

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'E' NEW DELHI)
BEFORE YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No. 3451/DEL/2025 (A.Y. 2022-23)

Sai Corp Creations Pvt. Ltd. D-8/2, VasantVihar, New Delhi PAN: AATCS7145L	Vs	DCIT Circe-22(2), C. R. Building, New Delhi
Appellant		Respondent
Assessee by	Ms. Tanvi Khurana, CA	
Revenue by	Sh. Piyush Tripathi, Sr. DR	
Date of Hearing	27/11/2025	
Date of Pronouncement	28/11/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)/Addl/JCIT(A)- Ranchi ('Ld. CIT(A)' for short), dated 31/03/2025 for the Assessment Year 2022-23.

2. Brief facts of the case are that, the Assessee filed return of income for the year under consideration by declaring total income of Rs. 5,71,26,160/- which has been processed by the CPC, and vide Intimation dated 26/03/2023, disallowed the late payment of Employees Contribution of ESIC and PF. Aggrieved by the Intimation dated 26/03/2023, the Assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 31/03/2025, dismissed the appeal of

the Assessee by relying on the Judgment of the Hon'ble Supreme Court of India in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1 dated 12/10/2022 in Civil Appeal No. 2833 of 2016. Aggrieved by the order dated 31/03/2025 dismissed the appeal of the Assessee, which has been called in question in the present Appeal.

3. The Ld. Counsel for the Assessee submitted that the Assessee has deposited the contribution of ESI & PF well within time as per the due date prescribed in the respective Acts, however, the Lower Authorities have not calculated the due date within the strict meaning, and without considering the documents produced by the Assessee, order impugned has been passed. Thus sought for allowing the Appeal.

4. Per contra, the Ld. Department's Representative submitted that, late payment of ESI & PF has been decided by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1(supra), thus sought for dismissal of the Appeal.

5. We have heard both the parties and perused the material available on record. It is the case of the Assessee that the Assessee has deposited Employees Contribution to PF & ESI well within the time prescribed in the respective Acts, however, the authorities below have not considered the documents and erred in calculating the dates and committed error in making the disallowance.

6. In an identical situation, the Co-ordinate Bench of the Tribunal in the case of M/s Benson Movers Pvt. Ltd. Vs. ACIT in ITA No. 2710/Del/2022 vide order dated 17/11/2023 restore the issue to the file of the A.O. in following manners:-

“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 4 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. In view of the above, by following the above ratio, we remit the issue to the file of the A.O. to calculate the actual due date for payment of employees contributions towards PF/ESI as prescribed in the respective Acts. The A.O. is also directed to verify the documents produced by the Assessee in support of its claim. Accordingly, the

Grounds of Appeal of the Assessee is partly allowed for statistical purpose.

8. In the result, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 28th November, 2025

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 28.11.2025

R.N, Sr.P.S*

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI