

आयकर अपीलीय अधिकरण
दिल्ली पीठ "सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ब्रजेश कुमार सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

आअसं.3006/दिल्ली/2025(नि.व. 2017-18)
ITA No.3006/DEL/2025 (A.Y.2017-18)

E Factor Adventure Tourism P. Ltd.,
101 A, Kundan Kutir, Hari Nagar, Ashram,
New Delhi 110014

PAN: AABCE-7871-R

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Central Circle-13, New Delhi 110055

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by: Shri S.K Chaturvedi, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by: Shri Om Prakash, Sr. DR

सुनवाई की तिथि/ Date of hearing : 03/02/2026

घोषणा की तिथि/ Date of pronouncement : 03/02/2026

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax-26, New Delhi [in short 'the CIT(A)'] dated 06.03.2025, for AY 2017-18 in proceedings u/s.154 of the Income Tax Act,1961(hereinafter referred to as 'the Act').

2. Shri S.K. Chaturvedi, appearing on behalf of the assessee submits that the assessee filed return of income for AY 2017-18 declaring NIL income. The case of the assessee was selected for complete scrutiny under CASS. The assessment u/s 143(3) of the Act was completed accepting the return filed by assessee vide

assessment order dated 25.12.2019. Thereafter, the Assessing Officer (AO) issued notice u/s.154 of the Act on 21.11.2023 to rectify alleged mistake, i.e., to disallow contribution of employee towards Provident Fund and ESI amounting to Rs. 4,46,928/- for alleged delay in deposit before the due date. The AO vide order dated 20.12.2023 passed u/s 154 of the Act, added back employees share of contribution of PF Rs.4,12,960/- and contribution of ESI Rs.73,968/- by placing reliance on the decision of Hon'ble Supreme Court of India in the case of Checkmate Services P. Ltd. vs. CIT (448 ITR 518). Aggrieved by the said order, the assessee filed appeal before the CIT(A) but remained unsuccessful. Hence, the present appeal.

The Id. Counsel for the assessee submitted that when the assessment u/s 143(3) of the Act was made on 25.12.2019, various High Courts had held that employees' share of contribution in respect of ESI/PF, if deposited before the due date of filing of return of income, deduction in respect of the same has to be allowed u/s 36(1)(va) of the Act. Thus, on the date of completion of assessment, the AO granted relief as per the legal position explained by various Hon'ble High Courts. Thereafter, on 12.10.2022, the Hon'ble Supreme Court of India in the case of Checkmate Services P. Ltd. vs. CIT (supra) overturned the said position and held that employees' share of contribution under PF/ESI has to be deposited on or before the due date specified under the respective Acts. The AO, on the basis of decision rendered much after the date of passing of the assessment order, initiated rectification proceedings u/s 154 of the Act to disallow contribution towards PF/ESI made beyond the due date specified under respective Acts. The Id. Counsel submitted that where the assessment has been completed on the basis of law as it was prevalent at the time of making the assessment, if the legal position has changed due to change in judgmental law subsequent to passing of assessment

order, it would not constitute mistake apparent on record. In support of his arguments, he placed reliance on the following decisions:-

- (i) DCIT vs. ANI Integrated Services Ltd., (162 taxmann.com 889);
- (ii) Heylands Exports P Ltd. vs. PCIT, ITA No.1539/Chny/2024, order dated 23.10.2024;
- (iii) Mepco Industries Ltd. vs. CIT, [319 ITR 208 (SC)]' &
- (iv) Rajkumar Laxminarayan Kanojia vs. DCIT, Writ No.24647 of 2025, Bombay High Court, order dated 16.09.2025.

3. Per contra, Shri Om Prakash, representing the department vehemently defending the impugned order submits that now the law is well settled that the assessee is required to deposit employees' share of contribution towards PF/ESI on or before the due date specified under the respective Acts. This position has been explicitly explained by the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. vs. CIT (supra). Thus, the AO, in line with the decision of the Hon'ble Apex Court, has rectified the assessment order u/s 154 of the Act.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee in ground no. 2 of appeal, has assailed action of the AO u/s.154 of the Act for making disallowance of the amounts of PF/ESI deposited by the assessee beyond due date specified under respective Acts, on the basis of judgment rendered in the case of Checkmate Services P. Ltd. vs. CIT (supra) passed by Hon'ble Supreme Court of India much after completion of assessment.

5. Before proceeding further, it would be relevant to take note of sequence of events:-

<u>Dates</u>	<u>Event</u>
25.12.2019	Assessment Year u/s.143(3) of the Act;
12.10.2022	Judgement rendered by Hon'ble Apex Court in the case of Checkmate Services P Ltd vs CIT;
21.11.2023	Notice u/s.154 of the Act; &
20.12.2023	Order u/s.154 of the Act

6. It is an undisputed fact that when the assessment u/s 143(3) of the Act was made, no disallowance u/s.36(1)(va) of the Act in respect of employees' share of contribution towards PF amounting to Rs.4,12,960/- and contribution to ESI amounting to Rs.73,968/- was made by the AO. The AO initiated rectification proceedings u/s.154 of the Act only after delivery of judgment by the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. vs. CIT (supra). Thus, it is evident that trigger point for invoking provisions of section 154 of the Act was the judgement rendered by the Hon'ble Apex court subsequent to the date of assessment order.

