

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.984/DEL/2025
(Assessment Year: 2020-21)**

Satya Pratap Singh Kunwar,
508, Begum Bag Meerut,
Begum Bag,
S.O. Meerut – 250 001 (Uttar Pradesh).

vs.

ITO, Ward 2 (3),
Faridabad.

(PAN : ABJPM1566B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Hemant Jain, Advocate
REVENUE BY : Shri Dheeraj Kumar Jain, Sr. DR

Date of Hearing : 11.08.2025
Date of Order : 03.09.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [“Id. CIT(A)”, for short] dated 27.06.2024 for AYs 2020-21.
2. At the time of hearing, Id. AR of the assessee brought to our notice that assessee being an individual was engaged in the business of Security Agency and filed return of income on 29.10.2020 declaring the income of Rs.15,44,324/- and the same was assessed under section 143(1) of the

Income-tax Act, 1961 vide order dated 08.12.2021 and rectified u/s 154 dated 24.02.2023 at the income of Rs.19,15,495. He brought to our notice that being aggrieved by the assessment order, assessee filed appeal before the ld. CIT (A) on the ground that the Assessing Officer without appreciating the correct facts of the case is not justified in law and in making the addition of Rs.3,71,171/- u/s 154 of the Act in view of the provisions of section 2(24)(x) r.w.s. 36(1)(va) of the Act on account of late deposit of employee contribution towards ESI and PF which has been duly deposited on or before the due dates as per the provisions of the Act. He submitted that assessee filed detailed submissions before the ld. CIT (A), however, ld. CIT (A) relying on the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. dated 12.10.2022, dismissed the appeal of the assessee. He further submitted that being aggrieved by the order of ld. CIT (A), assessee is in appeal before us on the issue of late deposit of employee contribution towards ESI and PF.

3. The ld. AR for the assessee submitted that the issue involved is relating to addition of Rs.3,71,171/- in view of the provisions of section 2(24)(x) r.w.s. 36(1)(va) on account of delayed deposit of employees contribution to PF and ESI made in the intimation u/s 143(1) and subsequently vide rectification order u/s 154, 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. In order to support this contention, reliance is placed 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. The Ld. Counsel for the assessee submitted that in view of the aforesaid decision, the matter may be restored to the file of AO to ascertain the due date for remittance of the PF/ESI contributions of employees in the present case.

4. On the other hand, ld. DR for the Revenue objected to the submissions made by the ld. AR for the assessee 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.
5. Considered the rival submissions and material placed on record. We observe 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'). In our considered view, this issue is already settled in favour of the Department and ld. AR for the assessee

relied on the decision of PR Packaging Services 199 ITD 724 (Mum.) and other similar case laws. These case laws are already distinguished by the coordinate Benches. Accordingly, this plea of the assessee is rejected.

6. Coming to alternative plea of the assessee. Considered the rival submissions and this plea was considered by the coordinate Bench in the case of Benson Movers Pvt. Ltd. (supra) and the relevant decision of the coordinate Bench is as under :-

“5. In so far as employees contributions towards PF & ESI it is noticed that the issue as to whether the due date under PF/ESI Acts should be as per the calendar month for which the salary is payable or from the month in which the salary is paid to the employee by the employer came up for adjudication in the case of Sentinel Consultants Pvt. Ltd. Vs. ACIT (supra) and the Tribunal restored the issue to the file of the AO with the following observations:-

“9. We have carefully considered the rival submissions and perused the material available on record. The disallowance of employees’ contribution to PF/ESIC for breach of condition under Section 36(1)(va) is in controversy.

9.1 We notice at the outset that an opportunity was given via electronic platform of the deptt. For the proposed adjustments and in the absence of e-response, the adjustments were carried out the CPC-Bangluru and intimation was issued enhancing the assessed income in the captioned assessment years. The CIT(A) in the first appeal has sustained the adjustments towards belated deposits of employees’ contribution to PF/ESIC in the light of the judgment rendered by the Hon’ble Supreme Court in Checkmate Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC). The contention of the Assessee that such additions cannot be made under the umbrella of S. 143(1) is covered against the assessee the decision of the co-ordinate bench in the case of Weather Comfort Engineers Private Limited vs. ACIT-CPC ITA No. 959/Del/2021 order dated 15/02/2023. The action of CPC and CIT(A) thus cannot be faulted where some opportunity was admittedly given for e- response.

9.2 We now turn to alternate plea on behalf of the assessee for grant of deduction under general provisions for deduction of expenditure under S. 37 of the Act. We do not see any merit in such plea that the belated deposit of employees contributions to PF/ESIC governed under Section 36(1)(va) is also simultaneously amenable to deduction under Section 37(1) of the Act. In terms of the provision, Section 37(1) permits deduction of expenditure which is not in the nature of expenditure prescribed in Sections 30 to 36 of the Act and also not being in the nature of capital expenditure or personal expenses of the assessee. Thus, in view of such mandate of law, the deduction of expenditure under the general clause of Section 37(1) would not extend to expenditure specially covered within the ambit of Section 36(1)(va) of the Act. The Hon'ble Supreme Court in the case of Checkmate Pvt. Ltd. (supra) itself explains this position in Para 32 of the Judgment. Such view also draws support from the observations made in recent judgment of the Hon'ble Supreme Court in the case of Pr.CIT vs. Khyati Realtors (P) Ltd. (2022) 141 taxmann.com 461 (SC). The alternate plea is thus without any merit.

9.3 We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanoi Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT (A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity.”

6. We find similar view has been taken by the co-ordinate benches in the cases of B. L. Kashyap & Sons Ltd. (supra) and VVDN Technologies Pvt. Ltd. (supra). The ld. Counsel submits that in view of these decisions the matter may be restored to the Assessing Officer to ascertain the due date for remittance of the PF/ESI contributions of employees. Considering the decisions of the coordinate benches referred to above we restore this issue to the file of the Assessing Officer to decide in the light of the observations made by the Tribunal in the case of Kanoi Paper & Industries Ltd. Vs. ACIT (supra).

Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee and the assessee is at liberty to provide all the necessary information in support of its contention.”

7. Since the above issue is squarely covered by the above decision, we are inclined to remit the issue back to the file of AO to consider the alternative plea of the assessee as per law after giving proper opportunity of being heard to the assessee. Accordingly, the appeal filed by the assessee is partly allowed for statistical purposes.
8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 3rd day of September, 2025.

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 03.09.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**