IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.3854 OF 2024 (T-IT)

BETWEEN:

1. M/S GEETHANJALI EFFECTIVE REALTY SOLUTIONS PVT LTD
NO.10/1, GROUND FLOOR,
LAKSHMINARAYANA COMPLEX
PALACE ROAD, VASANTH NAGAR
BENGALURU – 560 052
REP BY ITS DIRECTOR
SRI P RAVINDRA PAI
REGISTERED COMPANY
UNDER THE COMPANIES ACT.

2. SRI P RAVINDRA PAI
S/O SRI P DAYANAND PAI
AGED ABOUT 46 YEARS
R/AT NO.10/1, GROUND FLOOR,
LAKSHMINARAYANA COMPLEX,
PALACE ROAD, VASANTH NAGAR
BENGALURU-560 052.

…PETITIONERS

Digitally signed by CHANDANA B M
Location: High Court of Karnataka

(BY SRI. SESHACHALA M.V., SENIOR COUNSEL APPEARING FOR
SRI. NAGHARISH G.S., ADVOCATE)

AND:

1. THE INCOME TAX DEPARTMENT
BY ITS DEPUTY COMMISSIONER
OF INCOME TAX, TDS CIRCLE -1(1),
4TH FLOOR, HMT BHAVAN,
BELLARY ROAD,
BENGALURU-560 032
REP BY DR VIJAYAKUMAR M D.

2. PRINCIPAL COMMISSIONER OF INCOME TAX -TDS
4TH FLOOR, HMT BHAVAN,

BELLARY ROAD,
BENGALURU-560 032.

3. COMMISSIONER OF INCOME TAX-TDS
4TH FLOOR, H M T BHAVAN,
BELLARY ROAD,
BENGALURU-560 032.

…RESPONDENTS

(BY SRI. M. THIRUMALESH, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR SUCH OTHER WRIT OR DECLARATION THAT THE LEGISLATURE BY SUBSEQUENT AMENDMENT TO SECTIONS 191, 201, 43B, 40(a)(ia) RWS. 139 OF THE IT ACT HAS ALLOWED ADDITIONAL TIME TO THE DEPOSITOR TO DEPOSIT TDS BEYOND RULE 30 OF THE IT RULES DURING THE PREVIOUS YEAR BEFORE THE DATE OF FILING THE RETURN OF INCOME U/S 139 OF THE IT ACT AND ETC.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioners seek the following reliefs:

"a) Issue a writ of mandamus or such other writ or declaration that the legislature by subsequent amendment to Sections 191, 201, 43B, 40(a) (ia) rws 139 of the IT Act has allowed additional time to the depositor to deposit TDS beyond Rule 30 of the IT Rules during the previous year before date of filing the return of income U/s. 139 of the IT Act.

b) Consequently, issue a writ of certiorari quashing the order dated 22.12.2023 bearing No.ITBA/COM/F/17/2023-24/1059018326(1) Annexure-D

u/s. 279(1) of the IT Act for the Assessment year 2014-15 passed by the third respondent.

c) Issue such other writ or direction as this Hon'ble Court deem fit to grant in the facts and circumstances of the present case."

2. Heard learned counsel for the petitioners and learned counsel for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioners submits that respondents had passed identical orders under Section 276B r/w 278B of the Income Tax for the assessment years 2016-17 and 2017-18, which were tried by the petitioners along with other petitioners in W.P.No.24937/2022 and 24938/2022 and connected matters in which this Court vide final order dated 31.01.2024 set aside the orders impugned therein and remitted the matter back to the Assessing Officer for reconsidered afresh in accordance with law.

4. It is submitted that the present petition relates to the Assessment year 2014-15 and by applying the doctrine of parity that since the aforesaid petition in W.P.No.24937/2022 and

W.P.No.24938/2022 were in respect of the very same petitioners, the order impugned in the present petition at Annexure – D dated 22.12.2023 also deserves to be set aside and matter remitted back for reconsideration afresh in accordance with law.

5. Per contra, learned counsel for the respondents submits that there is no merit in the petition and that the same is liable to be dismissed.

6. As rightly contended by learned counsel for the petitioners, petitioners along with others approached this Court in W.P.No.24937/2022 and W.P.No.24938/2022 and connected matters in relation to the assessment years 2016-17 and 2017-18, which were allowed and disposed of by this Court vide order dated 31.01.2024 as hereunder:

> *"In W.P.No.24901/2022, petitioners seek for the following reliefs:*
>
> > *"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.*

b. Consequently, issue a writ of certiorari quashing the order dated 28.02.2018 bearing No.F.No.45/C.I.T.(T.D.S)C-27/2017-18 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2014-15 passed by the third respondent."

In W.P.No.24922/2022, petitioners seek for the following reliefs:

"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.

b. Consequently, issue a writ of certiorari quashing the order dated 25.06.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2018-19 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2016-17 passed by the third respondent."

In W.P.No.24936/2022, petitioners seek for the following reliefs:

"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.

b. Consequently, issue a writ of certiorari quashing the order dated 28.02.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2017-18 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2015-16 passed by the third respondent."

In W.P.No.24937/2022, petitioners seek for the following reliefs:

> *"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.*
>
> *b. Consequently, issue a writ of certiorari quashing the order dated 10.10.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2018-19 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2016-17 passed by the third respondent."*

In W.P.No.24938/2022, petitioners seek for the following reliefs:

> *"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.*
>
> *b. Consequently, issue a writ of certiorari quashing the order dated 10.10.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2018-19 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2015-16 passed by the third respondent."*

In W.P.No.24939/2022, petitioners seek for the following reliefs:

"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.

b. Consequently, issue a writ of certiorari quashing the order dated 12.11.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2018-19 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2017-18 passed by the third respondent."

In W.P.No.24940/2022, the petitioners seek for the following reliefs:

"a. Issue a writ of mandamus or such other writ or declaration that the time for deposit of tax deducted at source u/s. 200 r/w. Rule 30 of the IT Rules stands extended as per Section 139 rws. 201(1) rws. 40(a)(ia) rws.43B of the IT Act, that is upto the date of filing the return of income u/s. 139(1) of the IT Act as laid down by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd., (2010) 1 SCC 489 Annexure-F1 and Checkmate Services P. Ltd., Vs. CIT (2022) SCC Online SC 1423 Annexure-F2 dated 12.10.2022.

b. Consequently, issue a writ of certiorari quashing the order dated 25.06.2018 bearing No.F.No.45/C.I.T.(T.D.S)G-14/2018-19 Annexure-J passed u/s. 279 of the IT Act for the Assessment year 2015-16 passed by the third respondent."

2. Heard Sri M.V.Seshachala, learned Senior counsel appearing for the petitioners, Sri Y.V. Ravi Raj, learned counsel appearing for the respondents-revenue and perused the material on record.

3. In addition to reiterating the various contentions urged in the petitions and referring to the material on record, learned Senior counsel for the petitioners invited my attention to the impugned orders in order to point out that the return of income declaring payment of entire TDS amount for the periods 01.04.2013 to 31.03.2014; 01.04.2014 to 31.03.2015; 01.04.2014 to 31.03.2015; 01.04.2015 to 31.03.2016; 01.04.2014 to 31.03.2015; 01.04.2016 to 31.03.2017 and 01.04.2014 to 31.03.2015 respectively, with interest was within the extended period of the amended provisions of Section 139 r/w Section 201(1) and Section 43B(a) and Section 40(a)(i-a) of the Income Tax Act, 1961 (for short 'the I.T.Act'). It was submitted that without taking into consideration the amended provisions and the extended period, the respondents proceeded to pass the impugned order under Section 279 of the I.T.Act erroneously holding that the petitioners – assessees committed default in payment of TDS under Section 200 r/w Rule 30 of the I.T. Rules and as such, the petitioners having deposited the entire TDS amount together with interest as per the amended provisions and the extended period and in the light of the judgments of the Apex Court and this Court, the impugned orders deserve to be set aside. In support of his contentions, learned Senior counsel for the petitioners has placed reliance upon the following judgments:-

(i) M/s. Century Real Estate Vs.DCIT - Crl.P.3321/2022 dated: 15.09.2022;

(ii) CIT Vs. Alom Extrusions Ltd., - (2010) 1 SCC 489;

(iii) Checkmate Services P. Ltd., Vs. CIT - (2022) SCC Online SC 1423;

(iv) Raza Textiles Ltd., Vs. ITO - (1973) 1 SCC 633;

(v) CIT Vs.Calcutta Export Co., - (2018) 16 SCC 686;

(vi) Shree Choudhary Transport Co., Vs. ITO - (2021) 13 SCC 401.

