated under Section 144 C (13) of the Act.”

13.PCIT V. INDRANI SATHE, 2026:DHC:989-DB DATED 04.02.2026:

SECTION 153B – LIMITATION FOR COMPLETION OF ASSESSMENT – EXCLUSION OF TIME FOR EXCHANGE OF INFORMATION UNDER DTAA – AYs INVOLVED – THE BENEFIT OF EXCLUSION OF PERIOD UNDER EXPLANATION (IX) TO SECTION 153B IS AVAILABLE ONLY WHERE THE REFERENCE FOR EXCHANGE OF INFORMATION IS MADE STRICTLY IN ACCORDANCE WITH THE RELEVANT DTAA. WHERE THE REFERENCE IS NOT IN TERMS OF THE DTAA (IN THE PRESENT CASE, INDO-SWISS DTAA), NO SUCH EXCLUSION IS PERMISSIBLE AND THE ASSESSMENT WOULD BE TIME-BARRED. IT WAS FURTHER HELD THAT THE PROVISIONS RELATING TO LIMITATION MUST BE STRICTLY CONSTRUED AND ANY DEVIATION FROM STATUTORY CONDITIONS DENIES THE BENEFIT OF EXTENSION.

FURTHER HELD THAT IN PR. CIT v. SMT. SNEH LATA SAWHNEY 2025:DHC:3617-DB., THE COURT HELD THAT EXCLUSION OF TIME UNDER SECTION 153B CANNOT BE CLAIMED UNLESS THE REFERENCE FOR INFORMATION IS MADE STRICTLY AS PER THE DTAA AND WITHIN ITS PERMISSIBLE SCOPE; ANY REQUEST MADE OUTSIDE THE FRAMEWORK OF THE TREATY DOES NOT ENTITLE THE REVENUE TO EXTENSION OF LIMITATION. THIS PRINCIPLE WAS FOLLOWED AND REAFFIRMED IN PR. CIT v. SANJAY JAIN [2026:DHC:585-DB], WHERE THE COURT, EVEN IN THE CONTEXT OF A DIFFERENT TREATY (INDIA–HONG KONG), HELD THAT STRICT COMPLIANCE WITH THE TREATY IS A CONDITION PRECEDENT FOR CLAIMING EXCLUSION OF TIME UNDER SECTION 153B.

“2. Before Mr. Ruchir Bhatia, learned Senior Standing Counsel for the appellant could advance his submissions, learned counsel for the respondent invited Court’s attention that even if the best argument of the appellant is to be taken into account, the appellant’s appeals are anyway liable to be rejected, in view of the recent judgment of this Court rendered on 22.01.2026, in the case of Principal Commissioner of Income Tax, Central-1, Delhi v. Sanjay Jain reported in 2026:DHC:585-DB.

3. He submitted that the only difference in the case of Sanjay Jain (supra) is that the treaty in question was between India and Hong Kong, whereas in the instant case the treaty is between India and Switzerland. He prayed that all these appeals be dismissed.

4. Having heard learned counsel for the parties, we are of the considered opinion that these appeals are liable to be dismissed in light of the judgment of this Court in the case of Sneh Lata Sawhney (supra) which has further been followed and elaborated by this Court in the case of Sanjay Jain (supra).”

**14.INTERNATIONAL BUDDHIST CONFEDERATION V. ITO,
2026:DHC:864-DB DATED 22.01.2026:**

SECTIONS 11 & 12 – EXEMPTION TO CHARITABLE TRUST – INTEREST INCOME FROM FDRs – MERE DISCLOSURE UNDER WRONG HEAD (‘INCOME FROM OTHER SOURCES’) DOES NOT DENY EXEMPTION – AY 2017-18 – WHERE THE ASSESSEE, A REGISTERED TRUST, HAD APPLIED MORE THAN 85% OF ITS INCOME FOR CHARITABLE PURPOSES, THE INTEREST INCOME WAS OTHERWISE ELIGIBLE FOR EXEMPTION AND COULD NOT BE TAXED MERELY DUE TO

INADVERTENT DISCLOSURE UNDER A WRONG HEAD IN THE RETURN. IT WAS HELD THAT THE ASSESSING OFFICER IS DUTY BOUND TO GRANT LAWFUL EXEMPTION AND CANNOT TAKE ADVANTAGE OF AN ASSESSEE'S MISTAKE.

FURTHER HELD THAT APPELLATE AUTHORITIES ARE DUTY-BOUND TO GRANT RELIEF EVEN IF NOT CLAIMED IN RETURN AND SHOULD NOT REJECT CLAIMS ON TECHNICAL GROUNDS, AS HELD IN NATIONAL THERMAL POWER CO. LTD. v. CIT (SC) AND CIT v. JAI PARABOLIC SPRINGS LTD. (DELHI HC). ACCORDINGLY, THE ASSESSMENT ORDER AND APPELLATE ORDERS WERE SET ASIDE AND RELIEF WAS GRANTED TO THE ASSESSEE.

“12. The case in hands is a classic example of callousness. The Assessing Officer, while making the scrutiny assessment has taken advantage of the assessee's fault. It is rather surprising to find that when the assessment order was passed under section 143(1) (without scrutiny of the record), the appellant's income was assessed at 'nil' and a refund Rs.90,560/- was granted to appellant on 26.06.2018.

13. However, when the matter was taken up for scrutiny assessment, despite such fact and the details furnished by the appellant, the Assessing Officer proceeded to assess the appellant as per the return filed income of Rs.13,02,000/- and raised a demand. 14. According to us, while passing an order under Section 143(3) of the Act of 1961, the Assessing Officer is required to apply a judicious approach and confer due benefits, including exemption or deduction, for which the assessee is otherwise entitled to.

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16. We are surprised to see that both the appellate authorities too have applied a telescopic view of the matter and have rejected the appellant's appeal by simply observing that the said amount had not been added by the Assessing Officer. Even if that was so, at least they were expected to consider the material & petitioner's contentions.

17. We may add here that appellate proceedings are a continuation of regular proceedings and if any error has been committed by the Assessing Officer, it is the duty of the appellate authority to correct such error. The Assessing Officer might have been swayed by the revenue considerations, (ideally, which he should not) but at least the CIT(A) ought to have taken into account, the correct factual and legal position instead of non-suited the appellant on technical count. Similar has been the approach of the learned Tribunal, which should have been avoided. It is because of such approach that the appellant has to come to this Court. A lis, which could have been given a quietus, has to be brought to this Court.

18. It is the duty of the appellate authorities to assist taxpayers in securing legitimate reliefs and not be fettered by mere technicalities. This view stands affirmed in the judgment rendered by this Court in CIT v. Jai Parabolic Springs Ltd., reported in (2008) 306 ITR 42 (Del) wherein it was held that there is no bar on the appellate authorities to entertain a claim for deduction not made in the return. A reference was also made to the judgment of Hon'ble the Supreme Court rendered in the case of National Thermal Power Co. Ltd. v. CIT reported in (1998) 229 ITR 383 (SC), wherein it was held that appellate authorities including the Tribunal remain fully empowered to grant relief or allow claims to which the assessee is entitled, even if unclaimed in the return.

19. The view is further reinforced vide the CBDT Circular No. 14-XL (35) dated 11.04.1955 which enjoins a duty upon the officers of the department to aid taxpayers in every reasonable way to correctly determine their tax liability, particularly when some refund or relief is due to them and to refrain from taking advantage of an assessee's ignorance of his rights."

15.PCIT CENTRAL 3 V. JINDAL SAW LTD, 2026:DHC:1254-DB, DATED 12.02.2026

INCOME – CAPITAL OR REVENUE RECEIPT – EXCISE DUTY REFUND / SUBSIDY – THE SUBSIDY RECEIVED UNDER A GOVERNMENT INCENTIVE SCHEME (SCHEME OF 2001 FOR DEVELOPMENT OF KUTCH) IS A CAPITAL RECEIPT AND NOT TAXABLE, WHERE THE SUBSIDY IS LINKED TO SETTING UP / EXPANSION OF INDUSTRY AND NOT TO DAY-TO-DAY OPERATIONS. FURTHER HELD THAT SUCH SUBSIDY CANNOT BE REDUCED FROM THE BLOCK OF ASSETS UNLESS IT IS DIRECTLY LINKED TO THE COST OF A SPECIFIC ASSET. RELIANCE PLACED ON THE JUDGMENT OF THE SUPREME COURT IN CIT v. PONNI SUGARS & CHEMICALS LTD. (2008) 306 ITR 392 (SC), WHEREIN IT WAS HELD THAT THE NATURE OF SUBSIDY (CAPITAL OR REVENUE) IS TO BE DETERMINED ON THE BASIS OF ITS PURPOSE, AND WHERE THE OBJECT IS TO PROMOTE CAPITAL INVESTMENT, THE SUBSIDY IS CAPITAL IN NATURE.

5. This issue is covered by the judgment of Hon'ble the Supreme Court rendered in CIT, Madras v. Ponni Sugars & Chemicals Limited reported in 2008 (306) ITR 392 (SC) wherein it has been categorically held that Sales Tax & Excise Duty refund or the subsidy which is linked to Capital Investment made, is a capital receipt.

6. We also do not find any substance in alternative argument of Mr. Gupta that such subsidy should be reduced from the block of assets. In this regard he suggested the following question arises:

(i) Since the Tribunal has held that the subsidy which the respondent-assessee has received is a capital receipt, whether the amount of subsidy is required to be reduced from the block of assets on which the respondent-assessee claim depreciation.

7. On going through the facts available on record, we are of the considered opinion that since the subsidy which the respondent-assessee had received under the scheme of 2001 was in the nature of capital receipt independent of the cost of any asset, the only correlation with the asset was in the sense that an industry was supposed to make a particular investment. Otherwise, there was no nexus with the excise duty paid with the cost of the cost of a particular machine.

