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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'B', NEW DELHI

Before Sh. Raj Kumar Chauhan, Judicial Member
&
Sh. Manish Agarwal, Accountant Member

I.T.A. Nos. 2244 & 2248/Del/2022
Asstt. Years: 2018-19 & 2019-20

Hisar Metal Industries Ltd. Near Industrial Development Colony, Delhi Road, Haryana 125005	Vs	DCIT, Circle, Hisar
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACH 3752P		

Assessee by: Sh. Nitin Kanwar, Adv. &
Sh. Shivam Jain, Adv.
Revenue by: Sh. Rajesh Kumar Dhanistha, Sr. D.R.

Date of Hearing: 17.02.2026		**Date of Pronouncement: 15.05.2026**

ORDER

Per Raj Kumar Chauhan, Judicial Member:

We propose to decide these appeals by a common order as the assessee is the same and the impugned order is also even dated 14.07.2022 for AYs 2018-19 and 2019-20, and the issue involved are also identical and similar. These appeals are instituted against separate order of even date 14.07.2022 for AYs 2018-19 and 2019-20 wherein the disallowance made by the AO u/s 143(1) by way of adjustment in the intimation for delayed payment of Employee's Contribution by the assessee towards PF & ESI u/s 36(1)(va) of the Act was confirmed and the appeal was

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dismissed. In ITA No. 2244/Del/2022 for AY 2018-19 is taken as the lead case.

2. The facts in brief as culled out from proceedings of the authorities below are that the appellant company is being the business of manufacturing of cold rolling strips and pipe under the name of M/s Hisar Metal Industries Ltd. of fabricated metal products since 1990. During the assessment year i.e. 2019-20 the assessee has electronically filed return declaring net income of Rs.7,14,90,13/- on 03.10.2018 which was processed u/s 143(1) of the Act after making adjustment to the total income, the total income of the assessee was determined at Rs. 7,59,13,930/-. Vide intimation u/s 143(1) of the Act was passed even dated 16.10.2019 an addition of Rs. 44,23,789/- was made on account of various disallowance made in the ITR. The assessee filed an application u/s 154 on 23rd Nov., 2019 objecting the adjustment made u/s 143(1) of the Act. Accordingly, vide order dated 05.12.2019 u/s 154 the total income of Rs.7,52,73,932/-. Thus making a disallowance of Rs. 2,99,002/- u/s 43B of the Act on account of reversal of excess provision and disallowance of Rs.34,50,723/- u/s 36(1)(va) of the Act on account of delayed deposit of PF & ESI of Employee's Contribution.

3. Aggrieved against the adjustment vide intimation and order u/s 154 of the Act, the assessee preferred an appeal before the

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ld. CIT(A) who vide impugned order has confirmed the disallowance/addition of Rs.37,49,725/- without considering the documentary evidences submitted by the assessee.

4. Aggrieved by the impugned order, the assessee is in appeal and raised the following grounds of appeal in ITA No. 2244/Del/2022 as below:

> *"1. That the order of Learned CIT (A), NFAC in confirming/sustaining the addition made towards belated payment of Employee's contribution to PF and ESI amounting to Rs.34,50,723/- and of Rs.2,99,002/-on account of disallowance of amount to be allowed as per Section 43B (which was earlier disallowed) on account of reversal of excess provision of leave encashment is wholly unsustainable both on facts and in law.*
>
> *2. That the Learned CIT(A), NFAC failed to appreciate the fact that the 0 no addition by way of adjustment while processing the return of income u/s 143(1) towards the delayed deposit of the employees's contribution towards ESI and PF [though deposited within the due date of filing of return u/s 139(1)] or against debatable issues can be made.*
>
> *3. The Learned CIT(A) has erred in upholding the order of Ld.AO, who had made addition of Rs. 34,50,723/- under section 36(1)(va) of the Act, being the employee's contribution to provident fund and ESI respectively which was deducted from the employee's salary and not remitted into the Government treasury within the period stipulated under the relevant Act. The order of the Ld. CIT(A) failed to consider that the employees' contribution to EPF and ESI at Rs.34,50,723/- was duly paid before the due date of filing the return of income and thereby erred in disallowing the same.*

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4. *That the Learned CIT(A), NFAC has misinterpreted context of amendment brought via Finance Bill 2021 to the Section 43B and Section 36(1)(va) and was unjustified in confirming the addition made by Learned Assessing Officer relying on the amendments made to section 36(1)(va) and Section 43B by the Finance Act, 2021. Finance Bill 2021 inserted an Explanation to Section 36(1)(va) effective from 01.04.2021 which stated that provisions of section 43B shall not apply and similar explanation was inserted in Section 43B which stated that provisions of said section shall not apply to a sum received by the assesee from his employees to which provision of sub clause (x) of clause (24) of section 2 applies. Thus it is a prospective amendment and same does not apply for the assessment year in question.*

5. *That the Learned CIT(A), NFAC has erred in disallowing the reversal of excess provision for leave encashment of Rs.2,99,002/-made in the earlier year. The assessee already disallowed amount to the tune of Rs.2,99,002/- in the earlier year, the reversal of same in this year is not taxable, hence reduced from total income for the FY 2017-18. Taxing same amount again result in double taxation of income. The assessee by mistake, failed to report such amount in Form 3CD.*

6. *That the Learned CIT (A), NFAC erred in law in calculating the due 0 date of deposit of contribution to EPF/ESI to concerned authorities as due date for depositing the employee's contribution towards PF/ESI should be seen from the date of the payment (i.e. 15 days from the close of respective months during which the disbursement of salary/wages was actually made) and not from the due date.*

7. *That the Learned CIT(A), NFAC failed to consider/appreciate the submission of assesse dated 22.02.2022 in response to their notice u/s. 250 of the Act dated 08.02.2022 and proceeded with confirming the impugned addition without considering the documentary evidence submitted and explanation given in support of assesse's claim.*

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8. That the order passed by Authorities below is also erroneous, illegal 0 and against the principals of Natural Justice and Equity and the well settled laws of the land

9. That the appellant craves leave of the Honorable Income Tax Appellate Tribunal to add, alter, modify, substitute, delete any grounds of appeal at any stage of the proceedings before the honorable Income Tax Tribunal."

5. Ground of appeal in ITA No. 2248/Del/2022 for AY 2019-20:

"1. That the order of Learned CIT (A), NFAC in confirming/sustaining 0 the addition made towards belated payment of Employee's contribution to PF and ESI amounting to Rs.32,10,234/- is wholly unsustainable both on facts and in law.

2. That the Learned CIT(A), NFAC failed to appreciate the fact that the no addition by way of adjustment while processing the return of income u/s 143(1) towards the delayed deposit of the employees's contribution towards ESI and PF (though deposited within the due date of filing of return u/s 139(1)] can be made

3. The Learned CIT(A) has erred in upholding the order of Ld.AO, who had made addition of Rs. 32,10,234/- under section 36(1)(va) of the Act, being the employee's contribution to provident fund and ESI respectively which was deducted from the employee's salary and not remitted into the Government treasury within the period stipulated under the relevant Act. The order of the Ld. CIT(A) failed to consider that the employees' contribution to EPF and ESI at Rs.32,10,234/- was duly paid before the due date of filing the return of income and thereby erred in disallowing the same.

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4. *That the Learned CIT(A), NFAC has misinterpreted context of amendment brought via Finance Bill 2021 to the Section 43B and Section 36(1)(va) and was unjustified in confirming the addition made by Learned Assessing Officer relying on the amendments made to section 36(1)(va) and Section 43B by the Finance Act, 2021. Finance Bill 2021 inserted an Explanation to Section 36(1)(va) effective from 01.04.2021 which stated that provisions of section 43B shall not apply and similar explanation was inserted in Section 43B which stated that provisions of said section shall not apply to a sum received by the assesee from his employees to which provision of sub clause (x) of clause (24) of section 2 applies. Thus it is a prospective amendment and same does not apply for the assessment year in question.*

5. *That the Learned CIT (A), NFAC erred in law in calculating the due 0 date of deposit of contribution to EPF/ESI to concerned authorities as due date for depositing the employee's contribution towards PF/ESI should be seen from the date of the payment (i.e. 15 days from the close of respective months during which the disbursement of salary/wages was actually made) and not from the due date.*

6. *That the Learned CIT(A), NFAC failed to consider/appreciate the submission of assesse made at various dates in response to their notice u/s. 250 of the Act and proceeded with confirming the impugned addition without considering the documentary evidence submitted and explanation given in support of assessee's claim.*

7. *That the order passed by Authorities below is also erroneous, illegal 0 and against the principals of Natural Justice and Equity and the well settled laws of the land*

8. *That the appellant craves leave of the Honorable Income Tax Appellate Tribunal to add, alter, modify, substitute, delete any grounds of appeal at any stage of the proceedings before the honorable Income Tax Tribunal."*

6. On perusal of the grounds in both the appeal, we have noticed that ground nos. 2 & 3 in each appeal are the legal grounds pertaining to the disallowance made on account of delayed deposit of Employee's Contribution toward PF & ESI u/s 36(1)(va) of the Act.

7. Hence, we have heard the ld. AR and the DR on these grounds. The ld. AR at the very outset stated that the similar issue has already decided in favour of the assessee of that case by jurisdictional Tribunal in ITA No. 970/Del/2023 for AY 2017-18 and ITA No. 72/Del/2024 for AY 2019-20 vide order dated 16.06.2025. It is therefore, submitted that since the alleged adjustment by way of intimation was made prior to the Checkmate Services Pvt. Ltd. v. CIT 143 taxmann.com 178 of the Hon'ble Supreme Court delivered on 12.10.2022, hence both the legal issues be decided in favour of the assessee.

8. In support of his oral arguments he has also filed written argument and the relevant part is extracted below as under:

> *"It is submitted that the assessee's case does not fall within the ratio laid down in Checkmate Services Pvt. Ltd. v. CIT (143 taxmann.com 178), as decided by the Supreme Court of India on 12.10.2022, as in the present case impugned order dated 16.10.2019 is prior to the said judgment and therefore the said judgment is not applicable to the present facts. The issue involved is squarely covered by the judgment of the Chhattisgarh High Court in Raj Kumar Bothra v. DCIT (TAXC No. 56 of 2025), wherein it was categorically held that a disallowance*

on a debatable issue is beyond the scope of adjustment permissible under section 143(1)(a) and the same was accordingly set aside. This view has also been followed by the ITAT Delhi Bench A in A2Z Infra Services Ltd. v. DCIT (ITA Nos. 970/Del/2023 & 72/Del/2024) dated 16.06.2025, directing deletion of a similar disallowance, while observing that the issue was settled only subsequently by the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra) on 12.10.2022, so the judgment will not fall within the ratio laid down in Checkmate case & the issue also covered by the judgment of kanoi paper (Supra) also. In view of the above settled legal position, the impugned addition is unsustainable in law and is liable to be quashed."

9. The ld. DR on the other hand has relied on the judgment of the ld. lower authorities stating that the appeal has been rightly dismissed.

10. We have considered the rival submissions and examined the record. We have noticed that the grounds before the jurisdictional Tribunal in ITA No. 970/Del/2023 for AY 2017-18 and ITA No. 72/Del/2024 for AY 2019-20 (supra) were identical and similar to the grounds & issues before us. The finding of the ld. Jurisdictional Tribunal in above case from paras 2 to 7 are relevant and extracted below as under:

"2. The Ld. Counsel for the assessee, at the outset, referring to ground no.3 of grounds of appeal for the AY 2017-18 and ground no.2 of grounds of appeal for the AY 2019-20 submitted that the disallowance u/s 36(1)(va) in respect of employees contribution to PF & ESI cannot be subject matter of disallowance while processing the return u/s 143(1) of the Act. The Ld. Counsel for the assessee submitted that as on the date of passing of

intimation u/s 143(1) of the Act dated 28.03.2019 and 07.07.2020 for the assessment years 2017-18 and 2019-20 respectively the issue of disallowance of PF/ESI contributions of employees was debatable and there were divergent views of various High Courts and as a matter of fact the Jurisdictional High Court which is Punjab & Haryana was in favour of the assessee, the Hon'ble High Court took a view that no disallowance u/s 36(1)(va) r.w.s. 43B of the Act is permissible even though the contributions were made beyond the due dates specified in the respective Acts but remitted before the due date of filing the return. The Ld. Counsel for the assessee therefore submits that as on the date of passing the intimation u/s 143(1) the issue was highly debatable and it was subject matter of decision before the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. which decision was rendered only on 12.10.2022 and till that time the issue was debatable and therefore the disallowance of PF & ESI contributions while passing the intimation u/s 143(1) could not have been done.

3. Ld. Counsel for the assessee placed reliance on the recent decision of the Hon'ble Chattisgarh High Court at Bilaspur in TAXC No.56/2025 dated 08.05.2025. Referring to this decision the Ld. Counsel for the assessee submitted that on identical facts the Hon'ble High Court set aside the intimation passed u/s 143(1)(a), wherein disallowance of contribution towards PF & ESI u/s 36(1)(va) r.w.s. 2(24)(x) of the Act was deleted for the reason that as on the date of passing of intimation u/s 143(1)(a) of the Act in that case was 16.12.2021 the issue of said disallowance was highly debatable till the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. which was delivered on 12.10.2022. The Ld. Counsel for the assessee submitted that in the case on hand the intimations u/s 143(1) were passed on 28.03.2019 and 07.07.2020 for the assessment years 2017-18 and 2019-20 respectively by the CPC disallowing employees contribution towards PF & ESI and whereas the decision in the case of Checkmate Services was rendered much later on 12.10.2022 and therefore the decision of the Hon'ble Chattisgarh High Court in the case of Raj Kumar Bothra Vs. DCIT is squarely applicable to the facts of the assessee's case.