4. Per contra, learned counsel for the respondents – revenue would reiterate the various contentions urged in the statement of objections and submits that there is no merit in the petitions and the same are liable to be dismissed.

5. A perusal of the material on record will indicate that it is an undisputed fact that the petitioners deducted TDS for the assessment years 2014-15, 2016-17, 2015-16, 2016-17, 2015-16, 2017-18 and 2015-16 respectively and return of income was filed declaring payment of entire TDS amount with interest within the extended period. In this context, it is relevant to state that by virtue of the amended deeming provisions contained in Sections 191, 193, 194J, 194-I, 194C and 194H of the I.T.Act, a distinction has been made between actual payment and deemed payment and the petitioners were obliged to show interest payment on the Book entry showing TDS deductions even though actual payment had not been made and consequently, by virtue of the amended deeming provisions, since the petitioners had filed the returns and paid TDS with interest within the extended period, Sections 276B and 278B were not attracted to the facts of the instant case.

6. The scope and ambit of judicial review by this Court of an order passed by the respondents 3 and 4 which are quasi judicial authorities by exercising jurisdiction under the I.T.Act on wrong facts, came up for consideration before the Apex Court in the case of ***Raza Textiles vs. Income***

Tax Officer – (1973) 1 SCC 633, *wherein it is held as under:-*

> ***3.*** *Aggrieved by that order the appellant went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the appeal on the ground that the same was not maintainable. He took the view that an appeal lay only under Section 30(1-A). But, before such an appeal can be entertained the appellant must satisfy two conditions, namely, (1) he had deducted the tax due from the non-resident in accordance with the provisions of sub-section (3-B); and (2) that he had paid the sum deducted to the Government. The appellant having not complied with those two conditions, the Appellate Assistant Commissioner held that the appeal was incompetent. The order of the Appellate Assistant Commissioner was confirmed by the Tribunal. Thereafter, the appellant moved the High Court under Article 226 of the Constitution. That application came up before a Single Judge. The Single Judge after going into the matter in dated came to the conclusion that Messrs Nathirmal and Sons is not a non-resident firm and that being so the appellant was not required to act under Section 18(3-B). He accordingly set aside the order impugned. The revenue went up in appeal against the order of the learned Single Judge to the Appellate Bench. That Bench allowed the appeal with the observations, "in the present case the*

question before the Income Tax Officer, Rampur, was whether the firm Nathirmal and Sons was non-resident or not. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by a wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income Tax Officer was the sole Judge of the fact whether the firm in question was resident or non-resident. This conclusion in, our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the Jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the Jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion, the Appellate Bench is wholly wrong in opining that the Income Tax Officer can "decide either way".

7. While interpreting the amended provisions of Sections 191, 193, 194J, 194-I, 194C and 194H of the I.T.Act, the Apex Court has held that a Book entry is treated as 'deemed income' by virtue of the said amendments. In the case of ***Commissioner of Inocme Tax vs. Alom Extrusions Limited - (2010) 1 SCC 489****, the Apex Court held as under:-*

> ***17.*** *We find no merit in these civil appeals filed by the Department for the following reasons: firstly, as stated above, Section 43-B (main section), which stood inserted by the Finance Act, 1983, with effect from 1-4-1984, expressly commences with a non obstante clause, the underlying object being to disallow deductions claimed merely by making a book entry based on mercantile system of accounting. At the same time, Section 43-B (main section) made it mandatory for the Department to grant deduction in computing the income under Section 28 in the year in which tax, duty, cess, etc. is actually paid. However, Parliament took cognizance of the fact that accounting year of a company did not always tally with the due dates under the Provident Fund Act, the Municipal Corporation Act (octroi) and other tax laws. Therefore, by way of first proviso, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax, duty, cess or fee is paid before the*

date of filing of the return under the Income Tax Act (due date), the assessee(s) then would be entitled to deduction. However, this relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer(s) should not sit on the collected contributions and deprive the workmen of the rightful benefits under social welfare legislations by delaying payment of contributions to the welfare funds.

8. So also, the Apex Court in the case of ***Commissioner of Income Tax, Kolkata XII vs. Calcutta Export compnay – (2018) 16 SCC 686****, held as under:-*

27. *Thus, the Finance Act, 2010 further relaxed the rigors of Section 40(a)(i-a) of the IT Act to provide that all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income. The idea was to allow additional time to the deductors to deposit the TDS so made. However, the Memorandum explaining the provisions of the Finance Bill, 2010 expressly mentioned as follows:*

"This amendment is proposed to take effect retrospectively from 1-4-2010 and will, accordingly, apply in relation to Assessment Year 2010-11 and subsequent years."

