IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2576/DEL/2022
(Assessment Year: 2017-18)

ITO, Ward 5, Rohtak.	vs.	Rajbir, (through Legal Heir Shri Rajesh), H.No.778/1, Saini Anandpura, Rohtak (Haryana).
		(PAN : AVPPS5601P)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Manoj Kumar, CA
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 25.05.2026
Date of Pronouncement : 24.06.2026

<u>O R D E R</u>

<u>PER S.RIFAUR RAHMAN,AM:</u>

1. The Revenue has filed appeal against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short] dated 25.08.2022 for the Assessment Year 2017-18.

2. The Revenue has taken the following grounds of appeal :-

> "1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) was correct in deleting addition of Rs.1,71,70,670/- on account of late deposit of

employee's contribution to PF/ESI beyond the prescribed time limit provided in the respective Acts in view of the judgment of Hon'ble Supreme Court in Civil Appeal No.2833 of 2016 in the case of Checkmate Services P. Ltd. vs. Commissioner of Income-tax -1 dated 12.10.2022.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) was correct in holding that employees contribution to PF are governed by the provisions of section 43B and not by section 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961."

3. At the time of hearing, ld. DR for the Revenue brought to our notice detailed findings of Assessing Officer and submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT 143 taxmann.com 178.

4. On the other hand, ld. counsel for the assessee submitted that the issue involved on account of delayed deposit of employees contribution to PF and ESI made in the intimation u/s.143(1), without appreciating the fact that employees contribution to PF and ESI are recovered from the employees on disbursement of salary and wages. Accordingly, due date for deposit of employees contribution to PF and ESI i.e. within 15 days of the following month during which salary and wages was actually disbursed among the employees, thus he submitted that employees contribution to PF and ESI was actually deposited on or before 15th of the following month in which salary and wages actually disbursed. The ld. AR submitted that as on the date of passing of intimation u/s 143(1) of the

Act dated 19.03.2019 for the AY 2017-18, the issue of disallowance of PF/ESI contributions of employees was debatable and there were divergent views of various High Courts. He submitted that before the decision of Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra), 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. In order to support this contention, he relied on the decision of the Coordinate Bench of the Tribunal in the case of Bensons Movers Pvt. Ltd. vs. ACIT dated 17.11.2023 passed in ITA No. 2710/Del/2022 for assessment year 2019-20.

5. Considered the rival submissions and material placed on record. We observed that the first plea of the assessee that the issue under consideration is beyond the scope of section 143(1)(a) of the Income-tax

Act, 1961 (for short 'the Act'). We observed that the present order u/s 143(1) was passed on 19.03.2019. The decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) was delivered on 12.10.2022. On the date of order passed u/s 143(1), the issue under consideration was debatable and majority of the decisions were in favour of the assessee. Invoking the decision of Hon'ble Supreme Court in the present case is beyond jurisdiction. Therefore, we are inclined to dismiss the grounds raised by the Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 24th day of June, 2026

Sd/-	sd/-
(ANUBHAV SHARMA) **JUDICIAL MEMBER**	**(S.RIFAUR RAHMAN)** **ACCOUNTANT MEMBER**

Dated: 24.06.2026
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Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI