

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

**BEFORE
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

MA No.339/Del/2022
Arising out of ITA No.1180/Del/2022
(ASSESSMENT YEAR 2018-19)

ACIT, Circle-2(2), New Delhi.	Vs.	Anilesh Enterprises P. Ltd., 13/1090, Hardhyan Singh Road, New Delhi-110005. PAN-AABCA0735A
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Ankush Kalra, Sr. DR
Date of Hearing	12/12/2025
Date of Pronouncement	11/02/2026

ORDER

PER CHALLA NAGENDRA PRASAD, JM:

Through this Miscellaneous Application (“MA” in short), the Revenue requested for recalling of the Tribunal’s order dated 15.06.2022 in ITA No.1180/Del/2022 for the Assessment Year 2018-19.

2. In the MA, the Revenue contended that the appeal of the Revenue was dismissed by the Tribunal, however, in view of the judgment of the Apex Court in the case of Check Mate Services Private Limited Vs. CIT reported

in 143 taxmann.com 178 (SC), the order of the Tribunal allowing deduction of PF & ESI in respect of employee's contribution is a mistake apparent on record. Therefore, revenue requested that appropriate relief on the basis of the judgment of the Hon'ble Supreme Court be allowed to the revenue.

3. We have heard the rival contentions. The issue as to whether there is a mistake apparent on record in view of the subsequent judgment of the Hon'ble Supreme court in the case of Check Mate Services Private Limited Vs. CIT (supra) in allowing relief in respect of employee's contribution to PF & ESI came up for consideration before this Bench and various benches and the Tribunal in the case of Addl. CIT Vs. Sh. Amardeep Singh Bedi in ITA No.354/Del/2022 and 355/Del/2022 dated 21.03.2025 held that as on the date of passing of the order of the Tribunal there were conflicting views of various High Courts, therefore, there is no mistake apparent on record even after the judgment of the Hon'ble Supreme Court subsequently and accordingly the Miscellaneous Applications were dismissed by observing as under :-

“2. The applications in hand have been filed by the Revenue on the basis that the appeals of the assessee were allowed on the PF and ESI Court in Checkmate Services P. Ltd. vs. Cor. 143 Taxmann.com 178, the issue and now by virtue of the judgement of the Hon'ble Supreme Issue is covered in favour of the Revenue and the disallowance was Justified. The Hon'ble Bombay High Court in Writ Petition 17175 OF 2024 Infantry Security and Facilities though, proprietor Tukaram M. Surayawanshihas Versus The Income Tax Officer, Ward 4(5) order dated 3rd December held as follows:-

"14. In our clear opinion, the question would be required to be we may observe that the petitioner had succeeded before the Tribunal reasons for which we discuss hereunder. In such context, at the outset on the basis of the position in law as it prevailed on the day the decision was rendered on the petitioner's appeal on 26 July 2022 Subsequent to the said orders passed by the Tribunal, on 12 October 2022, the Supreme Court rendered its decision in "Checkmate Services Private Limited (Supra), whereby the Supreme Court held that the deduction of the employees share can be allowed under Section 36(1)(va) of the IT Act, only if such share was deposited before the under Section 139(1) of the IT Act. In the fact situation, certainly it time limit under the respective statutes and not before the due date cannot be said that the Tribunal has overlooked the existing position in law, as laid down by the Supreme Court or the High Court, so as to bring about a situation that the law declared by the Supreme Court was not followed by the Tribunal and/or the decision of the Tribunal is contrary to the law as laid down by the Supreme Court. Such decision of the Supreme Court which never existed when the Tribunal passed the original order could never have been applied by the Tribunal, and hence it cannot be said that there was any mistake on the face of the record, so as to confer jurisdiction on the Tribunal to exercise its jurisdiction under Section 254(2) of the IT Act."

3. In the light of the above, we noted that on the issue of late payment of PF and ESI under the respective statutes, beyond the due date as prescribed under the statutes, is highly debatable issue, because following decisions of Hon'ble High Courts have decided in favour of the assessee :-

(i) CIT Vs. Sabari Enterprises (2008) 298 ITR 141 (Karn), affirmed in (2009) 319 ITR 306 (SC).

(ii) CIT Vs. Nipso Polyfabriks Ltd.-(2013) 350 ITR 327 (HP).

(iii) *CIT Vs. Mark Auto Industries Ltd. - (2013) 358 ITR 43 (Pun)*).

(iv) *CIT Vs. State Bank of Bikaner & Jaipur: Jalpur Vidyut Vitaran Nigam Ltd.(2014) 363 ITR 70 (Raj)*.

(v) *CIT Vs. Jaipur Vidyut Vitaran Nigam Ltd.: Rajasthan Rajya Vidyut Utpadan Nigam Ltd.(2014) 363 ITR 307 (Raj)*.

(vi) *CIT Vs. Kichha Sugar Co.Ltd. - (2013) 356 (TR 351 (Uttarakhand)*.

(vii) *CIT Vs. Hemla Embroidery Mills (P) Ltd. - (2014) 366 ITR 167, 169 (Punj)*.

4. Following Hon'ble High Courts have decided in favour of the Revenue:-

(i) *CIT VS. Gujarat State Road Transport Corporation (2014) 366 ITR 170, 186 (Guj)*.

(ii) *CIT Vs. Merchem Ltd. - (2015) 378 ITR 443, 461 (Ker)*.

(iii) *Popular Vehicles & Services Pvt.Ltd. Vs. CIT (2018) 406 ITR 150 (Ker)*.

(iv) *CIT Vs. Harrisons Malayalam Ltd. - (2019) 414 ITR 718 (Ker)*.

5. It means that there is a debate between the High Courts whether the belated payments, beyond the due date provided under the respective statutes is the due date of making payment of PF & ESI or the due date of filing of return of income under Section 139(1) of the Act. On this proposition, since the issue became highly debatable and Hon'ble Calcutta High Court in Jiyajeerao Cotton Mills Ltd. Vs. ITO (1981) 130 ITR 710, 731(Cal) has narrated that the principle of retrospective legislation is not applicable to the decisions of the Supreme Court declaring the law or interpreting a provision in a statute. The law is laid down or a provision in a statute is interpreted by the Supreme Court only when there is a debate or doubt on the interpretation of any provision of a statute

requiring interpretation by the Supreme Court or when there is a conflict of judicial opinion on a provision of a statute between the different High Courts of India which is required to be resolved and settled by the Supreme Court. The law laid down by the Supreme Court cannot be said to have retrospective operation in the sense that although a debate or doubt or a conflict of judicial opinion is resolved and settled by the Supreme Court, yet still that does not obliterate the existence of such debate or doubt or conflict that existed prior to the decision of the Supreme Court setting at rest such debate or doubt or conflict.

6. In view of the above, we are of the view that only a glaring and obvious mistake of law can be corrected under Section 254(2) of the Act but a decision on a debatable point of law cannot be corrected by way of rectification. If the rectification was made at a time when the issue was debatable, it cannot be supported by reference to the Supreme Court's decision settling the issue which is rendered after the rectification. No contrary decision was pointed out before us during the course of hearing by the Revenue. Hence, we are of the view that the Revenue's miscellaneous applications deserve to be dismissed.”

4. Thus, following the said decisions, we hold that there is no mistake apparent on record in the order of the Tribunal in ITA No.1180/Del/2022 dated 15.06.2022 and, accordingly, the MA is liable to be dismissed.

5. In the result, the MA filed by the Revenue is dismissed.

Order pronounced in the open Court on 11.02.2026.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 11.02.2026

PK/Sr. Ps

Sd/-

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW, DELHI