4. On the other hand, the Ld. DR strongly supported the orders of the authorities below and placed reliance on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT.

5. Heard rival submissions, perused the orders of the authorities below. The only issue in respect of ground nos. 3 & 2 for the assessment years 2017-18 and 2018-19 respectively is as to whether the disallowance u/s 36(1)(va) r.w.s. 2(24)(x) of the I.T. Act in respect of employees contribution to PF and ESI is permissible while processing the return u/s 143(1) of the Act prior to the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. which was rendered on 12.10.2022. In the case on hand the intimations u/s 143(1) were passed for the assessment years 2017- 18 and 2019-20 on 28.03.2019 and 07.07.2020 respectively making disallowance u/s 36(1)(va) in respect of employees contribution to PF & ESI and as on the date of passing the said intimations the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra) was not available. The issue of disallowance of employee contribution to PF & ESI was also highly debatable and there were divergent views from various High Courts and Tribunal. We observed that the jurisdictional High Court in the case of CIT Vs. Hemla Embroidery Mills (P) Ltd. (2013) 217 Taxman 207 held that employee's contribution to PF & ESI deposited prior to due date for filing return of income but beyond the due dates specified in the PF & ESI Act, would be deductible. So when the intimations u/s 143(1) were passed for AY 2017-18 and 2019-20 there was a binding decision of the Jurisdictional High Court in favour of the Assessee and by virtue of this binding decision the AO could not have made disallowance of employee's contribution to PF & ESI though paid beyond the due dates specified in respective Acts but before the due date for filing the return of income while processing the returns u/s 143(1) of the Act.

6. We further observed that on identical circumstances, the Hon'ble Chattisgarh High Court recently by order dt. 08.05.2025 in the case of Raj Kumar Bothra Vs. DCIT in TAXC No.56 of 2025 had set aside the intimation

passed u/s 143(1)(a) dated 16.12.2021 wherein disallowance was made u/s 36(1)(va) read with 2(24)(x) of the Act which intimation was passed prior to the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. delivered on 12.10.2022 observing as under: -

> *"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-11 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 (HAT), 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.*
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> *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 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 Tax2 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). Raipur4 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 ITAF 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 Vs. DCIT5 and Parv Buildcon Vs. DCIT6 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 Inconie 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 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 Qrs Vs. Ramesh Prasad Verma (Dead) through LR7. EV George and Qrs Vs. State of Kerala and Qrs and also Central Bureau of Investigation v. R.R. Kishore". 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.

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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 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*

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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 subsection (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 Circle10. 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.—

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:

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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 Kvavemer John Brown Engg. (India) Pvt. Ltd. (supra), their Lordships of the Supreme Court observed that when there are conflicting judgments on interpretation of Section 80-0 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 80-0, 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

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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 143C(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.1.5/2024 (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), PV 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."

7. The decision of the Hon'ble Chattisgarh High Court squarely applies to the facts of assessee's case. Thus, respectfully following the decision of the Hon'ble High Court of Chattisgarh (supra), we direct the Assessing Officer to delete the disallowance made u/s 36(1)(va) r.w.s. 2(24)(x) of the Act for the assessment years 2017-18 & 2019-20. Ground nos. 3 and 2 in the appeals for the assessment years 2017-18 and 2019-20 respectively are allowed."

11. It is thus evident from the above extract of the order of the jurisdictional Tribunal in ITA No. 970/Del/2023 and 72/Del/2024 (supra), the addition made by the Assessing Officer by way of intimation u/s 143(1) and confirmed by the ld. CIT(A) in the impugned order with regard to the delayed deposit of Employee's Contribution of PF & ESI u/s 36(1)(va) r.w.s. 2(24)(x) of the Act are not sustainable. The case in hand also pertains to AYs 2018-19 & 2019-20 i.e. prior to the judgment of Checkmate Service Pvt. Ltd. v. CIT (supra). Therefore respectfully, following decisions of the jurisdictional Tribunal, we direct the Assessing Officer to delete the disallowance made u/s 36(1)(va) of the Act for AYs 2018-19 and 2019-20 respectively. The grounds nos. 2 & 3 in each appeal are therefore allowed. In view of decision on

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ground nos. 2 & 3, the decision on other grounds in appeals is rendered academic and we have not decided the same.

12. Both the appeal of the assessee are allowed.

Order pronounced in the Open Court as on 15.05.2026

Sd/-	**Sd/-**
(Manish Agarwal) **Accountant Member**	**(Raj Kumar Chauhan)** **Judicial Member**

Dated: 15/05/2026

G.P. Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR