Varsha Construction — TAXC No. 133/2025

Page 1 of 14 (TAXC No.133/2025) 2026:CGHC:17457-DB Digitally signed by SISTA NAFR SISTA SOMAYAJULU SOMAYAJULU Date: 2026.04.16 18:07:40 +0530 HIGH COURT OF CHHATTISGARH AT BILASPUR TAXC No. 133 of 2025 {Arising out of order dated 22-1-2025 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in ITA No.5/RPR/2023} M/s Varsha Construction, Second Floor-25, 26, Millenium Plaza, Raipur, Chhattisgarh-492001 ... Appellant versus Assistant Commissioner of Income Tax, Circle-1(1), Central Revenue Building, Civil Lines, Raipur, Chhattisgarh-492001 ... Respondent For Appellant : Mr. Nikhilesh Begani and Mr. Apurv Goyal, Advocates. For Respondent : Mr. Ajay Kumrani, Advocate on behalf of Mr. Amit Chaudhari, Standing Counsel for the Income Tax Department. Division Bench: - Hon'ble Shri Sanjay K. Agrawal and Hon'ble Shri Sachin Singh Rajput, JJ. Judgment On Board (16/04/2026) Sanjay K. Agrawal, J

1. This appeal preferred under of the Income Tax Act, 1961 (for short, 'the Act of 1961') was admitted for hearing on 2-9- 2025 by formulating the following substantial question of law:- > "Whether the CIT (appeals) and the Income Tax Appellate Tribunal are justified in dismissing the appeals holding that the Assessing Officer has rightly processed the return of the appellant herein under of the Act ignoring the fact that in light of conflicting judgments on the issue of due date the Assessing Officer was required to resort to the Page 2 of 14 (TAXC No.133/2025) provisions contained in / of the Act, by recording a finding which is perverse to the record?"

2. The aforesaid question of law arises for consideration on the following factual backdrop:-

3. The appellant/assessee filed the return of income for Assessment Year 2019-20 declaring a total income of Rs.1,27,98,874/- and paid tax to the tune of Rs.44,72,437/-. The return of the assessee was processed by Central Processing Centre ( ), Bengaluru/Assessing Officer and an intimation order was issued exercising the powers under of the Act of 1961, wherein, claim for deduction of delayed deposit of employees' share of contribution towards Employees' State Insurance (ESI) and Employees Provident Fund (EPF) of Rs.4,64,728/- under of the Act of 1961 was disallowed by the order dated 3-1-2021. DCIT6 had already held that claim of deduction in 2 (2008) 305 ITR 103 (SC) 3 (2008) 14 SCC 208 4 [2024] 164 taxmann.com 270 (Chhattisgarh) 5 ITA No.04/RPR/2023 delivered on 11.05.2023 (ITAT Raipur Bench 'SMC') 6 [2024] 159 taxmann.com 1574 (Raipur-Trib.) Page 5 of 14 (TAXC No.133/2025) respect of delayed deposit in respect of employees' share of contribution towards ESI and EPF could not be summarily disallowed by Assessing Officer under the provisions contained in of the Act of 1961 and negated disallowance of delayed deposit of employees' share of contribution towards ESI and EPF holding that the decision of the Supreme Court in ■cite■19†Checkmate Services Pvt. Ltd.■ (supra) was not available at the time when the intimation under of the Act of 1961 was issued in this case on 3-1-2021 and against the aforesaid orders of the ITAT, tax appeals vide TAXC No.149/2024 (The Deputy Commissioner of Income Tax v. Parv Builcon) and TAXC No.158/2024 (■cite■29†The Deputy Commissioner of Income Tax v. Satpal Singh Sandhu■) respectively were preferred before this Court by the Revenue, however, both the appeals were withdrawn by the Revenue and as such, the Revenue cannot be allowed to take a different stand in different forums. Learned counsel for the appellant/assessee finally submits that the intimation order under of the Act of 1961, the order passed by CIT(Appeals) and the order passed by the ITAT, affirming the order of CIT (Appeals), deserve to be set-aside by granting this appeal.

5. Mr. Ajay Kumrani, learned counsel for the respondent, would support the impugned order and submit that the contention of the appellant that the subject adjustment/disallowance is beyond the power of Assessing Officer in view of of the Act of 1961 is not correct. The adjustment made towards delayed deposit of employees' contribution is very much within the powers of Assessing Page 6 of 14 (TAXC No.133/2025) Officer to prima facie make adjustment at the time of processing of return. He further submits that in view of the decision of the Supreme Court in the matter of (supra), the issue is now well settled. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction." Page 9 of 14 (TAXC No.133/2025)

8. As such, their Lordships of the Supreme Court, in the above judgment rendered on 12-10-2022, settled the issues authoritatively and also clarified the legal position. In the instant case, at the time of passing of the intimation order under of the Act of 1961 on 3-1-2021, the decision of Supreme Court in (supra) was not available in view of the divergent view amongst the various High Courts, as it was rendered on 12-10- 2022.

9. At this stage, it would be appropriate and beneficial to notice the nature of powers under sub-section (1) of Section 143 as against sub-sections (2) and (3) of the Act of 1961. The power under sub-section (1) of of the Act of 1961 is summary in nature designed to cause adjustment which is apparent from the return while that under sub-sections (2) and (3) is to scrutinize the return and cause deeper probe to arrive at correct determination of the liability {See : > 17}.

10. Further, in of the Act of 1961, the procedure to process the return in a given case is provided. Section 143(1)(a) is reproduced hereunder reference:- > "Assessment > 143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-- > (a) the total income or loss shall be computed after making the following adjustments, namely:-- > 10 (2020) 19 SCC 12 Page 10 of 14 (TAXC No.133/2025) > (i) any arithmetical error in the return; (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return; (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139 (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.--Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return: > Provided that no such adjustments shall be made unless an intimation is given to the

assessee of such adjustments either in writing or in electronic mode: > Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made: > Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018." (a) of the Act of 1961, the issue as to whether the delayed deposit of employees' share of contribution towards Employees State Insurance and Employees Provident Fund, though deposited by the assessee beyond the due date prescribed under the relevant Acts, but before Page 12 of 14 (TAXC No.133/2025) the due date of filing of the return of income under of the Act of 1961, could be held as the income of the appellant/assessee under read with of the Act of 1961 or not or whether it is subject to the provisions contained in of the Act of 1961, was highly debatable, which was pending consideration before the Supreme Court in (supra) and subsequently, it was resolved by the Supreme Court by the judgment dated 12-10-2022. Furthermore, the assessee in its audit report had only furnished the details of delayed deposit in Column 20 (b) of the Form No.3CB and had not shown the same as disallowance. Therefore, the Assessing Officer has committed a grave legal error in processing the return of the assessee under of the Act of 1961, in light of principles of law their Lordships of Supreme Court in the matters of ■cite■25†Kvaverner John Brown Engg. (India) Pvt. Ltd■ (supra) and (supra).

14. Furthermore, the orders passed in (supra) and Parv Buildcon (supra) by the ITAT holding that of the Act of 1961 cannot be resorted to in case of highly debatable issue were challenged by the Revenue before this Court by filing two appeals and ultimately, both the appeals vide Tax No.149/2024 (DCIT v. Parv Buildon) and TAX No.15/2024 (DCIT v. Satpal Singh Sandhu), were withdrawn by the Revenue by orders dated 10-2-2025 and 21-5-2025, respectively, and thereby, the Revenue has allowed the plea of the assessees therein to stand that in a highly debatable issue, the Assessing Officer ought not to have resorted to Section Page 13 of 14 (TAXC No.133/2025) 143(1)(a) of the Act of 1961. Therefore, the Revenue cannot be allowed to take a different stand before different forums as it may lead to uncertainty and chaos.

15. In the instant case, the ITAT has committed a grave legal error by relying upon the decision rendered by this Court in M/s. (supra), wherein, this Court has dismissed the appeal preferred by the assessee as barred by limitation summarily without formulating any substantial question of law and as such the substantial question of law formulated herein in this appeal was neither involved, formulated and answered in M/s. (supra).

19. The substantial question of law is answered in favour of the appellant/assessee and against the respondent/Revenue.

20. In the result, the appeal is allowed to the extent indicated herein- above leaving the parties to bear their own cost(s). Sd/- Sd/- (Sanjay K. Agrawal) (Sachin Singh Rajput) Judge Judge Soma