28. *The controversy surrounding the above amendment was whether the amendment being*

curative in nature should be applied retrospectively i.e. from the date of insertion of the provisions of Section 40(a)(i-a) or to be applicable from the date of enforcement.

29. *TDS results in collection of tax and the deductor discharges dual responsibility of collection of tax and its deposition to the Government. Strict compliance of Section 40(a)(i-a) may be justified keeping in view the legislative object and purpose behind the provision but a provision of such nature, the purpose of which is to ensure tax compliance and not to punish the taxpayer, should not be allowed to be converted into an iron rod provision which metes out stern punishment and results in malevolent results, disproportionate to the offending act and aim of the legislation. Legislature can and do experiment and intervene from time to time when they feel and notice that the existing provision is causing and creating unintended and excessive hardships to citizens and subject or have resulted in great inconvenience and uncomfortable results. Obedience to law is mandatory and has to be enforced but the magnitude of punishment must not be disproportionate by what is required and necessary. The consequences and the injury caused, if disproportionate do and can result in amendments which have the effect of streamlining and correcting anomalies. As discussed above, the amendments made in 2008 and 2010 were steps in*

the said direction only. Legislative purpose and the object of the said amendments were to ensure payment and deposit of TDS with the Government.

30. *A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section, is required to be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.*

31. *The purpose of the amendment made by the Finance Act, 2010 is to solve the anomalies that the insertion of Section 40(a)(i-a) was causing to the bona fide taxpayer. The amendment, even if not given operation retrospectively, may not materially be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assessees having substantial turnover and equally huge expenses and necessary cushion to absorb the effect. However, marginal and medium taxpayers, who work at low gross product rate and when expenditure which becomes subject-matter of an order under Section 40(a)(i-a) is substantial, can suffer severe adverse consequences if the amendment made in 2010 is not given retrospective operation i.e. from the date of substitution of the provision. Transferring or shifting expenses to a*

subsequent year, in such cases, will not wipe off the adverse effect and the financial stress. Such could not be the intention of the legislature. Hence, the amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e. from the date of insertion of the said provision.

32. *Further, in Allied Motors (P) Ltd. [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472 : (1997) 224 ITR 677] , this Court while dealing with a similar question with regard to the retrospective effect of the amendment made in Section 43-B of the Income Tax Act, 1961 has held that the new proviso to Section 43-B should be given retrospective effect from the inception on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. The aforesaid view has consistently been followed by this Court in the following cases viz. Whirlpool of India Ltd. v. CIT [Whirlpool of India Ltd. v. CIT, (2000) 9 SCC 62 : (2000) 245 ITR 3] , CIT v. Amrit Banaspati Co. Ltd. [CIT v. Amrit Banaspati Co. Ltd., (2002) 10 SCC 457 : (2002) 255 ITR 117] and CIT v. Alom Extrusions Ltd. [CIT v. Alom Extrusions Ltd., (2010) 1 SCC 489 : (2009) 319 ITR 306]*

33. *Hence, in light of the forgoing discussion and the binding effect of the judgment given in Allied*

Motors [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472 : (1997) 224 ITR 677] , we are of the view that the amended provision of Section 40(a)(i-a) of the IT Act should be interpreted liberally and equitable and applies retrospectively from the date when Section 40(a)(i-a) was inserted i.e. with effect from Assessment Year 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the section recorded above show that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on 1-8-2005 i.e. in accordance with the due date under the provisions of Section 139 of the IT Act, hence, is allowed to claim the benefit of the amendment made by the Finance Act, 2010 to the provisions of Section 40(a)(i-a) of the IT Act.

9. Similarly, in the case of ***Checkmate Services Private Limited vs. Commissioner of Income Tax-1 - (2023) 6 SCC 451,*** *the Apex Court held as under:*

50. *This condition i.e. of payment of actual amount on or before the due date to enable deduction, continued for 14 years. By the amendment of 2003, the second proviso was deleted. This Court interpreted the law, in the light of these developments, in Alom Extrusions [CIT v.*

Alom Extrusions Ltd., (2010) 1 SCC 489] . The Court considered the effect of omission of the second proviso, and observed as follows : (SCC pp. 493-96, paras 9-11, 15, 18-19 & 22-23)

"9. "Income" has been defined under Section 2(24) of the Act to include profits and gains. Under Section 2(24)(x), any sum received by the assessee from his employees as contributions to any provident fund/superannuation fund or any fund set up under the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees constituted income. This is the reason why every assessee(s) [employer(s)] was entitled to deduction even prior to 1-4-1984, on mercantile system of accounting as a business expenditure by making provision in his books of accounts in that regard. In other words, if an assessee(s) [employer(s)] is maintaining his books on accrual system of accounting, even after collecting the contribution from his employee(s) and even without remitting the amount to the Regional Provident Fund Commissioner (RPFC), the assessee(s) would be entitled to deduction as business expense by merely making a provision to that effect in his books of accounts.

10. The same situation arose prior to 1-4-1984, in the context of assessees collecting sales tax and other indirect taxes from their respective

customers and claiming deduction only by making provision in their books without actually remitting the amount to the exchequer. To curb this practice, Section 43-B was inserted with effect from 1-4-1984, by which the mercantile system of accounting with regard to tax, duty and contribution to welfare funds stood discontinued and, under Section 43-B, it became mandatory for the assessee(s) to account for the aforestated items not on mercantile basis but on cash basis. This situation continued between 1-4-1984 and 1-4-1988, when Parliament amended Section 43-B and inserted the first proviso to Section 43-B.

11. By this first proviso, it was, inter alia, laid down, in the context of any sum payable by the assessee(s) by way of tax, duty, cess or fee, that if an assessee(s) pays such tax, duty, cess or fee even after the closing of the accounting year but before the date of filing of the return of income under Section 139(1) of the Act, the assessee(s) would be entitled to deduction under Section 43-B on actual payment basis and such deduction would be admissible for the accounting year. This proviso, however, did not apply to the contribution made by the assessee(s) to the labour welfare funds. To this effect, the first proviso stood introduced with effect from 1-4-1988.

15. By the Finance Act, 2003, the amendment made in the first proviso equated in

terms of the benefit of deduction of tax, duty, cess and fee on the one hand with contributions to the Employees' Provident Fund, superannuation fund and other welfare funds on the other. However, the Finance Act, 2003, bringing about this uniformity came into force with effect from 1-4-2004. Therefore, the argument of the assessee(s) is that the Finance Act, 2003, was curative in nature, it was not amendatory and, therefore, it applied retrospectively from 1-4-1988, whereas the argument of the Department was that the Finance Act, 2003, was amendatory and it applied prospectively, particularly when Parliament had expressly made the Finance Act, 2003 applicable only with effect from 1-4-2004.

18. However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of the Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by Parliament only with effect from 1-4-2004, would become curative in nature, hence, it would apply retrospectively with effect from 1-4-1988.

19. Secondly, it may be noted that, in Allied Motors (P) Ltd. v. CIT [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472] , the scheme of Section 43-B of the Act came to be examined. In that case, the question which arose for determination was, whether sales tax collected by the assessee and paid after the end of the relevant previous year but within the time allowed under the relevant sales tax law should be disallowed under Section 43-B of the Act while computing the business income of the previous year? That was a case which related to Assessment Year 1984-1985. The relevant accounting period ended on 30-6-1983. The Income Tax Officer disallowed the deduction claimed by the assessee which was on account of sales tax collected by the assessee for the last quarter of the relevant accounting year. The deduction was disallowed under Section 43-B which, as stated above, was inserted with effect from 1-4-1984.

22. It is important to note once again that, by the Finance Act, 2003, not only is the second proviso deleted but even the first proviso is sought to be amended by bringing about a uniformity in tax, duty, cess and fee on the one hand vis-à-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003 is retrospective in operation. Moreover, the

judgment in Allied Motors [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472] was delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that the Finance Act, 2003 will operate retrospectively with effect from 1-4-1988 (when the first proviso stood inserted).

23. Lastly, we may point out the hardship and the invidious discrimination which would be caused to the assessee(s) if the contention of the Department is to be accepted that the Finance Act, 2003, to the above extent, operated prospectively. Take an example, in the present case, the respondents have deposited the contributions with RPFC after 31st March (end of accounting year) but before filing of the returns under the Income Tax Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under Section 43-B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right up to 1-4-2004, and who pays the contribution after 1-4-

2004, would get the benefit of deduction under Section 43-B of the Act."

10. Further, in the case of ***Shree Choudhary Transport Company vs. Income Tax Officer – (2021) 13 SCC 401****, the Apex Court held as under:-*

> ***16.*** *While taking up the question of interpretation of Section 40(a)(i-a), it may be usefully noticed that Section 194-C is placed in Chapter XVII of the Act on the subject "Collection and Recovery of Tax"; and specific provisions are made in the Act to ensure that the requirements of Section 194-C are met and complied with, while also providing for the consequences of default. As noticed, Section 200 specifically provides for the duties of the person deducting tax to deposit and submit the statement to that effect. The consequences of failure to deduct or pay the tax are then provided in Section 201 of the Act which, as noticed, puts such defaulting person in the category of "the assessee in default in respect of the tax" apart from other consequences which he or it may incur. The aspect relevant for the present purpose is that Section 40 of the Act, and particularly the provision contained in sub-clause (i-a) of clause (a) thereof, indeed provides for one of such consequences.*

16.10. *Another contention in regard to Section 40(a)(i-a) of the Act, that its scope cannot be decided on the basis of Section 194-C, has only been noted to be rejected. The interplay of these provisions is not far to seek where Section 40(a)(i-a) is not a standalone provision but provides one of those additional consequences as indicated in Section 201 of the Act for default by a person in compliance of the requirements of the provisions contained in Part B of Chapter XVII of the Act. The scheme of these provisions makes it clear that the default in compliance of the requirements of the provisions contained in Part B of Chapter XVII of the Act (that carries Sections 194-C, 200 and 201) leads, inter alia, to the consequence of Section 40(a)(i-a) of the Act. Hence, the contours of Section 40(a)(i-a) of the Act could be aptly defined only with reference to the requirements of the provisions contained in Part B of Chapter XVII of the Act, including Sections 194-C, 200 and 201. Putting it differently, when the obligation of Section 194-C of the Act is the foundation of the consequence provided by Section 40(a)(i-a) of the Act, reference to the former is inevitable in interpretation of the latter.*

11. In relation to the petitioners – assessees herein arising out of criminal proceedings under Section 279 of the

I.T.Act, this Court in ***Criminal Petition No.3321/2022 and connected matters*** *dated* ***15.09.2022****, held as under:-*

> *11. With effect from 01-07-2012, the time to pay TDS was extended up to filing of return of income tax under Section 139 of the Act. The extension was in terms of the proviso to Section 201 of the Act. If filing of return was co-terminus with the TDS that could be paid under Section 139 of the Act, the period pursuant to which the TDS could be paid would get extended up to *31-10-2013 and 30.11.2014. It is an admitted fact that TDS is paid by the petitioners within *31-10-2013 and 30.11.2014, though not at particular quarter. It is germane to notice the evidence of the Assistant Commissioner of Income Tax in C.C.No.94 of 2018. In the examination-in-chief the witness would state that there has been delay. In the cross-examination the witness would depose as follows:*
>
> *"6. In Ex.P14 the demand of Rs.39,50,982/- is in respect of interest on TDS amount. It is true to suggest that Section 201(1) deals with dealing the Assessee as Assessee in default. Section 201(1A) deals with levy interest on delayed payment. It is false to suggest that in the survey report the amount is not tallying. Witness voluntarily*

deposed that the TDS default fluctuates every month. If the Assessee does not pay the TDS in succeeding month the amount in default will be increased similarly if the TDS amount is paid by the Assessee in the succeeding month the amount in default will also decrease. It is true to suggest that the TDS default amount varies on the date of survey, on the date passing order under 201 and on the date of sanction order. On the date of sanction order I was already transferred to another section so I do not know about the sanction order. Accrual of account is identified by me. It is true to suggest that default is computed based on accrual. As on the date of survey we have identified the default of TDS made by the Assessee. As an officer of Income Tax my duty is to identify the default on the date of accrual and not to identify the actual future payments by the Assessee. It is true to suggest that on the last date of filing the returns the TDS amounts can be paid. ***Witness voluntarily deposed that the same will not absolve the criminal liability of the Assessee. It is true to suggest that there is provision to file a certificate issued by the Chartered Accountant about the tax payment of the deductee."***

(Emphasis added)

