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

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Date of Decision: 24.04.2025

+ **W.P.(C) 4235/2025**

GOODRICH CARBOHYDRATES LTD.Petitioner

Through: Mr. Deepanshu Jain, Mr. Shaantanu Jain, Mr. Prateek Kumar & Mr. Manish Yadav, Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX.....Respondent

Through: Mr. Abhishek Maratha, Mr. Apoorv Agarwal, Mr. Parth Samwal, Mr. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Kuskan Goel & Mr. Himanshu Gaur, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition impugning an order dated 29.11.2024 [**impugned order**] dated 29.11.2024 passed under Section 250/143(3) of the Income Tax Act, 1961 [**Act**] to give effect to the order dated 27.08.2020 passed by the Commissioner of Income Tax (Appeals) [**CIT(A)**].
2. The petitioner had filed its return of income for the assessment year [**AY**] 2017-18 on 30.10.2017 declaring an income of ₹2,26,85,350/-. The petitioner's return of income was picked up for scrutiny and a notice under Section 143(2) of the Act was issued on 13.08.2018. The said proceedings culminated in the Assessing Officer [**AO**] passing an assessment order dated 21.12.2019 under Section 143(3) of the Act.
3. The controversy centres around the addition of ₹5,87,096/- made by



the AO on account of disallowance due to delay in depositing the Employees' State Insurance [ESI]/Provident Fund [PF] under Section 36(1)(va) of the Act.

4. The petitioner filed an appeal against the assessment order dated 21.12.2019 before the CIT(A) assailing the said addition. The learned CIT(A) accepted the petitioner's contention and allowed the appeal. The relevant extract of the said appellate order is set out below:

“Examination of the issue and decision:-

6. Addition of Rs.5,87,096/- u/s 2(24)(x) r.w.s 36(1)(va) on account of delay in depositing of ESI.

6.1 I have carefully considered the facts of the case in the light of submissions made by the appellant as well as the assessment order u/s 143(3) of the Act and the applicable law in this regard.

6.2 There are a number of judicial decisions which support the argument of the appellant that if the assessee deposits the employee's contribution of EPF before the due date of filing of Income Tax Return, the same cannot be disallowed. The appellant has relied on a number of case laws in support of its grounds of appeal as reproduced above.

6.3 Following the decision of Supreme Court in the case of **Commissioner of Income Tax vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC)**, Bombay High Court in the case of **Commissioner of Income-tax vs. Ghatge Patil Transports Ltd. (2014) 368 ITR 749 (Bom.)** and Punjab & Haryana High Court in the case of **Commissioner of Income-tax vs. Hemla Embroidery Mills (P) Ltd. (2014) 366 ITR 167 (P&H)** have held that both the employee's and employer's contribution towards ESI/PF and such welfare funds for employee are covered under the amendment to Sec. 43B of the I.T. Act.

6.4 Following the principle laid down by the Hon'ble Supreme court in the case of **Vinay Cement 213 CTR 263**, the Hon'ble High Court, Delhi in **CIT vs. AIMIL Limited [2010] 321 ITR 508** has held that -

“We may only add that if the employees' contribution is not deposited by the due date



prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income-tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principles laid down by the Supreme Court in *Vinay Cement (supra)*.”

6.5 Recently, SLP in the case of **Pr. CIT, Jaipur vs. Rajasthan State Beverages Corporation Ltd.**, in which Hon'ble Rajasthan High Court had held that amount of PF & ESI having been deposited on or before the due date of filing returns could not be disallowed u/s 43B or sec. 36(1)(va), was also dismissed in favour of assessee (2017) 84 Taxmann.com185.

6.6 As regards applicability of CBDT's Circular number 22/2015, the circular cannot be conclusive and override judicial decisions as held in **Geep Industrial Syndicate Ltd. vs. CBDT (1987) 166 ITR 88 (Del.) & CIT vs. Hero Cycles (P) Ltd. (1997) 228 ITR 463(SC) and UCO Bank vs. CIT [1999] 237 ITR 889 (SC)**.

6.7 I have examined the issue. Since in the present case, the appellant company has paid the disallowed contribution towards EPF of Rs 5,87,096/- within the F.Y. 2016-17 and well before the due date of filing of return u/s 139(1), keeping in view the above cited judicial pronouncements, the addition made by the AO on account of delayed payment of employee's contribution of EPF of Rs 5,87,096/- is **deleted** and ground of appeal in respect of this issue is **allowed**.

7. In the result, appeal is allowed.”

5. There is no ambiguity in the order passed by the CIT(A) and it is crystal clear that the CIT(A) had allowed the petitioner's appeal in regard to disallowance of ₹5,87,096/- towards EPF contribution.

6. After the said appellate order, the AO was required to recompute the



demand and pass an order in compliance of the aforementioned appellate order. However, under the guise of giving effect to the said order, the AO has passed the impugned order holding that no change in the assessment is required in view of the subsequent judgment dated 12.10.2022 of the Supreme Court in *M/s Checkmate Services P. Ltd. v. Commissioner of Income Tax-I: Civil Appeal No.2833/2016*.

7. We consider it apposite to set out the impugned order:

“ORDER U/S 250/143(3) OF THE INCOME TAX ACT, 1961

1.0 The assessment in this case was completed u/s 143(3) of the IT Act, 1961 on 21.12.2019 assessing total income as under:

	Amount (Rs.)	Amt. (Rs.)
Total Income declared as per ITR		2,26,85,350
Add: Addition u/s 36(1)(va) of the IT Act	5,87,096	5,87,096
Taxable Income u/s 143(3)		2,32,72,446/-

2.0 Aggrieved by the above, the assessee has filed appeal before the CIT(A), who vide its order dated 27/08/2020, allowed the appeal of the assessee company and deleted the additions of Rs. 5,87,096/- made at the time of completing assessment proceedings u/s 143(3) of the Act. However considering the recent judgment of *M/s Checkmate Services Private Limited v/s CIT-I*, Hon'ble Supreme Court has disallowed the deduction u/s 36(i)(va) in respect of delayed deposit of amount collected towards employee's contribution to ESI/PF cannot be claimed when deposited within the due date of filing of return even when read with section 43b of the Act.

3.0 In view of the above, total taxable income of the assessee company for the year under consideration remains unchanged i.e. same as assessed u/s 143(3) of the Income tax Act, 1961 dated 21.12.2019. Issue necessary forms.”

8. It is at once clear from the above that in essence, the AO has decided to review the order passed by the CIT(A) and passed a fresh order on the contentious issue that was settled in favour of the petitioner by the CIT(A). It



is clear that the AO is not in agreement with the decision of the CIT(A) as according to him, the Hon'ble Supreme Court has taken a different view in another case.

9. It is apparent that the AO had no jurisdiction to disregard the appellate order in the manner as he had done. The jurisdiction of the AO is limited to give effect to the CIT(A) appellate order dated 27.08.2020 passed by the CIT(A). In the event the Revenue finds that the order passed by the CIT(A) is not acceptable, the Revenue is required to avail its remedy of an appeal before the learned Income Tax Appellate Tribunal [ITAT]. It would be debilitating to the Rule of law, if the AO is permitted to sit as an appellate authority over the decision rendered by the appellate authority and review the appellate order passed by the CIT(A) instead of giving effect to it.

10. Mr. Maratha, learned counsel appearing for the Revenue submits that the petitioner has a statutory remedy of appeal. However, since the impugned order has been passed without jurisdiction, we are not persuaded to refrain from entertaining the present petition.

11. In view of the above, the present petition is allowed and the impugned order is set aside.

12. The AO is directed to forthwith pass a fresh order to give effect to the appellate order dated 27.08.2020 passed by the CIT(A).

13. We clarify that nothing stated in this order shall be construed to mean that this court has examined the question regarding the addition or disallowance in regard to delayed deposit of contribution of EPF/PF.



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14. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 24, 2025

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Click here to check corrigendum, if any