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ADJUSTMENT BY INCOME TAX DEPARTMENT U/S 143(1)(a) IN RESPECT OF DEBATABLE ISSUE

1. INTRODUCTION:

1.1. Due to the setup of the Central Processing Centre, all the income tax returns filed by the assessees are processed through computer processing. No manual intervention is done. Presently the assessees are getting notices from the income tax central processing center for adjustments under section 143(1)(a) of the Income tax Act. As per the notices issued, explanations are called for from the assessee for why adjustment should not be made in their returned income. For the said purposes, in view of the proviso to section 143(1)(a), a time of 30 days is being given to the assessee to reply the said notice. Even notices are issued to the assessee stating there in mistake in computing the income while in fact there is no mistake or inconsistency. If no reply is received from the assessee, the adjustments proposed are confirmed. However, it is noted that even wherever the assessee replies to the notice and gives its explanation but the same is not considered and without giving any reason for the rejection of the explanation, adjustment is made. The question is whether where the adjustments which are proposed are of debatable nature or where there is no mistake in the filling up of the return of income form, whether those adjustments can be made u/s 143(1)(a) under the garb of prima facie adjustment or whether even the notices can be issued in such cases.

2. PROVISIONS OF SECTION 143(1)(a):

2.1. Section 143(1) of the Income tax Act provides that *'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:—

(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 indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, 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;

2.2. The assessees are receiving notices u/s 143(1)(a) for proposed adjustment in the returned income, in view of the proviso to clause (a). As per the said proviso, if any adjustment is to be made in the returned income of the assessee, the income tax department is required to give an intimation to the assessee for such adjustment either in writing or through electronic mode. Such notices for adjustment are being given by the income tax department though electronic mode and a reply is being sought for the adjustment in the returned income of the assessee within thirty days.

2.3. The present subsection (1) of section 143 of the Income tax Act was introduced by the Finance Act, 2008 w.e.f. 1st April, 2008 by substituting the earlier sub-section (1) which was as under: -

"(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142 –

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly, and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee.

Provided that except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be an intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him.

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made,

Provided also that where the return made is in respect of the income first assessable in the assessment year commencing on the 1st day of April, 1999, such intimation may be sent at any time up to the 31st day of March, 2002."

2.4. In this sub-section (1)(a), clause nos. (iii) and (iv) are inserted by the Finance Act, 2016 w.e.f. 1st April, 2017.

2.5. The explanatory statement in respect of substitution of section 143(1) by the Finance Act, 2008 is as under: -

Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralised Processing of Returns

Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income.

In India, the scheme of summary assessment being in force since the 1st day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss.

With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return:-
(a) any arithmetical error in the return; or
(b) an incorrect claim, if such incorrect claim is apparent from any information in the return.

Further it is proposed to clarify the meaning of the term "an incorrect claim apparent from any information in the return". This term shall mean such claim on the basis of an entry, in the return, –
(a) of an item, which is inconsistent with another entry of the same or some other item in such return;
(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; or
(c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

Further, these adjustments will be made only in the course of computerized processing without any human interface.

2.6. While inserting clause (iii) and (iv), the explanatory statement states as under: -

"Clause (a) of sub-section (1) of section 143 provides that, a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.

In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments."

2.7. By the substitution of section 143(1) by Finance Act, 2008, certain adjustments such as arithmetical error in the return, incorrect claim which is apparent from the information in the return, disallowance of deduction claimed under sections 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID or section 80IE, if the return is furnished beyond the due date of filing of return u/s 139(1) are to be made.

2.8. By the Finance Act, 2016 in order to increase the scope of adjustments under section 143(1), the two news clauses (iii) and (iv) were inserted which provided for disallowance of losses if the return is furnished after the due date of filing of return u/s 139(1) and disallowance of expenses which are indicated in the audit report but not taken into account in computing the total income by the assessee.

3. ADJUSTEMENTS PROPOSED U/S 143(1)(a) FOR DISALLOWANCE OF EXPENSES:

3.1. Recently several persons received notices from the Income tax Department for disallowance u/s 36(1)(va) of the Income tax for delayed payment of employees contribution to any provident fund or superannuation fund or any fund setup under the provisions of the Employees State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees. The reasons as are even for the proposed disallowance in the notice generally states *"Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)"*.

3.2. In the tax audit report, there is a clause 20(b) which requires the tax auditor to furnish the following details: -

"20 (b) any sum received from the employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24)(x) and due date for payment and the actual date of payment to the concerned authorities under section 36(1)(va)."

The details which are required in Form 3CD – tax audit report from the tax audit of the assessee are tabulated below: -

Sr. No.	Nature of Fund	Sum received from employees	Due date of payment	The actual amount paid	The actual date of payment to the concerned authorities

These details are required to be submitted by the tax auditor compulsorily. This does not require the auditor to state whether in case there is any delay in the payment of the said amount for contribution received from employees but paid before the due date of filing of return, such amount will be disallowable under section 36(1)(va) or not. Even auditor cannot mention whether the expenditure is allowable or not or cite the relevant decision of the court for forming his view. Further, in the present scenario all the returns are practically filed in electronic mode and the data to be entered is as per the fields prescribed in the income tax form. No additional remarks etc. can be submitted in the income tax return.

3.3. Since, auditor cannot express his opinion in the tax audit report, it cannot be assumed that the tax auditor by inserting the data mentioned under the table given under column 20(b) of the tax audit report the said amount or the law compulsorily requires for disallowance of the said amount while processing the return under section 143(1) of the Act which is through electronic mode and there is no manual intervention in it.

3.4. Though it is correct that before making an adjustment under section 143(1) of the Act, a notice is issued to the assessee for its justification but it has been observed that even though the assessee reply to the said notice, the additions/disallowances are made without considering the reply of the assessee at all and without even communicating the reason as to why the claim of the assessee was not acceptable as after filing the reply there is no procedure prescribed under section 143(1) to explain the assessee as to why its explanation is rejected.

3.5. The disallowances are being made through electronic processing for the employees contribution to various funds which are paid little late even within the grace period under the various employees' welfare laws or paid before the filing of the income tax return. The purpose of section 143(1) is to reduce the revenue loss which arise due to clerical mistake or where there is no two opinion can be formed or where the adjustment can be made due to a mistake which occurred in the return of income in view of the declaration made by the assessee in the tax audit. In the case of disallowances u/s 36(1)(va) which are being made while processing the return u/s 143(1), it cannot

be said that there is a clerical mistake in the computation of the returned income as per income tax return filed electronically. There are judicial pronouncements of various courts holding in favour as well as against the assessee. The tax auditor under clause 20(b) of tax audit report only give the details of the payment of employees' contribution in the prescribed manner. Thus, the adjustment in the income of the assessee electronically is made without considering the explanation of the assessee which is totally incorrect, against the cannon of the natural justice, unjustified and unjudicial approach on the part of the revenue.

3.6. In case of disallowance u/s 36(1)(va), there are various judgments of different High Courts. Some of the High Courts ordered that no disallowance can be made u/s 36(1)(va) of the Act for delayed payment of employees contribution as per the due date prescribed under the respective legislature if paid before the due date of filing of income tax return. Against this several High Court held that even in case of one day delay in payment of employees contribution, the amount will be disallowed u/s 36(1)(va). Some of the cases, allowing and disallowing u/s 36(1)(va), are given as under: -

Cases in favour of assessee:

1. **Sagun Foundry (P) Ltd. Vs. CIT [2017] 78 taxmann.com 47 (Allahabad)**

   Assessee (employer) deposited contributions of employer and employees towards provident fund and ESI beyond due date prescribed under relevant Acts, but before due date of filing of return of income under section 139(1) - Whether in view of judgment of Supreme Court rendered in case of CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416, assessee was entitled to deductions under sections 43B and 36(1)(vi) as claimed - Held, yes.

2. **Bihar State Warehousing Corporation Ltd. Vs. DCIT [2017] 393 ITR 386 (Patna)**

   Section 36(1)(va) – Where assessee-company made payment of employees' contribution to ESI and EPF after due dates of payment under relevant Acts but much before date of filing of return under Act, assessee would clearly be entitled to deduction of said payment.

3. **Pr. CIT Vs. Rajasthan State Beverages Corpn. Ltd. [2017] 250 Taxman 32 (Rajasthan)**

   Where PF and ESI was paid before due date of filing of returns, same could not be disallowed under section 43B or under section 36(1)(va).

4. **Pr. CIT Vs. Hind Filter Ltd. [2018] 90 taxmann.com 51 (Bombay)**
   Where assessee made contribution of Employees' Provident Fund after due date as specified in Explanation to section 36(1)(va) but within grace period, in view of deletion of second proviso to section 43B with effect from 1-4-2004, contribution so made could not be disallowed.

5. **CIT Vs. Jaipur VidyutVitran Nigam Ltd [2014] 363 ITR 307 (Rajasthan)**

Where payment of PF and ESI could not be made on or before due date under relevant Acts but same was deposited on or before due date of filing of returns under section 139, said amount could not be disallowed.

6. **Geekay Security Services (P) Ltd. Vs. DCIT [2019] 101 taxmann.com 192 (Bombay)**

   All payments towards employee's contribution to PF had been made before due date of filing of return, Commissioner was not justified in refusing to entertain assessee's claim on merits.

7. **Essae Teraoka (P) Ltd. Vs. DCIT [2014] 366 ITR 408 (Karnataka)**

   Where employer did not deposit PF/ESI contribution within due date as contemplated under PF/ESI Scheme/Act, but deposited it before due date of filing return, assessee would be entitled to deduction.

8. **CIT Vs. Kichha Sugar Co. Ltd. [2013] 356 ITR 351 (Uttarakhand)**

   Employee's contribution towards Provident Fund if paid before due date of filing return is allowable under section 36(1)(va) to employer assessee.

9. **CIT Vs. Nuchem Ltd. [2015] 59 taxmann.com 455 (Punjab & Haryana)**

   Section 36(1)(va) of the Income-tax Act, 1961 - Employee's contribution (Due date) - Assessment years 1994-95 to 1999-2000 - Whether where PF and ESI had been paid before due date of filing of return, it could not be disallowed - Held, yes.

10. **CIT Vs. ANZ Information Technology (P.) Ltd. [2009] 318 ITR 123 (Karnataka)**

    Section 36(1)(va)Income-tax Act, 1961, read with sections 2(24)(x) and 43B, of the Income-tax Act, 1961 - Employee’s contributions - Assessment year 2004-05 - Whether deposit made by employer of employee's contribution towards provident fund and ESI contribution beyond stipulated period provided under Act and under Provident Fund Act and Employees' State Insurance Act can be treated as income of employer under section 36(1)(va), read with section 2(24)(x), in view of section 43B - Held, no.

11. **H.P. Tourism Development Corpn. Ltd. [2010] 328 ITR 508 (Himachal Pradesh)**

    Where assessee during relevant assessment years did not deposit amount of provident fund within time prescribed under Employees' Provident Fund Act, but same was deposited prior to due date of filing of return of income under Act, it was to be allowed as deduction - Held, yes.

12. **Spectrum Consultants India Pvt Ltd Vs. CIT [2013] 215 Taxman 597 (Karnataka)**

Employee's contribution under EPF and ESI Act, remitted after due dates prescribed under said statutes, but before extended due date for filing return under section 139(1), is allowable as deduction.

13. **CIT Vs. AIMIL Ltd. [2010] 321 ITR 508 (Delhi)**

    Whether employees' contribution towards provident fund and ESI would qualify for deduction even if paid after due date prescribed under Provident Fund Act/ESI Act but before due date of filing of return – Held yes

14. **CIT Vs. George Williamson (Assam) Ltd. [2006] 284 ITR 619 (Gauhati)**

    Section 43B, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed only on actual payment - Whether contributions made by assessee towards provident fund, etc., after close of accounting period, but before due date for filing of return of income would be entitled for relief under section 43B(b) - Held, yes.

Cases against the assessee:

1. **Pr. CIT Vs. Suzlon Energy Ltd. [2020] 115 taxmann.com 340 (Gujarat)**

   Where assessee had not deposited employees' contributions towards PF and ESI amounting Rs. 15.20 lakhs within prescribed period in law and Assessing Officer by invoking provisions of section 36(1)(va) read with section 2(24)(x) made addition of aforesaid amount to income of assessee, impugned addition made to income of assessee was justified.

2. **CIT Vs. Merchem Ltd. [2015] 378 ITR 443 (Kerala)**

   In case of employee's contribution, an assessee is entitled to get deduction of amount as provided under section 36(1)(va) only if amount so received from employee is credited in specified account within due date as provided under relevant statute.

3. **CIT Vs. South India Corporation Ltd [2015] 232 Taxman 241 (Kerala)**

   Whether deduction under section 36(1)(va) would be available only if remittance to provident fund is made within due date fixed for making such remittance - Held, yes - Whether belated payment of employee's contribution to provident fund cannot be allowed as deduction in view of provisions of Explanation to clause (va) of section 36(1) and section 43B - Held, yes.

4. **Unifac Management Services (India) Pvt Ltd. [2018] 409 ITR 225 (Madras)**

   Whether scope of section 43B and section 36(1)(va) are different and thus, there is no question of reading both provisions together to consider as to whether assessee-employer is entitled to deduction in respect of sum paid (employees contribution to PE, ESI) belatedly

and therefore, for considering such question, application of section 36(1)(va), read with section 2(24)(x) alone is proper course and any other interpretation would only defeat object and scope of both provisions, viz., 43B and 36(1)(va) - Held, yes.

5. **CIT Vs. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Gujarat)**

Where assessee did not deposit employees' contribution to employees' account in relevant fund before due date prescribed in Explanation to section 36(1)(va), no deduction would be admissible even though he deposits same before due date under section 43B.

3.7. In the case of **CIT Vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)**, the Hon'ble Supreme Court observed about the allowability of employees' contribution under section 43B of the Income tax Act and observed that by the Finance Act, 2003, the following proviso was deleted,

"Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realized within fifteen days from the due date."

and therefore, the amount of employee contribution which is collected by the assessee is paid before the due date of filing of return u/s 139(1) of the Act will be allowed u/s 43B of the Act and no disallowance will be made u/s 36(1)(va).

3.8. There are several High Courts as mentioned above which have considered that no disallowance can be made u/s 36(1)(va) of the Act if emplyee's contribution is paid before the due date of filing of return in view of the observation of the Hon'ble Supreme Court in the case of Alom Extrusions Limited. Thus merely by an electronic processing the claim of the assessee cannot be rejected on the basis of the tax audit report specially when in the tax audit report, the tax auditor never expresses his opinion for the disallowance of the said payment.

3.9. The decision of the superior judicial authority is binding on the subordinate courts. Under Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India. However the decision of the respective High Court will be binding within the Jurisdiction of the High court.

The issue of the binding nature of a judgment of the Hon'ble High Court of a state is examined by the **Hon'ble Apex Court** in the case of **East India Commercial Co. Ltd. Vs. Collector of Customs AIR 1962 SC 1893**. In the said judgment, the Hon'ble Apex Court held that,

"This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215 every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights

and for any other purpose to any person or authority, including in appropriate cases any Government within its territorial jurisdiction. Under Art. 227, it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by the Court, and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that ***the law declared by the highest Court in the State is binding on authorities or tribunals under its superintendence and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.****"*

3.10. The **Hon'ble High Court of Bombay** in the case **Thana Electric Supply co. Ltd. Vs. CIT 206 ITR 727** with regard to the binding precedent held as under:-

"*9. For deciding whose decision is binding on whom, it is necessary to know the hierarchy of the courts. In India, the Supreme Court is the highest court of the country. That being so, so far as the decisions of the Supreme Court are concerned, it has been stated in article 141 of the Constitution itself that :*

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

10. In that view of the matter, all courts in India are bound to follow the decisions of the Supreme Court.

11. Though there is no provision like article 141 which specifically lays downs the binding nature of the decisions of the High Courts, it is a well accepted legal position that a single judge of a High Court is ordinarily bound to accept as correct judgments of courts of co-ordinate jurisdiction and of the Division Benches and of the Full Benches of his court and of the Supreme Court. Equally well settled is the position that when a Division Bench of the High Court gives a decision on a question of law, it should generally be followed by a co-ordinate Bench in the subsequent case wants the earlier decision to be reconsidered, it should refer the question at issue to a larger Bench.

12. It is equally well settled that the decision of one High Court is not a binding precedent on another High Court. The Supreme Court in Valliama Champaka Pillai v. Sivathanu Pillai, , dealing with the controversy whether a decision of the erstwhile Travancore High Court can be made a binding precedent on the Madras High Court on the basis of the principle of stare decisis, clearly held that such a decision can at best have persuasive effect and not the force of binding precedent on the Madras High Court. Referring to the States Reorganisation Act, it was observed that there was nothing in the said Act or any other law which exalts the ratio of those decisions to the status of a binding law nor could the ratio decidendi of those

decisions be perpetuated by invoking the doctrine of stare decisis. The doctrine of stare decisis cannot be stretched that far as to make the decision of one High Court a binding precedent for the other. This doctrine is applicable only to different Benches of the same High Court.

13. It is also well-settled that though there is no specific provision making the law declared by the High Court binding on subordinate courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would confirm to the law laid down by it. It is in that view of the matter that the Supreme Court in East India Commercial Co. Ltd. v. Collector of Customs,:

"We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it....."

14. This position has been very aptly summed up by the Supreme Court in Mahadeolal Kanodia v. Administrator General of West Bengal,:

"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."

15. The above decision was followed by the Supreme Court in Baradakanta Mishra v. Bhimsen Dixit, wherein the legal position was reiterated in the following words (at page 2469) :

"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunal subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

3.11. In the recent decision in the case of **Gilco Exports Limited Vs. ACIT [2019] 109 taxmann.com 424 (Chandigarh - Trib.)**, the Hon'ble Chandigarh Tribunal deleted the disallowance made by the assessing officer u/s 36(1)(va) stating as under,

It is well understood that the decision of the Apex Court in terms of article 141 of the Constitution of India, not only as a matter of judicial discipline but as a constitutional mandate, is a binding precedent for all Courts and Tribunals in the country. The said article

in unambiguous terms lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. No doubt there is no such similar provision qua the High Courts, however, there can be no dispute or confusion on the impact of article 227 of the Constitution which vests the High Court with the power to supervise the functions of the Tribunals and authorities within its territorial jurisdiction. The import and impact of the said article has been addressed over the years in many landmark decisions. Thus, it is well understood and accepted that for any authority within its territorial jurisdiction subjected to its superintendence, the decision rendered by the High Court is a binding precedent to be followed.

It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have persuasive value for other High Courts. However, as far as the Tribunal is concerned, a lone decision of any High Court of the country being higher in hierarchy in the scheme of things becomes a binding precedent for the Tribunal wherever the bench of the Tribunal may be situated. However, at the same time in the face of the decision of the jurisdictional High Court no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Tribunal within their territorial jurisdiction are concerned. It is well settled that any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The issue as far as the present proceedings are concerned, can be said to have been addressed by the said decision. In the facts of the instant case, there is a decision of the jurisdictional High Court which stands in the eyes of law and there is also a decision of the non-jurisdictional High Court on which the Commissioner (Appeals) has placed reliance. Considering the fact that the assessee is within the territorial jurisdiction of the Punjab & Haryana High Court and the Commissioner (Appeals) an authority also within the territorial jurisdiction of the Punjab & Haryana High Court, it is found that the Commissioner (Appeals) in the facts of the instant case has erred in relying upon the decision of the non-jurisdictional High Court ignoring the binding precedent available.

The Commissioner (Appeals) has erred in ignoring the decision of the jurisdictional High Court on the issue and relying upon the decision of the non-jurisdictional High Court when he was duty bound to follow the binding precedent available of the jurisdictional High Court in the case of Hemla Embroidery Mills (P.) Ltd. (supra) which decision stands in the eyes of law as on date. *Accordingly, the ground raised by the assessee is allowed.*

Thus, in the case of disallowance made u/s 36(1)(va), the Hon'ble Chandigarh Bench ITAT deleted the disallowance following the judgment of the Hon'ble Jurisdictional High Court.

3.12. In such circumstances, it is not understood, as to how the adjustment u/s 143(1)(a) of the Act can be made electronically without considering the law as applicable and settled by the jurisdictional High Court in respect of such claim if the assessee falls within the jurisdiction of the respective High Court which has decided the issue in favour of the assessee. Further, how an arguable matter can be

considered for adjustment u/s 143(1)(a) under the grab of prima facie adjustment. Under the electronic processing, the adjustments can only be made for the mistakes apparent such as totaling mistake, adjustments for which the assessee himself disallowed the expenditure at one place in the return but in the another column the disallowance is not made or such disallowances which are duly settled and there is no dispute for it. Adjustment even proposed for an issue which is not even considered by the tax auditor as disallowable or for which no addition is proposed in the tax audit report, is not tenable at all. Where there are divergent views of different High courts on an issue, no disallowance can even be proposed for the expenditure claimed as it will not fall within the purview of mistake apparent as there can conceivably two opinions. This is so held by the Hon'ble Supreme Court in the case of **Balram Vs. Volkart Brother 82 ITR 50 (SC)**.

3.13. The Hon'ble Calcutta High Court examined the issue of adjustment u/s 143(1)(a) for disallowance in respect of provident fund contribution in the case of **Mintri Tea Co. (P) Ltd vs. CIT [2009] 223 CTR 241 (Calcutta)** and held that in view of the decision in **Jagatdal Jute & Industries Ltd. v. CIT [2004] 188 CTR (Cal.) 593/[2004] 266 ITR 587 (Cal.)** the Assessing Officer could not make a disallowance in respect of provident fund contribution in proceedings under section 143(1)(a) or 154.

3.14. The Hon'ble Bombay High Court in the case of ***KhatauJunkar Ltd. v. K.S. Pathania, Dy. CIT [1992] 196 ITR 55 (Bom.)***held that *"This is because the scope of the powers to make prima facie adjustments under s. 143(1)(a) is somewhat co-terminous with the power to rectify a mistake apparent from the record under s. 154 In its literal sense, 'prima facie' means on the fact of it.* ***Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then can it be disallowed under the proviso to s. 143(1)(a). If any further enquiry is necessary, or if the ITO feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-s. (2) of s. 143.****"*

3.15. The **circular no. 581 (1990) 186 ITR (St)2dt. 28th Sept., 1990**, issued by the CBDT it has been said that the scope of the powers to make prima facie adjustments under s. 143(1)(a) is 'somewhat co-terminous with the power to rectify a mistake apparent from the record under s. 154'. The nature of the remedy, therefore, circumscribes the power under s. 143(1)(a).

3.16. In the case of **Jagatdal Jute & Industries Ltd. v. CIT [2004] 266 ITR 587 (Cal.)**, the Hon'ble Calcutta High Court held that,

> *"…… It is apparent that for holding a prima facie finding out what is the due date and therefore, whether the contributions were really paid after the due dates. The documents available before the AO do not apparently disclose what were the due dates of the said contributions. Therefore, it does not appear that without holding further enquiry from the records, it was apparent on the face of it that the said contributions were paid after the due dates. In such circumstances on the said allegation, the notice under s. 154, could not have been issued and the proceedings following such notice is apparently bad. The law relied on by learned counsel for the appellant in this connection also supports such view.*

Further, in respect of payment of such contributions, the due date has to be ascertained and a finding has to be arrived at as to whether such due date is the one referred to under s. 139 of the Act or its due date under the relevant Act which provides for the payment of contributions and provident fund and employees' state insurance contributions. As apparently no opinion could be formed from the records available on the face of it for deciding such due date, the power under s. 154 could not have been exercised for rectification of the order earlier passed."

3.17. Where there is a debatable issue, such debatable claim cannot be disallowed by way of an intimation under section 143(1)(a) of the Act. In the case of **Bajaj Auto Finance Limited Vs. CIT [2018] 93 taxmann.com 63 (Bombay)**, the Hon'ble Bombay High considered the issue of disallowance made by an intimation u/s 143(1)(a) for provision for bad debt u/s 36(1)(viii) of the Act and held that,

"the disallowance cannot be made by intimation under section 143(1)(a), as it requires that a party be given an opportunity to establish its claim before disallowing it. It would have been a completely different matter if the Apex Court had ruled that in no case can provision for bad debts be allowed as a bad debt under section 36(1)(vii). The allowance of the claim of provision for bad debt is entirely dependent upon how it is reflected in the balance sheet and its accounts. Therefore, for the above purpose it is necessary that the party to be given an opportunity to establish its claim. Therefore, in the present facts, adjustment by way of disallowing deduction by intimation under section 143(1)(a) is not proper."

3.18. Similar view is taken by the Hon'ble Guahati High Court in the case of **George Williamson (A) Ltd vs. CIT [2006] 286 ITR 533 (Gauhati)** wherein the Hon'ble court held that,

"As regards the issue as to whether on the facts and circumstances, the Assessing Authority was justified in invoking the provisions of section 143(1)(a) and section 143(1A), the assessing authority invoked the provisions of section 143 as the assessee failed to produce the certificate. Clause (iii) of the first proviso to section 143(1)(a) provides that the Assessing Officer can make an adjustment to the income or loss declared, if on the basis of the information available, the deduction, allowance or relief claimed prima facie is admissible."

3.19. In the case of **Peerless General Finance & Investment Co. Ltd. Vs. CIT [2010] 228 CTR 72 (Calcutta)**, the Hon'ble Calcutta High Court held that,

"It is also necessary for the AO to examine second proviso before making any disallowance. A disallowance cannot be made under s. 43B simply because payment was not made within the previous year. From the facts it appears that the information contained in the tax audit report did not enable the AO to make any prima facie adjustments under s. 143(1)(a) with reference to the provisions of s. 43B. It further appears that the tax audit report did not contain any break-up of the amount or the further information required in the light of the two provisos to s. 43B. The tax auditor did not specify in the tax audit report the amount inadmissible under s. 43B. Therefore, it appears to us that it was necessary for the AO to

issue a notice under s. 143(2) for the purpose of making an proper assessment under s. 143(3).”

Conclusion:

In view of the above, making adjustments for the issues which are debatable one are not valid adjustments. No adjustments can be made by electronic processing of returns even though an opportunity is given to the assessee for such debatable issues. In respect of disallowance u/s 36(1)(va), the view of various High Courts of the Country are different and considering the binding nature of the judgment of the Highest Court of the state, a judgment against the assessee of another state cannot be applied in the case of the assessee where the issue is decided by the jurisdictional High Court in its favour. Such adjustments proposed which are debatable in nature only increases the litigation and the work load for no purpose. This will unnecessary waste the valuable man hour of the country for wasteful litigation. CBDT must issue necessary directions in this regard.