8. Hence, the contention of the appellant-Department that the subsidy so received should be reduced from the block of assets is untenable in law.

9. We have this view because, the subsidy was not in the nature of capital investment subsidy and it was in the form of reimbursement of the excise duty paid by the unit. Unless the subsidy is directly linked to the cost of purchase of the particular asset, the same cannot be reduced from the block of assets.

**16.KAWATRA TENT AND CATERERS PRIVATE LIMITED V. ACIT CC 16,
NEW DELHI, 2025:DHC:9848-DB DATED 11.11.2025**

**SECTION 153A r.w.s. 153D – VALIDITY OF SEARCH ASSESSMENT –
APPROVAL UNDER SECTION 153D – WHERE APPROVAL IS GRANTED**

COLLECTIVELY FOR MULTIPLE ASSESSMENT YEARS INSTEAD OF YEAR-WISE, THE VALIDITY OF SUCH APPROVAL REQUIRES EXAMINATION IN LIGHT OF SETTLED LAW – MATTER REMANDED TO ITAT FOR ADJUDICATION OF CROSS-OBJECTIONS ON THIS ISSUE.

FURTHER HELD THAT IN VIEW OF THE JUDGMENT IN PR. CIT v. SHIV KUMAR NAYYAR ITA 285/2024. THAT APPROVAL UNDER SECTION 153D IS REQUIRED TO BE GRANTED AFTER DUE APPLICATION OF MIND AND CANNOT BE MECHANICALLY GRANTED FOR MULTIPLE YEARS TOGETHER; THE ISSUE SHOULD BE RESTORED TO THE TRIBUNAL FOR FRESH DECISION AFTER HEARING BOTH PARTIES.

**17.PCIT-4 DELHI V. KRBL INFRASTRUCTURE LTD, 2025: DHC:9908- DB,
DATED 13.11.2025**

SECTION 68 – UNEXPLAINED CASH CREDIT – UNSECURED LOAN – SEARCH ASSESSMENT u/s 153A – AY 2014-15 – WHERE THE ASSESSEE HAS DISCHARGED THE PRIMARY ONUS BY PROVING IDENTITY, CREDITWORTHINESS AND GENUINENESS OF THE CREDITOR THROUGH DOCUMENTARY EVIDENCE AND CONFIRMATION, ADDITION CANNOT BE MADE MERELY ON THE BASIS OF SUSPICION ARISING FROM DEFECTS IN THE AFFAIRS OF THE CREDITOR. FURTHER HELD THAT ENQUIRY INTO ‘SOURCE OF SOURCE’ IS IMPERMISSIBLE (PRE-AMENDMENT) AND ISSUES RELATING TO THE CREDITOR’S TRANSACTIONS CANNOT BE EXAMINED IN THE HANDS OF THE ASSESSEE.

IT WAS HELD THAT WHERE THE LOAN IS RECEIVED THROUGH BANKING CHANNELS, CONFIRMED BY THE CREDITOR (BOTH IN STATEMENT AND u/s 133(6)) AND SUPPORTED BY FINANCIALS, THE ONUS STANDS DISCHARGED AND IN ABSENCE OF CONTRARY MATERIAL, ADDITION u/s 68 AND CONSEQUENTIAL DISALLOWANCE OF INTEREST ARE UNSUSTAINABLE.

IT WAS FURTHER NOTED THAT THE LOAN WAS SUBSEQUENTLY REPAID IN THE FOLLOWING YEAR, WHICH LENDS CREDENCE TO THE GENUINENESS OF THE TRANSACTION. ACCORDINGLY, IN ABSENCE OF ANY CONTRARY MATERIAL, ADDITION U/S 68 AND CONSEQUENTIAL DISALLOWANCE OF INTEREST WERE HELD TO BE UNSUSTAINABLE.

Relevant Facts

The assessee, pursuant to a search under Section 132, was assessed under Section 153A r.w.s. 143(3) wherein the Assessing Officer made an addition of Rs. 10 crores under Section 68 on account of unsecured loan received from M/s Shashi Foods India Pvt. Ltd. along with disallowance of interest thereon, alleging that the lender lacked creditworthiness and the transaction was not genuine based on post-search enquiries and alleged bogus transactions in the hands of the lender. The assessee, however, furnished confirmation from the lender, bank statements, financial statements and other documentary evidences to establish identity, creditworthiness and genuineness, and also demonstrated that the loan was received and repaid through banking channels. The CIT(A) deleted the addition holding that the assessee had discharged its onus and that enquiries into the affairs of the lender amounted to impermissible examination of “source of source”, which was affirmed by the ITAT.

Relevant Paras:

“33. The finding of the AO in paragraph 5.5 is that the assessee had failed to furnish the identity and creditworthiness of Shashi Foods and genuineness of the loan. The assessee has also not submitted any details as to why the lender has given such a huge amount without any agreement or collateral. The AO held that a mere submission that the loan has been received through banking channels does not mean that the transaction is genuine. Shashi Foods had tried to explain its worth by stating that there are 12 parties who are its creditors and a total amount of Rs.34.96 crores was pending payment. However the AO, based on the inspectors report has concluded that out of 12 parties only four have been found at their address.

34. The submission of Mr. Maratha is that the reply of the assessee was considered but was not found tenable as enquiries conducted during the course of search, post search and in the course of assessment revealed that the loan advanced by Shashi Foods was not genuine. According to him, as per Section 68 of the Act, the primary onus to prove that the loan amount is genuine is on the assessee and the mere fact that the loan was received through banking channels does not mean that it is genuine. Further there was no collateral security taken. According to him, all of these would lead to the conclusion that the loan was not genuine.

35. We are not in agreement with the submission made by Mr. Maratha. The loan advanced was in the FY 2013-14, i.e., AY 2014-15. The identity of the creditor has been proved by documentary evidence and also through the statement of the Director of Shashi Foods recorded during the survey proceedings and also in reply to the notice under Section 133(6) of the Act. It has also been established that Shashi Foods advanced the loan out of the funds credited in its bank account, proving the

creditworthiness of the entity. Though the AO had held that Shashi Foods did not have the necessary funds in its bank account to provide the loan, the findings of the CIT(A) and the ITAT are at variance with the observation of the AO inasmuch as that the loan has been advanced from the bank account of Shashi Foods. In any case, the Revenue has not placed on record anything to show that in the AY 2014 15, the requisite funds to advance the loan were not available in the bank account of Shashi Foods.

36. So, it follows, the genuineness of the loan was and the creditworthiness of Shashi Foods have been proved by establishing that:

- (i) The same was received through banking channels;*
- (ii) the loan has been repaid in the next financial year between 2015-16;*
- (iii) repayment of the loan is with interest.*

37. Though the Revenue has raised an argument that the purchases made by Shashi Foods from other third entities were not genuine, the same is immaterial insofar as the assessment proceedings of the respondent is concerned. The initial onus cast upon the respondent/ assessee to show the genuineness of the transaction having been duly discharged, the question as to whether the funds at the hands of Shashi Foods were obtained through genuine purchases or not cannot be gone into by the Revenue. This we say so, for the reason that once the assessee discharges its initial onus of proving the identity and creditworthiness of the creditor and also the genuineness of the transaction, it is not incumbent upon the assessee to prove the genuineness of the funds at the hands of its lender, i.e., the „source of the source“ of the funds.

.....

42. Further, the present case relates to the AY 2014-15, prior to the amendment brought about by the Finance Act, 2022 requiring assessees to prove the „source of the source“ of funds credited as unsecured loans. As such, the contention that the genuineness of the funds of Shashi Foods needs to be examined is devoid of any merit.”

**18.KROSS DIAMONDS PVT. LTD V. ITO WARD 14(3), 2025:DHC:10437-DB,
DATED 24.11.2025**

SECTION 69C – CASH DEPOSITS – REMAND BY ITAT – WHERE THE ASSESSEE FAILED TO PROPERLY EXPLAIN AND CORRELATE EXCESS CASH DEPOSITS WITH CASH IN HAND OR CASH SALES, THE ITAT REMANDED THE MATTER TO THE AO FOR FRESH VERIFICATION. FURTHER HELD THAT SUCH ISSUES INVOLVE PURE QUESTIONS OF FACT AND DO NOT GIVE RISE TO ANY SUBSTANTIAL QUESTION OF LAW u/s 260A. ACCORDINGLY, THE HIGH COURT DECLINED TO INTERFERE WITH THE ORDER OF THE ITAT (WHICH HAD RESTORED THE MATTER FOR RE-EXAMINATION) HOLDING THAT THE ISSUE PERTAINED TO FACTUAL VERIFICATION AND NO SUBSTANTIAL QUESTION OF LAW AROSE.

**19.PCIT CENTRAL- 1 V. SPERRY PLAST LTD., 2026:DHC:895-DB, DATED
03.02.2026**

SECTION 68 – UNEXPLAINED CASH CREDIT – WHERE THE ASSESSEE HAS ESTABLISHED IDENTITY, CREDITWORTHINESS AND GENUINENESS OF THE CREDITORS THROUGH CONFIRMATIONS, FINANCIALS AND BANKING CHANNELS, ADDITION CANNOT BE

SUSTAINED. MERE SUSPICION ARISING FROM QUICK REPAYMENT OF LOAN OR ABSENCE OF INTEREST DOES NOT RENDER THE TRANSACTION NON-GENUINE.

FURTHER HELD THAT SUCH ISSUES INVOLVE APPRECIATION OF FACTS AND EVIDENCE AND DO NOT GIVE RISE TO ANY SUBSTANTIAL QUESTION OF LAW u/s 260A; ACCORDINGLY, NO INTERFERENCE WITH THE ORDER OF THE ITAT WAS WARRANTED.

