

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD “SM-A” BENCH: HYDERABAD  
BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.698/Hyd./2025  
Assessment Year 2020-2021

Sri Narayansinthy Gajendra Patro, Hyderabad-500 087. Telangana. <b>PAN AGZPP7808A</b>	vs.	The DCIT, Circle-13(1), Hyderabad – 500 004. Telangana.
(Appellant)		(Respondent)

For Assessee :	CA Srikanth Polireddy
For Revenue :	Sri Suresh Babu KN, Sr. AR

Date of Hearing :	25.08.2025
Date of Pronouncement :	12.09.2025

**ORDER**

**PER MANJUNATHA G. :**

The above appeal has been filed by the assessee against the order dated 20.03.2024 of the learned Addl./JCIT(A)-2, Ahmedabad, relating to the assessment year 2020-2021.

2. At the outset, there is a delay of 326 days in filing the appeal before the Tribunal. The assessee has filed Affidavit explaining the reasons for the delay to the effect

that, he had appeal before the learned CIT(A) and responded to the notices. Further, the learned CIT(A) has issued notices to the Tax Consultant and the same went unanswered. He submitted that, he was completely unaware of the notices and the order passed by the learned CIT(A). When he consulted a new Tax Consultant, it is informed that the learned CIT(A) has passed an unfavourable order and advised to file appeal before the Tribunal. Thereafter, the assessee has taken immediate steps for filing of the appeal and the accordingly the present appeal has been filed before the Tribunal with a delay of 326 days. He submitted that, there was 'sufficient cause' for the assessee in not filing the appeal before the Tribunal within the time stipulated and, therefore, he, pleaded that the delay of 326 days in filing the appeal before the Tribunal may please be condoned in the interest of justice.

3. Sri Suresh Babu KN, learned Sr. AR for Revenue, on the other hand, strongly opposed for condonation of delay and submitted that, the assessee could not explain reasons for delay in filing appeal before the Tribunal and,

therefore, submitted that, the delay condonation petition filed by the assessee should be dismissed in the interest of justice.

4. We have gone through the affidavit filed by the assessee. We find that, the reasons explained by the assessee in his affidavit are seems to be genuine and bonafide by taking note of the reasons explained by the assessee which are beyond the control of the assessee. The Hon'ble Supreme Court in the case of Collector, Land Acquisituon vs., MST Katiji [1987] 167 ITR 471 (SC) has laid down certain principles for condoning the delay and also directed the lower courts to follow a lenient approach for condoning the delay. Going by the principles laid down by the Hon'ble Supreme Court in the case of MST Katiji (supra), there is no dispute if an appeal is dismissed on account of technicalities, a meritorious case may be thrown-out of judicial review. Therefore, while condoning the delay, the courts must have a liberal approach or lenient approach considering the reasons given by the petitioners or appellants. Therefore, going by the principles laid down by

the Hon'ble Supreme Court in the case of MST Katiji (supra) and also considering the submissions of the assessee, we condone the delay of 326 days in filing the appeal before the Tribunal and admit the appeal for adjudication.

5. The assessee has pleaded the following grounds in the instant appeal :

1. *"The Hon'ble Commissioner of Income Tax (Appeals) ("CIT(A)) erred in upholding the Learned Centralized Processing Centre ("Ld.CPC") Order, which is bad in law and against the principles of equity and natural justice.*
2. *The Hon'ble CIT(A) erred in making adjustment of INR 14,66,815 with regard to the employees contribution u/s 36(1)(va) in the intimation u/s 143(1) of the Act.*
3. *The Hon'ble CIT(A) erred in passing the order without providing the assessee with an adequate and reasonable opportunity of being heard.*
4. *The Hon'ble CTT(A) ought to have appreciated the fact that the entire amount of INR 14,66,815 /-, was paid within the financial year or before the due date of filing the return of income. Hence, the same should be allowed as a deduction.*
5. *The Hon'ble CIT(A) erred in not treating the expenditure as allowable u/s 37(1) of the Act, as the payment of Employee's and*

*Employer's contribution to PF and ESI was incurred in the course of business and for the purposes of business.*

- 6. The Hon'ble CTT(A) ought to have appreciated that, as per the Finance Bill, 2021 and its Memorandum, the said amendments are effective prospectively from 01.04.2021 and cannot be applied retrospectively.*
- 7. The Hon'ble CIT erred in upholding the interest levied u/s 2348 and 234C of the Act.*
- 8. The Appellant respectfully seeks leave to submit additional factual and legal arguments during the proceedings before Your Honours.”*

6. Briefly stated facts of the case are that, the assessee is a proprietor of M/s.Narayansinthy Gajendra Patro Security Agency, engaged in the business of security services, had filed his original return of income on 08.02.2021 with a total income of Rs.15,08,983/- for the impugned assessment year 2020-2021 and claimed refund of Rs.3,87,300/-. The AO-CPC has processed the return under section 143(1) of the Income Tax Act, 1961 [in short “the Act”] with an addition of Rs.14,66,815/- and raised a demand of Rs.88,660/-. The said addition of Rs.14,66,815/-

represents amount received from employees as contribution to the provident fund/superannuation fund/fund set-up under ESI Act not credited to employees account on or before the due date as per section 36(1)(va) and the amount of Rs.14,66,815/- was paid in the same financial year or before the due date of filing the return of income, which is evident from Form 3CB-CD. During the course of assessment proceedings, the assessee submitted that, it is a settled law that the employee contribution to Provident fund/ESI paid up-to the date of filing of return is allowable as per the Judgments passed by the Honorable High Court of Rajasthan in the case of Rajasthan State Beverages Corporation Limited and the dismissal of the SLP filed by the Department against the said judgment before the Honorable Supreme Court. The AP-CPC has made the adjustment of the amount u/sec.36(1)(va) of Rs.14,66,815/- and processed the return u/sec.143(1) of the Income Tax Act, 1961 by assessing the income of the assessee at Rs.29,75,798/- and raised a demand of Rs.88,660/- representing the amount relating to the employees

contribution to provident fund and ESI was paid in the same financial year or before the due date of filing the return of income.

7. Aggrieved by the assessment order of the AO-CPC, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee did not respond, despite service of notices on 4 occasions through ITBA portal i.e., dated 11.01.2024, 14.02.2024, 06.03.2024 and 12.03.2024 u/sec.250 of the Income Tax Act, 1961. Therefore, in absence of any documentary evidences filed by the assessee to substantiate his case, the learned CIT(A) has sustained the addition made by the AO-CPC and dismissed the appeal of the assessee for non-prosecution.

8. Aggrieved by the order of the learned CIT(A), the assessee is now, in appeal before the Tribunal.

9. CA, Srikanth Polireddy, Learned Counsel for the Assessee submitted that, the AO-CPC had made the addition of Rs.14,66,815/-, being employees contribution to Provident fund of Rs.14,62,555/- and to ESI of Rs.4,260/-

under section 36(1)(va) of the Income tax Act, 1961 [in short “the Act”], ignoring the fact that, it is otherwise allowable u/sec.43B of the Income Tax Act, 1961. He further submitted that, the AO-CPC had also made adjustment with regard to the employees contribution u/sec.36(1)(va) of the Act, in the intimation u/sec.143(1) of the Act when the same is a debatable issue. In support of this contention, the Learned Counsel for the Assessee relied upon the decision of Coordinate Bench of ITAT, Hyderabad in the case of Dondapati Sudhakara Rao vs., ITO, Ward-13(3) in ITA.No.701/Hyd./2025, Order dated 20.08.2025 and argued that, when the assessment order was passed by the Assessing Officer, the decision of Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs., CIT [2022] 143 Taxmann.com 178 (SC) was not available and as per the available Judgment on this issue, it was well established principle that, if contribution to PF and ESI has been made on or before the due date for furnishing of return of income u/sec.139 of the Income Tax Act, 1961, then, said contribution can be allowed. The Tribunal after considering

the relevant facts has held that, disallowance of employees contribution to PF and ESI u/sec.36(1)(va) r.w.43B is highly debatable issue, which can be considered while processing the return of income u/sec.143(1)(a) of the Income Tax Act, 1961. He submitted that, during the course of appellate proceedings, although, the assessee has challenged the addition made by the Assessing Officer by agitating the above issues, but, the learned CIT(A), without considering the submissions of the assessee has sustained the additions. Therefore, the Learned Counsel for the Assessee submitted that, the addition made by the Assessing Officer and sustained by the learned CIT(A), should be deleted.

10. Sri Suresh Babu KN, learned Sr. AR for the Revenue, on the other hand, supporting the order of the learned CIT(A) submitted that, now the issue of depositing employer's contribution to the respective employees PF and ESI account has been settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs., CIT [2022] 143 Taxmann.com 178 (SC) wherein the Hon'ble Supreme Court held that, employees contribution to PF and ESI

beyond the due date prescribed under relevant Acts is not allowable as deduction u/sec.36(1)(va) r.w.s.43B of the Income Tax Act, 1961. In the present case, from the perusal of the audit report, the facts regarding payment of dues beyond the due date have been ascertained. Therefore, the AO-CPC has adjusted the said sums towards PF and ESI in the intimation u/sec.143(1) of the Income Tax Act, 1961, which is in accordance with the amended provisions of sec.143(1)(a)(ii) of the Income Tax Act, 1961. The learned CIT(A) also after considering the submissions of the assessee, has rightly sustained the addition made by the AO-CPC. He, therefore, submitted that, the order of the learned CIT(A) should be upheld.

11. We have heard both the parties, perused the material on record and the orders of the authorities below. The contention of the Learned Counsel for the Assessee before the Tribunal by relying on the decision of Coordinate Bench of ITAT, Hyderabad in the case of Dondapati Sudhakara Rao vs., ITO, Ward-13(3) in ITA.No.701/Hyd./2025, Order dated 20.08.2025 and argued that, when the

assessment order was passed by the Assessing Officer, the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs., CIT [2022] 143 Taxmann.com 178 (SC) was not available and as per the available Judgment on this issue, it was well established principle that, if contribution to PF and ESI has been made on or before the due date for furnishing of return of income u/sec.139 of the Income Tax Act, 1961, then, said contribution can be allowed. The Tribunal after considering the relevant facts has held that, disallowance of employees contribution to PF and ESI u/sec.36(1)(va) r.w.43B is highly debatable issue, which cannot be considered while processing the return of income u/sec.143(1)(a) of the Income Tax Act, 1961. In our considered view, once the law has been laid down by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (2022) 143 Taxmann.com 178, where, the Hon'ble Supreme Court clearly held that, *“employees contribution to PF and ESI beyond the due date prescribed under relevant Acts is not allowable as deduction u/sec.36(1)(va) r.w.s. 43B of the Act”*,

it goes back to the date of provision which came into existence in the statute and, therefore, the finding recorded by the Coordinate Bench of ITAT, Hyderabad in the case of Dondapati Sudhakara Rao vs., ITO, Ward-13(3) (supra), is contrary to the findings given by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., (supra) and against the law and cannot be accepted. Further, in our considered view, whether disallowance u/sec.36(1)(va) r.w.s.43B is a debatable issue or a *prima facie* adjustment which can be made while computing the income or loss in terms of sec.143(1)(a) of the Income Tax Act, 1961, is very clear by the said provisions after amendment by Finance Act, 2016 w.e.f.01.04.2017 where the law has been very clearly stated in so far as various adjustments which can be made while computing income or loss and as per the said amended provisions, any incorrect claim, if such incorrect claim is apparent from any information in the return can be adjusted to the total income or loss. In the present case, the AO-CPC has made adjustment to belated payment of PF contribution on the basis of tax audit report where the tax

auditor has reported actual date of payment with reference to the due date for payment of such contribution and on the basis of the said report, the Assessing Officer has made adjustment. Therefore, in our considered view, the adjustment made by the Assessing Officer towards belated payment of PF and ESI contribution squarely falls under the provisions of sec.143(1)(a)(ii) of the Income Tax Act, 1961 and thus, the findings given by the Coordinate Bench of ITAT, Hyderabad in the case of Dondapati Sudhakara Rao vs., ITO, Ward-13(3) (supra), is contrary to the provisions of law and also decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., (supra) and thus, cannot be accepted.

12. Having said so, let us come back to the arguments of the Learned Counsel for the Assessee in light of due date for payment and actual date of payment. We find from the tax audit report issued by the Auditor that, for the months of November and December, 2019, going by the due dates and actual date of payment, it appears that, the remittances towards PF for the above 2 months has been

made on or before the due date. However, the facts with regard to the above payments is not clearly amenable from the details submitted by the assessee including relevant challans for payment of contribution. Therefore, to this extent, in our considered view, the matter needs verification from the Assessing Officer. Thus, we set-aside the order of the learned CIT(A) and remit the issue to the file of Assessing Officer for the limited purpose of verification of due date for payment and actual date of payment in respect of PF contribution. In case, the payments made by the assessee for any of the months is within the due date specified under the respective Acts, then, the Assessing Officer is directed to delete the addition made towards disallowance of PF and ESI contributions.

13. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12.09.2025.

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT  
Hyderabad, Dated 12<sup>th</sup> September, 2025  
VBP

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

## Copy to

1.	Sri Narayansinthy Gajendra Patro, 29-ANDAL HOMES, Villa No.29, Andal Homes, Yapral, JJ Nagar Post, JJ Nagar Colony, S.O. Tirumalagiri, Hyderabad-500 087. Telangana.
2.	The DCIT, Circle-13(1), Aaykar Bhavan, Opp. LB Stadium, Basheerbagh, Hyderabad – 500 004. Telangana.
3.	The Pr. CIT, Aaykar Bhavan, Opp. LB Stadium, Basheerbagh, Hyderabad – 500 004. Telangana.
4.	The DR ITAT “SM-A” Bench, Hyderabad.
5.	Guard File.

//By Order//

//True Copy//