TAX SPHERE

Disallowance of late deposit of employees' contribution under section 143(1) of the Income-tax Act, 1961

During assessment year 2019-20, the assessee deducted employees' contribution towards Provident Fund ("**EPF**") and State Insurance ("**ESI**"), however, there was an inordinate delay in depositing these amounts as per the applicable EPF/ ESI laws.

Since the said deposits were made before the due date of filing return of income, deduction towards these amounts was claimed under section 36(1)(va) read with section 43B of the Act. The claim of deduction was fortified by:

a) express language of proviso to section 43B(1), which states that there would be no disallowance, if payment was made before the due date of furnishing return of income; and

b) Supreme Court decisions in the cases of *Vinay Cement Ltd[1] & Alom Extrusions Ltd[2]* as well as over 40 judgments by different High Courts, including of the Delhi High Court.

[1] CIT vs Vinay Cement Ltd [2003] 213 CTR 268 (SC)
[2] CIT vs Alom Extrusions Ltd [2009] 319 ITR 306 (SC)

Pertinently, the Gujarat High Court had taken an adverse view in the case of *Gujarat State Transport Corporation[3]*.

In intimation issued under 143(1) on 28.05.2020, the aforesaid claim of deduction was disallowed, which was disputed by the assessee, inter alia, on the ground that the said claim, being of debatable nature, is beyond the scope of adjustments permissible under section 143(1) of the Act.

Subsequently, in the case of *Checkmate Services (P) Ltd[4]*, the Supreme Court vide judgment dated 12.10.2022, conclusively held that delay in deposit of employees' contribution would result in disallowance of the said expense in terms of section 36(1)(va) read with section 2(24)(x) of the Act.

It is pertinent to note that the dispute in Checkmate Services (supra) arose out of disallowance made in assessment order passed under section 143(3); the scope and validity of adjustment under section 143(1) of the Act, on this count, was not examined by the apex Court.

In the aforesaid background, the Delhi High Court was called upon to decide the tenability of disallowance made in respect of late deposit of employees' contribution vide intimation under section 143(1) of the Act inasmuch as debatable issues are not open to adjustment by exercising powers under the said section.

[3] CIT vs Gujarat State Transport Corporation [2014] 366 ITR 170 (Gujarat)

[4] Checkmate Services (P) Ltd vs CIT [2022] 448 ITR 518 (SC)

Vide judgment dated 08.09.2025[1], the Delhi High Court held that the exercise of jurisdiction was valid inasmuch as under section 143(1)(a)(ii), adjustment in relation to an incorrect claim is permitted, if such incorrect claim is apparent from any information in the return. The High Court also noted that adverse judgment of the Gujarat High Court in *Gujarat State Road Transport Corporation (supra)* was available at the time when the claim of deduction was made, which was subsequently affirmed by the Supreme Court in *Checkmate Services (supra)* and held that interpretation of substantive law is not dependent on the nature of assessment; that such adjustment can be made under section 143(1)(a) of the Act as well.

Judgment of the Delhi High Court raises following points for consideration and discussion:

a) Scope of section 143(1) of the Act inasmuch as debatable issues, which call for interpretation of any provision, are not covered therein - detailed enunciation of law by the Supreme Court in *Checkmate Services (supra)*, makes it apparent that the issue under consideration was debatable;

b) At the time of making the claim of deduction, assessee was supported by favourable judgments of the Delhi High Court and various other High Courts allowing the subject deduction, thus, the claim could not be said to be incorrect;

[5] Woodland Aero Club (P) Ltd vs ACIT 2025: DHC:7788-DB

c) Judgment rendered in *Checkmate Services (supra)* arose out of disallowance made in scrutiny assessment proceedings and did not deal with powers under section 143(1) of the Act;

d) If adjustments qua debatable issue is allowed to be made in exercise of powers under section 143(1), procedure prescribed for scrutiny assessment, viz., sections 143(2), 143(3), 144B, etc., will be rendered nugatory.

[5] Woodland Aero Club (P) Ltd vs ACIT 2025: DHC:7788-DB