7. The Hon'ble Bombay High Court, in a similar situation in the case of Infantry Security & Facilities vs. ITO in WP No. 17175 of 2024 decided on 03.12.2024, where the Tribunal in exercise of powers u/s 254(2) of the Act had recalled its earlier order in MA filed by the Revenue consequent to the decision rendered in the case of Checkmate Services P. Ltd. vs. CIT (supra), held that a subsequent ruling of the Supreme Court of India cannot be a ground for invoking provisions of section 254(2) of the Act. Section 254(2) of the Act can be invoked to rectify any mistake apparent from record and not otherwise. Admittedly, on the date when the original order was passed by the Tribunal on 22.06.2022, the Tribunal followed the law as it stood then; hence, on the date when the Tribunal passed its original order, it could not be said that there was any error or mistake apparent on record giving jurisdiction

to the Tribunal to invoke section 254(2) of the Act. The relevant excerpts of the judgement rendered in the case of Infantry Security and Facilities vs. ITO (supra) are reproduced herein under:-

“13. The question in the present case is whether there was any mistake apparent on the face of the record and/or whether a decision which was rendered by the Supreme Court subsequent to the Tribunal’s decision of which rectification is sought, could be relevant to come to a conclusion on the ground that there was a mistake apparent on the face of the order, the Tribunal could substitute its original order.

14. In our clear opinion, the question would be required to be answered against the Revenue and in favour of the assessee. The reasons for which we discuss hereunder. In such context, at the outset, we may observe that the petitioner had succeeded before the Tribunal 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 time limit under the respective statutes and not before the due date under Section 139(1) of the IT Act. In the fact situation, certainly it 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.

15. XXXX

16. In so far as the petitioner’s contention on the jurisdiction of the Tribunal to entertain the Miscellaneous Application is concerned, it appears that the position in law is well settled. The jurisdiction as conferred under sub Section(2) of Section 254 is akin to the jurisdiction conferred on the Civil Court under the provisions of Order XLVII, Rule 1 of the CPC inter alia to correct mistakes apparent on the face of the record. However, on a comparative reading of sub-Section (2) of Section 254 of the IT Act, and Rule 1 of Order XLVII of CPC, it appears that such jurisdiction conferred on the Tribunal is more restricted.

17. In *Beghar Foundation (Supra)*, the Supreme Court was considering a review petition, filed against the final judgment and order dated 26 September 2018, passed on the main proceedings. In rejecting the review petition, the Supreme Court observed that no case for review of such judgment was made out, and most importantly on the ground that change in law or subsequent decision/judgment of coordinate or larger bench by itself cannot be regarded as a ground for review. Such principles of law are squarely applicable in the facts of the present case.

18. In *Sanjay Kumar Agrawal vs. State Tax Officer (1) and Another (2024) 2 SCC 362*, the Supreme Court following the decision in the Constitution Bench in *Beghar Foundation (Supra)*, made the following observations:

“15. It is very pertinent to note that recently the Constitution Bench in *Beghar Foundation v. K. S. Puttaswamy (Aadhaar Review – 5 J.)*, held that even the change in law or subsequent decision/judgment of coordinate Bench or larger Bench by itself cannot be regard as a ground for review.”

8. The Coordinate Mumbai Bench of the Tribunal in the case of *DCIT vs. ANI Integrated Services Ltd. (supra)*, after considering catena of judgments and also the provisions of Order XLVII of the Code of Civil Procedure, held that subsequent judgment of Hon’ble Supreme Court of India in the case of *Checkmate Services P. Ltd. vs. CIT (supra)* would not alter the finality of earlier decisions of the Tribunal which was based on binding precedent of the Jurisdictional High Court and other High Courts. The said Tribunal order was approved by the Hon’ble Bombay High Court in the case of *Infantry Security and Facilities vs. ITO (supra)*.

9. The provisions of section 154 of the Act are *pari materia* to the provisions relating to rectification of mistake u/s 254(2) of the Act and, hence, we find merit in ground no. 2 of appeal. Thus, in light of undisputed facts and the decisions discussed above, we *set aside* the impugned order and direct the AO to delete the addition made u/s.154 of the Act, in garb of rectification. Thus, ground no. 2 of appeal by the assessee is allowed.

10. In ground no. 1 of appeal, the assessee has assailed validity of proceedings u/s 153C of the Act in the absence of any incriminating material. We find that the said issue does not emanate from the order passed by the AO u/s 154 of the Act. The assessee is seeking relief on two issues emanating from two different proceedings in a single appeal. The same is not permissible. Hence, ground no. 1 of appeal is dismissed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Tuesday the 03rd day of February, 2026.

Sd/-

(BRAJESH KUMAR SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 12/02/2026

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI