

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.65/AGR/2022
(ASSESSMENT YEAR: 2018-19)

Govind Agarwal, 15, Tagor Nagar, University Road, Gwalior-474011, (M.P.) PAN-ABVPA0161A	Vs ·	Dy. CIT, Circle-2(1), Gwalior (M.P.)
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Shailendra Srivastava, Sr. DR
Date of Hearing	19/05/2025
Date of Pronouncement	29/05/2025

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(E), in short] dated 20.09.2021, in Appeal No. CIT(A), Gwalior/10058/2019-20 for Assessment Year 2018-19 arising out of the order passed u/s 143(1) dated 26.04.2019.

2. The sole issue involved in appeal with regard to the disallowance of Rs.4,98,569/- made on account of delayed deposit of Employees Contribution to Provident Fund made by way of prima facie adjustment u/s 143(1) of the Act.

3. From the perusal of the orders of the lower authorities, it is seen that the CPC while processing the return of the assessee u/s 143(1) in terms of impugned order dated 26.04.2019 has made disallowance of delayed payment of employees's contribution towards PF/ESI by invoking the provisions of section 36(1)(va) read with section 2(24)(x) which stood confirmed by the Ld. CIT(A) by placing reliance on various judgements of Hon'ble High Courts.

4. During the course of hearing, none was present on behalf of the assessee and Ld. Sr. DR on behalf of the Revenue submitted that issue has now been settled by the judgments of Hon'ble Supreme Court in the case of Checkmate Services Private Limited vs. CIT-1, reported 65 SCC 451 and, he therefore, prayed for confirmation of the order of Ld. CIT(A).

5. On the other hand, though the assessee was not represented during the course of hearing, however, written submissions filed by the AR of the assessee dated 16.05.2025 wherein the AR of the assessee has placed reliance on the recent judgment of the Hon'ble Chhattisgarh High Court in the case of Raj Kumar Bothra vs. DCIT in TAXC No.56 of 2025 wherein the Hon'ble High Court vide its order dated 08.05.2025 has held that the judgment of Hon'ble Supreme Court in the case of Checkmate Service Pvt. Ltd. (supra) was delivered on 12.10.2022 wherein the Hon'ble Supreme Court has settled the controversy with respect to the delayed payment of employees contribution towards PF/ESI. However, prior to the judgment of Checkmate Service Pvt. Ltd. (supra) there were contrary decision

available on the issues and the issue of allowability of delayed payment of employees contributions towards PF/ESI was highly debatable issue and, therefore, the Hon'ble High Court was of the view that the same could not be done in the processing of return u/s 143(1) and for making such disallowance, the AO should resorted to the provisions of section 143(3) of the Act.

6. From the perusal of the impugned order passed u/s 143(1) of the Act by the CPC, it is seen that the said order is passed on 26.04.2019 and further order of Ld. CIT(A) is dated 28.09.2021 and therefore, when both the orders of lower authorities were before the judgment of Hon'ble Supreme Court in the case of Checkmate Service Pvt. Ltd. (supra) which was not delivered at that point of time, where the issue was highly debatable and disallowance u/s 143(1) could not be made on such issue. The Hon'ble Chhattisgarh High Court in the case of Raj Kumar Bothra (supra) while dealing this issue has held as under:

"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). 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.”

7. In view of the above facts and by respectfully following the judgment of Hon'ble Chhattisgarh High Court, we allow the appeal of the assessee and deleted the disallowance made of Rs.4,98,569/- towards delayed payment of employee's contribution to PF/ESI in the order passed u/s 143(1) of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29.05.2025.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 29.05.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR