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HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 56 of 2025

{Arising out of order dated 26.09.2024 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in ITA No.377/RPR/2024}

Raj Kumar Bothra C-101/5, First Floor, Tagore Nagar, Raipur, Chhattisgarh- 492001

... Appellant.

versus

Deputy Commissioner Of Income Tax, Circle-2(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.

Hon'ble Shri Justice Sanjay K. Agrawal &
Hon'ble Shri Justice Deepak Kumar Tiwari

Judgment On Board
(08/05/2025)

Sanjay K. Agrawal, J

1. This appeal preferred under Section 260A of the Income Tax Act, 1961 (for short the "**Act of 1961**") was admitted for

hearing on 19.03.2025 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 Section 143(1)(a) 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 provisions contained in Section 143(3) / Section 147 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 2020-21 declaring a total income of Rs.3,76,34,910/- and paid tax to the tune of Rs.1,44,33,865/-. The return of the assessee was processed by Central Processing Centre (CPC), Bengaluru/Assessing Officer and an intimation order was issued exercising the powers under Section 143(1)(a) 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.28,21,065/- under Section 36(1)(va) of the Act of 1961 was disallowed by the order dated 16.12.2021. Feeling aggrieved by

the said order, the assessee preferred an appeal under Section 246A of the Act of 1961 before the Commissioner of Income Tax (Appeals) {for short "the **CIT(Appeals)**"} by submitting Form No.35 and challenging the aforesaid intimation order. In the meanwhile, on 12.10.2022, in the case of **Checkmate Services Private Limited Vs. Commissioner of Income Tax-1**[1] judgment was delivered by the Supreme Court, settling the issue with regard to claim of deduction under Section 36(1)(va) of the Act of 1961, wherein, it was held that to claim deduction under the aforesaid provision, employees' contribution should be deposited on or before the due dates specified under the respective employees welfare Acts. Ultimately, the CIT (Appeals) passed the order on 15.07.2024 dismissing the appeal of the assessee, against which, the assessee preferred an appeal before the Income Tax Appellate Tribunal (**ITAT**), which was dismissed by the impugned order dated 26.09.2024 leading to filing of the present appeal, in which, the above-stated substantial question of law has been formulated for consideration.

4. Mr. Nikhilesh Begani, learned counsel appearing for the appellant/assessee submits that though the Assessing Officer has processed the return of the income of assessee, however, on

1 (2023) 6 SCC 451

the date when the intimation order was issued exercising powers under Section 143(1)(a) of the Act 1961, the issue with regard to claim of deduction under Section 36(1)(va) of the Act of 1961 i.e. as to whether the employees' contribution should be deposited on or before the due dates in terms of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "**EPF Act 1952**") and Employees' State Insurance Act, 1948 (for short "**ESI Act 1948**"), was pending consideration before the Supreme Court in *Checkmate Services Pvt Ltd* (supra) and only on 12.10.2022, the issue with regard to claim of deduction under Section 36(1)(va) of the Act of 1961 was settled holding that employees' contribution should be deposited on or before the due dates specified under the respective employees welfare Acts. Therefore, on the date of passing the intimation order, the issue with regard to deposit of contribution on or before the due date under Section 36(1)(va) of the Act of 1961, was highly debatable and contentious. Learned counsel further submits that the scope and ambit of Section 143(1)(a) of the Act of 1961 only permits *prima facie* adjustments to be carried out and the highly debatable issues cannot be adjusted/disallowed while processing return under Section 143(1)(a) of the Act 1961. In support of the contention, learned counsel would rely upon the decisions

rendered by the Supreme Court in the matter of **Kvaverner John Brown Engg. (India) Pvt. Ltd. Vs. Assistant Commissioner of Income Tax**[2] and in the matter of **Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd**.[3] He further submits that since on the relevant date of passing of intimation order, the issue being highly debatable, the Assessing Officer ought not to have resorted to the provision under Section 143(1)(a) of the Act of 1961, which was completely unsustainable and bad in law and the same was neither considered by the CIT (Appeals) nor the ITAT. He would also submit that the reliance placed by the ITAT in the matter of **M/s. BPS Infrastructure Vs. ITO, Ward-1(3), Raipur**[4] would not be applicable, as in that case, this Court has considered the issue of delay in filing the appeal and dismissed the same as barred by limitation by holding that no sufficient cause has been shown in filing the appeal and further the substantial question of law formulated in this tax appeal was neither involved nor considered at all in that appeal. As such, the ITAT committed a grave legal error in applying the decision of *M/s. BPS Infrastructure* (supra) while passing the impugned order. He would finally submit that the ITAT in **Satpal Singh Sandhu**

2 (2008) 305 ITR 103 (SC)

3 (2008) 14 SCC 208

4 [2024] 164 taxmann.com 270 (Chhattisgarh)

Vs. DCIT[5] and Parv Buildcon Vs. DCIT[6] had already held that claim of deduction in 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 Section 143(1)(a) 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 *Checkmate Services Pvt. Ltd.* (supra) was not available at the time when the intimation under Section 143(1)(a) of the Act of 1961 was issued in this case on 16.12.2021 and against the aforesaid orders of the ITAT, tax appeals vide TAXC No.149/2024 (The Deputy Commissioner of Income Tax Vs. Parv Builcon) and TAXC No.158/2024 (The Deputy Commissioner of Income Tax Vs. 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 Section 143(1)(a) of the Act of 1961, the order passed by CIT(Appeals) and the order passed by the

5 ITA No.04/RPR/2023 delivered on 11.05.2023 (ITAT Raipur Bench 'SMC')

6 [2024] 159 taxmann.com 1574 (Raipur-Trib.)

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 Section 143(1)(a) 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 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 *Checkmate Services Pvt. Ltd.* (supra), the issue is now well settled. He further submits that in the present case, it is an admitted position that the appellant/assessee has deposited the employees' contribution under the heads of ESI and EPF after the due date. He would also submit that the clarificatory judgment of the Supreme Court in *Checkmate Services Pvt Ltd* (supra) would have the retrospective effect as held in the decisions rendered by the Supreme Court in the matters of **State of Bihar and Ors Vs. Ramesh Prasad Verma (Dead) through LR**[7], **P.V. George and Ors Vs. State of Kerala and Ors**[8]

7 (2017) 5 SCC 665

8 (2007) 3 SCC 537

and also **Central Bureau of Investigation v. R.R. Kishore**[9]. He finally submits that the judgments upon which learned counsel for the appellant has placed reliance are clearly distinguishable to the facts of the present case, therefore, they are of no help to the appellant. In view of such submission, learned counsel for the respondent prays that this appeal be dismissed.

6. We have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.

7. Admittedly, return of the income filed by the appellant/assessee was processed by the Assessing Officer and an intimation order dated 16.12.2021 was issued exercising power under Section 143(1)(a) Act of 1961, wherein, claims for deduction of delayed deposit of employees' share of contribution towards Employees State Insurance and Provident Fund of Rs.28,21,065/- under Section 36 (1) (va) of the Act of 1961 were disallowed, inasmuch as, on the said date, the issue with regard to delayed deposit of contribution with respect to interpretation under Section 36(1)(va) of the Act of 1961 and whether the assessee is entitled to deduction of amount deposited by them, which was contribution in terms of the EPF Act, 1952 and the ESI Act, 1948 on or before the due date was

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9 (2023) 15 SCC 339

pending consideration before the Supreme Court in the matter of *Checkmate Services Pvt. Ltd.* (supra). In the said judgment, their Lordships of the Supreme Court noticed a division of opinion on the issue of interpretation under Section 36(1)(va) of the Act of 1961, with the High Courts of Bombay, Himachal Pradesh, Calcutta, Guwahati and Delhi favouring the interpretation beneficial to the assessees on the one hand, and the High Courts of Kerala and Gujarat preferring the interpretation in favour of the Revenue on the other hand. Ultimately, their Lordships resolved the issue authoritatively by holding that to claim deduction under Section 36(1)(va) of the Act of 1961, the employees' contribution should be deposited on or before the due dates specified under the respective Employee Welfare Act. Their Lordships of the Supreme Court settled the issue by making the following observation :-

> **"62.** The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked

distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

63. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. 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.**"**

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 Section 143(1)(a) of the Act of 1961 on 16.12.2021, the decision of Supreme Court in *Checkmate Service Pvt. Ltd* (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 Section 143 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 : **Vodafone Idea Limited Vs. Assistant Commissioner of Income Tax Circle**[10], Para 17}.

10. Further, in Section 143(1)(a) of the Act of 1961, the procedure to process the return in a given case is provided. Section 143 (1)(a) is produced 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:—
>
> (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.—

10 (2020) 19 SCC 12

> 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"

11. In the matter of **Kvaverner John Brown Engg. (India) Pvt. Ltd.** (supra), their Lordships of the Supreme Court observed that when there are conflicting judgments on interpretation of Section 80-O of the Act of 1961 *prima facie* adjustments contemplated under Section 143 (1) (a) is not applicable and observed as under :-

> "...When there were conflicting judgments on interpretation of Section 80-O, in our view, prima facie adjustments contemplated under Section 143(1)(a) was not applicable and, therefore, consequently appellant was not

> liable to pay additional tax under Section 143(1A) of the 1961 Act."

12. Similarly, in the matter of **Rajesh Jhaveri Stock Brokers Pvt** (supra), their Lordships of the Supreme Court held explicitly that the Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues under Section 143(1)(a) of the Act of 1961 and held as under:-

> **"11.** What were permissible under the first proviso to section 143(1)(a) to be adjusted were, (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return and similarly (iii) those claims which were on the basis of the information available in the return, prima facie inadmissible, were to be rectified/ allowed/disallowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief."

13. Coming back to the facts of the present case, while following the principles of law laid down in above stated judgments of the Supreme Court for exercise of power and jurisdiction under Section 143 (1) (a) of the Act of 1961, it is quite vivid that on

the date of issuance of intimation order by the Assessing Officer i.e. on 16.12.2021 under Section 143(1)(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 the due date of filing of the return of income under Section 139 (1) of the Act of 1961, could be held as the income of the appellant/assessee under Section 36(1)(va) read with Section 2(24)(x) of the Act of 1961 or not or whether it is subject to the provisions contained in Section 43-B of the of the Act of 1961, was highly debatable, which was pending consideration before the Supreme Court in *Checkmate Services Pvt Ltd* (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 Section 143(1)(a) of the Act of 1961, in light of principles of law laid down by their Lordships of Supreme Court in the matters of

Kvaverner John Brown Engg. (India) Pvt. Ltd (supra) and *Rajesh Jhaveri Stock Brokers Pvt* (supra).

14. Furthermore, the orders passed in *Satpal Singh Sandhu* (supra) and *Parv Buildcon* (Supra) by the ITAT holding that Section 143 (1) (a) 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 Vs. Parv Buildon) and TAX No.15/2024 (DCIT Vs. Satpal Singh Sandhu), were withdrawn by the Revenue by orders dated 10.02.2025 and 21.05.2025, 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 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. BPS Infrastructure* (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. BPS Infrastructure* (supra).

16. Furthermore, the submission of the Revenue that the judgment passed in *Checkmate Services Pvt Ltd* (supra) would have retrospective effect, as held in *Ramesh Prasad Verma* (supra), *P.V. George* (supra) and in *R.R. Kishore's* case (supra), is no longer a dispute and well settled as the law declared by a Court will have a retrospective effect if not otherwise stated to be so specifically. However, the retrospective effect of the decision rendered by the Supreme Court in *Checkmate Services Pvt Ltd.* (supra) is not an issue involved in present case, as the question involved herein was quite different as to whether Section 143 (1) (a) of the Act of 1961 can be resorted to when there is highly debatable issue. Therefore, the case laws relied upon by the Revenue are not applicable to the facts of the present case.

17. Concludingly, we are of the considered opinion that the Assessing Officer should not have resorted to the provisions contained under Section 143(1)(a) of the Act of 1961 and instead could have resorted to the provisions under Section 143(3) of the Act of 1961, as on the date of issuance of intimation order dated 16.12.2021 by the Assessing Officer, exercising power under Section 143(1)(a) of the Act of 1961,

the subject issue was highly debatable and ultimately, that issue was resolved by their Lordships in the matter of *Checkmate Services Pvt Ltd* (supra) on a later date.

18. As a fallout and consequence of above-stated discussion, the *prima facie* disallowance of impugned contribution towards ESI and EPF under Section 36(1)(va) read with Section 2(24)(x) of the Act of 1961 made by the Assessing Officer under Section 143(1)(a) by order dated 16.12.2021 is hereby set-aside. Consequently, the order dated 15.07.2024 passed by the CIT (Appeals) and the subsequent order dated 26.09.2024 passed by the ITAT are also set-aside. However, liberty is reserved in favour of the respondent/Revenue to proceed in accordance with law.

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 above leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge

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