Relevant Facts

The assessee had received loans from two companies, namely Bhargabi Vinimav Pvt. Ltd. and Pioneer Dealtrade Pvt. Ltd., which were treated by the Assessing Officer as unexplained cash credits under Section 68 on the ground of lack of genuineness and creditworthiness. During remand proceedings, both creditors responded to notices issued under Section 133(6) and furnished confirmations, bank statements, ITRs and financial statements. It was also noted that one of the loans (Rs. 2 crores) was substantially repaid within two days and the balance within a month through banking channels. The Tribunal, after considering these evidences, deleted the additions holding that identity, creditworthiness and genuineness stood established. The Revenue challenged the same before the High Court.

Relevant Paras

“6. While observing that simply because the loan has been paid within two days, it cannot be said with certitude that the loan was not a genuine loan and was only a paper entry. According to us, the other argument that no interest was paid to the creditor is also mis-placed because if the short-term loan for two-three days is taken,

for whatever reason because of family or business relation or friendship, a creditor may advance the amount with lesser or even without interest.

7. As a matter of fact the enquiry which ought to have been contended by the respondent-assessee is lacking in the case, which in instant case could have been – whether the creditor has license under the Bengal Money Lender's Act, 1940 or not, and/or what is the relationship (friendly or ITA 90/2026 Page 4 of 4 business/blood relationship) due to which a creditor situate in Kolkata had advanced such a huge amount of loan to the respondent-assessee situate in Delhi.

8. In absence of requisite enquiry or exercise which should have been undertaken, we do not find it to be a case warranting interference. The appeal is, therefore dismissed.”

20.PCIT-7 V. STERIA INDIA PVT. LTD., 2025:DHC:11271-DB DATED 12.12.2025

TRANSFER PRICING – SELECTION OF COMPARABLES – FUNCTIONAL DISSIMILARITY / BRAND VALUE / EXTRAORDINARY EVENTS – WHERE THE ITAT, AFTER DETAILED FAR ANALYSIS, EXCLUDED CERTAIN COMPARABLES ON GROUNDS SUCH AS SIGNIFICANT BRAND VALUE (E.G., INFOSYS, TCS GROUP), FUNCTIONAL DISSIMILARITY (ENGAGED IN SOFTWARE PRODUCTS / KPO / R&D ACTIVITIES), EXTRAORDINARY EVENTS LIKE AMALGAMATION, HIGH RELATED PARTY TRANSACTIONS OR ABSENCE OF SEGMENTAL DATA, SUCH FINDINGS ARE PURELY FACTUAL AND BASED ON SETTLED PRINCIPLES OF COMPARABILITY UNDER RULE 10B.

FURTHER HELD THAT CONSISTENT JURISPRUDENCE OF THE JURISDICTIONAL HIGH COURT HAS ALREADY SETTLED THE EXCLUSION OF SUCH COMPARABLES IN SIMILAR FACT PATTERNS, AND WHERE THE REVENUE FAIRLY CONCEDES THAT THE ISSUES ARE COVERED BY EARLIER DECISIONS, NO SUBSTANTIAL QUESTION OF LAW ARISES u/s 260A.

ON THE ISSUE OF FOREIGN EXCHANGE FLUCTUATION, IT WAS HELD THAT WHERE SUCH GAIN/LOSS ARISES DIRECTLY FROM INTERNATIONAL TRANSACTIONS AND FORMS PART OF THE OPERATING ACTIVITY OF THE ASSESSEE UNDER A COST-PLUS MODEL, THE SAME IS TO BE TREATED AS OPERATING IN NATURE AND CANNOT BE EXCLUDED WHILE COMPUTING MARGINS. ACCORDINGLY, THE HIGH COURT HELD THAT THE ENTIRE ISSUE RELATES TO APPRECIATION OF FACTS AND APPLICATION OF SETTLED LEGAL PRINCIPLES, AND DOES NOT GIVE RISE TO ANY SUBSTANTIAL QUESTION OF LAW; THE APPEAL OF THE REVENUE WAS DISMISSED.

**21.PCIT-07 DELHI V. M/S TCK ADVISERS PVT. LTD., 2025:DHC:11972-DB
DATED 24.12.2025**

TRANSFER PRICING – DETERMINATION OF ALP UNDER TNMM – SELECTION / REJECTION OF COMPARABLES – WHERE THE DRP AND ITAT, ON DETAILED FUNCTIONAL ANALYSIS (FAR ANALYSIS), EXCLUDED COMPARABLE COMPANIES ON GROUNDS SUCH AS FUNCTIONAL DISSIMILARITY, DIFFERENT RISK PROFILE, INVOLVEMENT IN FUND-BASED / NBFC / MERCHANT BANKING

ACTIVITIES AND FAILURE TO SATISFY EXPORT TURNOVER FILTER, SUCH EXCLUSION IS VALID AND BASED ON SOUND PRINCIPLES OF COMPARABILITY UNDER RULE 10B.

FURTHER HELD THAT SELECTION OF COMPARABLES IS A FACT-INTENSIVE EXERCISE INVOLVING APPRECIATION OF FUNCTIONAL PROFILE, RISK ASSUMPTION AND ECONOMIC CHARACTERISTICS OF THE TESTED PARTY VIS-À-VIS COMPARABLES. WHERE THE DRP HAS GIVEN DETAILED REASONS AND THE SAME HAVE BEEN AFFIRMED BY THE ITAT, AND THE REVENUE HAS FAILED TO DEMONSTRATE ANY PERVERSITY OR LEGAL ERROR, NO SUBSTANTIAL QUESTION OF LAW ARISES u/s 260A. ACCORDINGLY, THE HIGH COURT DECLINED TO INTERFERE WITH THE FINDINGS OF THE LOWER AUTHORITIES

Relevant Facts

The assessee was engaged in providing non-binding investment advisory services exclusively to its Associated Enterprise (AE) under a cost-plus model, wherein all significant risks such as market risk, credit risk and foreign exchange risk were borne by the AE. For determining the Arm's Length Price (ALP), the assessee relied on comparables showing its margin to be at arm's length. The Transfer Pricing Officer (TPO), however, proposed an upward adjustment by including certain comparables. The Dispute Resolution Panel (DRP) excluded six such comparables on detailed analysis, holding that they were functionally dissimilar, engaged in high-risk activities such as stock broking, NBFC operations, merchant banking, debt syndication, or fund-based activities, and also failed the 75% export turnover filter. The ITAT upheld the DRP's findings noting that the Revenue had failed to controvert

the functional dissimilarity and reasoning given by the DRP. The Revenue carried the matter to the High Court challenging exclusion of comparables and application of filters.

Relevant para

“16. We are unable to accept the submission in that regard for the simple reason that the DRP, whose conclusions, we have reproduced above has come to a conclusion that the companies/the comparables, fail functional test as the comparables were engaged in operations other than export service undertaken by the assessee. The DRP’s conclusion also includes how the comparables to be excluded on the basis of 75% export turnover test. It was concluded by the DRP that the export income of this company is 49%, which is less than 75% of total turnover, whereas income of tested parties is 100% from exports. Suffice to state, meaningfully read, the DRP has given sufficient reasons for excluding the comparables. The findings of the DRP, which have been accepted by the ITAT, are pure question of facts.”

**22.THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3 V. TRAVELPORT LP, 2025:DHC:8070-DB DATED
03.09.2025**

**SECTION 144C – DRAFT ASSESSMENT ORDER – SCOPE AND
APPLICABILITY – THE PROVISIONS OF SECTION 144C CAN BE
INVOKED ONLY IN THE CASE OF AN “ELIGIBLE ASSESSEE”, I.E., (i) A
PERSON IN WHOSE CASE VARIATION ARISES PURSUANT TO AN
ORDER OF THE TPO U/S 92CA(3), OR (ii) A FOREIGN COMPANY.
WHERE THESE CONDITIONS ARE NOT SATISFIED, THE ASSESSING
OFFICER HAS NO JURISDICTION TO PASS A DRAFT ASSESSMENT**

ORDER AND THE ENTIRE PROCEEDINGS ARE VITIATED. IT WAS FURTHER HELD THAT WHERE THE ASSESSEE IS AN LLP (TREATED AS A FIRM) AND NO TPO ORDER EXISTS, THE INVOCATION OF SECTION 144C IS WHOLLY WITHOUT JURISDICTION, AND THE DRAFT ASSESSMENT ORDER AS WELL AS THE FINAL ORDER PASSED PURSUANT THERETO ARE VOID AB INITIO.

FURTHER HELD THAT ADDITIONS BASED SOLELY ON EARLIER YEARS' FINDINGS WITHOUT EXAMINING THE FACTUAL POSITION OF THE RELEVANT YEAR ARE UNSUSTAINABLE, ESPECIALLY WHERE THERE IS A MATERIAL CHANGE IN FACTS SUCH AS DISCONTINUATION OF BUSINESS. FINALLY, WHERE THE ISSUE ON MERITS STANDS CONCLUDED BY BINDING PRECEDENTS (INCLUDING DECISIONS OF THE SUPREME COURT IN THE ASSESSEE'S OWN CASE), THE QUESTIONS RAISED BY THE REVENUE BECOME PURELY ACADEMIC AND NO SUBSTANTIAL QUESTION OF LAW ARISES FOR CONSIDERATION U/S 260A; ACCORDINGLY, THE APPEAL WAS DISMISSED.

**23.PCIT NOIDA V. TRIVENI ENGINEERING AND INDUSTRIES LTD,
2025:DHC:8073-DB DATED 03.09.2025**

INCOME – TAXABILITY OF SUBSIDY – WHERE THE VERY ENTITLEMENT TO SUBSIDY IS UNDER LITIGATION AND PENDING BEFORE THE SUPREME COURT, THERE EXISTS NO REASONABLE CERTAINTY FOR RECOGNITION OF INCOME; ACCORDINGLY, THE ITAT IS JUSTIFIED IN REMANDING THE MATTER TO THE AO TO BE DECIDED AFTER FINAL OUTCOME OF THE LITIGATION SO AS TO AVOID MULTIPLICITY OF PROCEEDINGS.

SECTION 37(1) – ALLOWABILITY OF EXPENDITURE – PROVISION FOR AFTER-SALES EXPENSES – WHERE THE PROVISION IS MADE ON A SCIENTIFIC AND RATIONAL BASIS FOR MEETING ASCERTAINABLE BUSINESS LIABILITY AND IS IN ACCORDANCE WITH THE MATCHING PRINCIPLE OF ACCOUNTING, THE SAME IS ALLOWABLE AS DEDUCTION, EVEN IF THE LIABILITY IS TO BE DISCHARGED IN FUTURE.

FURTHER HELD THAT WHERE THE ISSUE IS ALREADY COVERED IN ASSESSEE’S OWN CASE BY A BINDING JURISDICTIONAL HIGH COURT JUDGMENT AND THE REVENUE HAS NOT SHOWN ANY DISTINGUISHING FACTS, NO SUBSTANTIAL QUESTION OF LAW ARISES u/s 260A AND THE APPEAL IS LIABLE TO BE DISMISSED.

Relevant Paras

7. He do concede that the observation made by the ITAT on the issue with regard to the Sugar Industrial Promotion Policy, 2004, which has been decided by the High Court of Judicature at Allahabad is pending consideration before the Supreme Court and the matter need to be finally adjudicated. Until the adjudication is complete, the AO cannot decide the issue which arises for consideration for which the matter has been remanded back by the ITAT.

8. Mr. Rohit Jain, learned counsel for the respondent acknowledges the submission of Mr. Rai. He states that, as and when the Supreme Court decides the appeal, the decision shall be informed to the AO for him to proceed with the adjudication process in terms of the remand.

9. We say that, since the ITAT has remanded the matter back to the AO and in any case such adjudication shall depend upon the outcome of the SLP, the plea that the ITAT should have decided the issue, does not merit consideration.

.....

14. Suffice to state that, on this issue, the ITAT has based its conclusion in respect of a judgment rendered by this Court in the case of CIT v. Triveni Engineering & Industrial Ltd. (2011) 336 ITR Delhi 374, in respect of the assessee itself, wherein paragraph 11 reads as under:

“11. After considering the submissions, the counsel on the either side, in the given facts, we are of the prima facie view that arguments of the learned counsel for the assessee to prevail. The learned counsel for the Revenue may be correct in stating the proposition of law, generally. No doubt, unless the expenditure is actually incurred or it is accrued in the relevant year, it would not be allowed as deduction. Such a liability has to be in praesenti. However at the same time, in the given scenario where in relation to the project works undertaken by the assessee, completed contract method of accounting is followed, which is consistent with the Accounting Standards and these accounting standards also lay down the norms indicating the particular point of time when the provisions for all known liabilities and losses has to be made, the making of such a provision by the assessee appears to be justified moreso when the assessee had recognized gain as well on such project during this year itself. This appears to be in consonance with principle of matching cost and revenue as well. However, in the projected scenario of this case after taking stock of the entire situation, we are of the opinion that it is not necessary to conclusively answer the aforesaid questions formulated. It is because of the reason that we find that the entire exercise is revenue neutral. It may be pointed out that it is a matter of record that against the provision of `139 lacs, the assessee had to actually incur expenditure of `218.03 lacs, i.e., more than the provision made. It is undisputed that the expenditure incurred by the assessee on the project is admissible deduction. The only dispute that the Revenue seeks to raise is regarding the year of allowability of expenditure. Considering that the assessee is a company assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is, in any case, revenue neutral.’

15. We have been informed by Mr. Jain that the judgment has attained finality in as much as the Revenue has not taken the same in appeal. The ITAT has given the benefit of the judgment.

16. We are of the view that no substantial question of law arises for consideration and the appeal is rejected but by taking the submission of Mr. Jain as noted in Paragraph 8 on record.”

24.UNION OF INDIA, THROUGH (MINISTRY OF YOUTH AFFAIRS AND SPORTS GOVT. OF INDIA) V. ADDITIONAL DIRECTOR OF INCOME TAX- EXEMPTION RANGE-II, NEWDELHI, 2025:DHC:8393-DB DATED 18.09.2025

APPEAL – LOCUS STANDI – REMAND – WHERE THE UNION OF INDIA FILED APPEALS BEFORE THE ITAT IN RESPECT OF ASSESSMENT ORDERS OF THE ORGANISING COMMITTEE, COMMONWEALTH GAMES 2010, CONTENDING THAT UPON DISBANDMENT OF THE COMMITTEE IT HAD STEPPED INTO ITS SHOES AND WAS AN AGGRIEVED PARTY, THE ITAT DISMISSED THE APPEALS ON THE GROUND OF LACK OF LOCUS STANDI WITHOUT EXAMINING THE MATTER ON MERITS. THE HIGH COURT HELD THAT SUCH AN APPROACH WAS NOT APPROPRIATE AND, ON THE REVENUE’S SUBMISSION, SET ASIDE THE ITAT’S ORDER AND REMANDED THE MATTER BACK TO THE TRIBUNAL WITH A DIRECTION TO DECIDE THE APPEALS ON MERITS IN ACCORDANCE WITH LAW.