The witness would admit by this statement that it is true to suggest that on the last date of filing the returns, TDS can be paid and he voluntarily deposes that such payment will not absolve criminal liability of the assessee. He again accepts that it is true to suggest that there is a provision to file a certificate issued by the Chartered Accountant about tax payment of the deductee i.e., the petitioners herein. What would emerge from the evidence of the Assistant Commissioner of Income-Tax is that, the petitioners could have paid the TDS amount upto the end of financial year i.e., even on the last day of the financial year ending. It is in this light as also the amendment with regard to insertion of words 'reasonable cause' in Section 278AA of the Act, the order granting sanction for such prosecution will have to be considered. Though the order granting sanction for such prosecution does bear application of mind with regard to all the orders, but does not consider the amendment to Section 278AA of the Act. The Department does not take into account the reply submitted by the petitioners, which prima facie demonstrates reasonable cause for non-remittance of the TDS within the time stipulated under Section 201(1A) of the Act.

*12. It is in this light, the order of sanction requires reconsideration at the hands of the competent authority and all further proceedings taken thereto pursuant to the sanction of such prosecution would be rendered unsustainable, as the petitioners in terms of the Act itself were entitled to remit TDS amount up to *31-10-2013 and 30-11-2014, as the case would be, as it is these two years that are now made as offences under Section 276B r/w. 278B of the Act. If the petitioners had a reasonable cause and the Act itself permitted them to remit TDS amount on the last date of the financial year, prima facie the Court is of the opinion that a crime could not have been registered against the petitioners.*

13. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petitions are allowed in part.

(ii) The Orders of sanction dated 28-02-2018, 25.06.2018, 03.07.2018 and 10.10.2018 all issued by the Commissioner of Income-Tax (TDS), Bangalore as also the cognizance taken by the Special Court for Economic Offices, Bangalore in C.C.Nos.94/2018,140/2019,

141/2019 and 115/2019, impugned in respective criminal petitions, stand quashed.

(iii) Matters are remitted back to the hands of the competent authority i.e., the Commissioner of Income-Tax (TDS) to re-examine according of sanction for prosecuting the petitioners for offences punishable under Sections 276B read with 278B of the Income Tax Act, bearing in mind the observations made in the course of the order and pass appropriate orders in accordance with law.

12. A perusal of the material on record including the impugned order will indicate that the Principal Commissioner has not taken into account the amended deeming provisions which provide for extension of time nor ratio of the judgments of the Apex Court referred to supra. Further, in relation to the very same assessees, this Court has set aside the criminal prosecution and remitted the matters back to the respondents for reconsideration afresh in accordance with law. Under these circumstances, I deem it just and appropriate to set aside the impugned orders at Annexure-J and remit the matters back to the concerned respondents 2 and 3 for reconsideration afresh, bearing in mind the amended deeming provisions of the I.T.Act and the judgments of the Apex Court and this Court in accordance with law.

13. In the result, I pass the following:-

ORDER

(i) All the writ petitions are hereby allowed.

(ii) The impugned orders at Annexure-J dated 28.02.2018, 25.06.2018, 28.02.2018, 10.10.2018, 10.10.2018, 12.11.2018 and 25.06.2018 respectively are hereby set aside.

(iii) The matters are remitted back to the concerned respondents 2 and 3 for reconsideration afresh in accordance with law, bearing in mind the amended deeming provisions of the I.T.Act and the judgments of the Apex Court and this Court referred to supra in the body of this order.

(iv) Liberty is reserved in favour of the petitioners to produce additional pleadings, documents, judgments etc., which shall be considered by the concerned respondents 3 and 4 while passing orders afresh after hearing the petitioners.

(v) All rival contentions are kept open and no opinion is expressed on the same."

7. As can be seen from the aforesaid order, the orders impugned therein were set aside and matter remitted back to the concerned respondents for reconsideration afresh. Hence, by applying the doctrine of parity, I deem it just and appropriate to dispose of this petition by issuing certain directions.

8. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned order at Annexure – D dated 22.12.2023 passed by the 3rd respondent is hereby set aside.

(iii) Matter is remitted back to the 3rd respondent for reconsideration afresh in accordance with law bearing in mind the amended deeming provisions of the IT Act and the judgment of the Apex Court and this Court referred to in W.P.No.24937/2022 and W.P.No.24938/2022 and connected matters.

(iv) Liberty is reserved in favour of the petitioners to produce additional pleadings, documents, judgments, etc., which shall be considered by the 3rd respondent while passing orders afresh after hearing the petitioners.

(v) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 2 Sl No.: 31