Relevant Paras

“2. The aforesaid order was passed on the basis of the submissions made by the learned counsel appearing on behalf of the Union of India / appellant herein that the Tribunal has rejected the appeals No.1677/Del/2019 and ITA No.1678/Del/2019 which relates to the Assessment Years (AY) 2010-11 and 2008-09 on the ground that the appellant has no locus standi.

3. The justification given by the appellant to file the aforesaid appeals before the Tribunal challenging various orders passed under Section 143(3) of the Income Tax Act, 1961 for the AY 2008-09 and 2010-11 is that the Organising Committee, Commonwealth Games– 2010, Delhi has been disbanded with the permission of Government of India. Pursuant thereto the appellant / Union of India has stepped into the shoes of the Organising Committee and in that sense the appellant is the aggrieved party to file the aforesaid appeals before the Tribunal.

4. Mr Shlok Chandra, learned SSC, who took time to take instructions, states that the matter may be remanded to the Tribunal to decide the appeals filed by the appellant herein on merits. 5. In view of above, we remand both the appeals No.1677/Del/2019 and ITA No.1678/Del/2019 relating to AY 2010-11 and AY2008-09 respectively filed by the appellant herein with a direction that the Tribunal shall decide the same on merits in accordance with law.”

**25.WOODLAND (AERO CLUB) PRIVATE LIMITED V. ACIT CIRCLE
49(1), 2025:DHC:7788-DB DATED 08.09.2025**

**SECTION 36(1)(va) r.w.s. 2(24)(x) & 43B – EMPLOYEES’ CONTRIBUTION
TO PF/ESI – ALLOWABILITY – SECTION 143(1) ADJUSTMENT – WHERE
THE EMPLOYEES’ CONTRIBUTION IS DEPOSITED BEYOND THE DUE
DATE PRESCRIBED UNDER THE RELEVANT WELFARE ACTS,**

DEDUCTION IS NOT ALLOWABLE EVEN IF SUCH PAYMENT IS MADE BEFORE THE DUE DATE OF FILING OF RETURN; THE LEGAL POSITION STANDS CONCLUSIVELY SETTLED BY THE SUPREME COURT IN CHECKMATE SERVICES (P) LTD.

IT WAS HELD THAT EMPLOYEES' CONTRIBUTION IS DEEMED INCOME u/s 2(24)(x) AND CAN BE ALLOWED AS DEDUCTION ONLY UPON STRICT COMPLIANCE WITH SECTION 36(1)(va), I.E., DEPOSIT WITHIN THE DUE DATE UNDER THE RELEVANT ACT; SECTION 43B DOES NOT OVERRIDE THIS REQUIREMENT. THE 2021 AMENDMENT INSERTING EXPLANATION TO SECTION 43B IS CLARIFICATORY AND DOES NOT ALTER THE EXISTING LEGAL POSITION.

FURTHER HELD THAT SUCH DISALLOWANCE CAN VALIDLY BE MADE AT THE STAGE OF PROCESSING UNDER SECTION 143(1), AS THE DELAY IN DEPOSIT IS APPARENT FROM THE RETURN AND TAX AUDIT REPORT, AND THEREFORE FALLS WITHIN THE SCOPE OF "INCORRECT CLAIM APPARENT FROM RECORD". THE MERE EXISTENCE OF EARLIER CONTRARY JUDICIAL VIEWS DOES NOT RENDER THE ISSUE DEBATABLE ONCE THE LAW STANDS AUTHORITATIVELY INTERPRETED.

HOWEVER, IT WAS ALSO HELD THAT WHERE THE STATUTORY DUE DATE FALLS ON A NATIONAL HOLIDAY, PAYMENT MADE ON THE NEXT WORKING DAY SHALL BE TREATED AS WITHIN TIME BY VIRTUE OF SECTION 10 OF THE GENERAL CLAUSES ACT, AND DEDUCTION SHALL BE ALLOWABLE TO THAT LIMITED EXTENT.

Relevant Facts:

The assessee filed its return for AY 2019-20 and during processing under Section 143(1), the Assessing Officer made an adjustment disallowing employees' contribution to PF/ESI deposited beyond the due date prescribed under the respective Acts, though paid before filing of return. The CIT(A) allowed the claim; however, the ITAT reversed the same relying on the Supreme Court judgment in Checkmate Services (P) Ltd.. The assessee challenged before the High Court contending that (i) such disallowance could not be made under Section 143(1) as the issue was debatable at the relevant time, (ii) the amendment by Finance Act, 2021 was prospective, and (iii) deduction should be allowed where payment was made before filing return. Additionally, a limited issue was raised regarding payments made on the next day where the due date fell on a national holiday.

Relevant Paras:

“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 01.04.2021, 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 interpreted 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:.....

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 Section 2(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:-

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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):

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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.....

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."