

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA Nos. 1189 &amp; 1386/Bang/2025</b>
<b>Assessment Years : 2020-21 &amp; 2021-22</b>

Shri Rajaram Badu Salian, Site No. 27, 9 <sup>th</sup> Block, M/s. Dhanalakshmi Constructions, Katipalla, Mangaluru – 575 030. <b>PAN: AVWPS7065G</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle – 1(1), Mangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sanketh, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	18-11-2025
Date of Pronouncement	:	12-02-2026

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi dated 27/03/2025 and 21/04/2025 in respect of the A.Ys. 2020-21 and 2021-22 respectively.

**2.** The issue involved in both the appeals are common and therefore both the appeals are taken up for hearing together and the appeal in ITA No. 1189/Bang/2025 is taken as the lead case and the decision arrived in this appeal would apply mutatis mutandis to the other appeal in ITA No.

1386/Bang/2025. The grounds raised by the assessee are extracted as below:

**ITA No. 1189/Bang/2025**

*“1. The order of the C P C is opposed to the facts of the case and is opposed to the Law.*

*2. The CPC has erred by disallowing the payments received towards PF and ESI through Intimation under section 154 as it involves a question of law which requires interpretation and passing of Assessment Order.*

*3. The CPC has erred in facts and in law by disallowing the payment received from employees to provident fund and superannuation fund under section 36(1)(va) of the Act, amounting to Rs.61,37,696/- and adding the same to the returned income without appreciating that the said contributions were deposited before the due date of filing of the return of income under Section 139(1) of the Act.*

*4. That the CPC has failed to consider that prior to the amendment made by the Finance Act, 2021 to Sections 36(1)(va) and 43B, the position of law as interpreted by several High Courts, including the jurisdictional High Court, was that employee's contributions to PF/ESI, if deposited before the due date of filing of the return, were allowable as a deduction.*

*5. That the Learned CIT(A) has erred in considering the Apex court's decision in respect of Checkmate Services (P) Ltd which has been passed after the date of Intimation and has passed the order by considering the same retrospectively.*

*6. That the Learned CIT(A) has failed to consider that the amendments introduced by the Finance Act, 2021 to Sections 36(1)(va) and 43B are prospective in nature and apply only from Assessment Year 2021-22 onwards and do not affect the legal position applicable to earlier years, which was settled in favour of the assessee by several High Courts.*

*7. That the appellant humbly submits that the due date for deposit of Provident Fund contributions is 15 days from the end of the month in which wages are paid, and in cases where salary is disbursed in the following month, the due date is effectively the 15th of the subsequent month. Thus, deposits made within this period are within*

*time under the respective act, and not liable for disallowance.*

*8. Such other grounds as may be urged at the time of hearing.”*

**ITA No. 1386/Bang/2025**

*“1. The order of the C P C is opposed to the facts of the case and is opposed to the Law.*

*2. The CPC has erred by disallowing the payments received toward s PF and ESI through Intimation as it involves a question of law which requires interpretation and passing of Assessment Order.*

*3. The CPC has erred in facts and in law by disallowing the payment received from employees to provident fund and superannuation fund under section 36(1)(va) of the Act, amounting to Rs.61,49,325/- and adding the same to the returned income without appreciating that the said contributions were deposited before the due date of filing of the return of income under Section 139(1) of the Act.*

*4. That the CPC has failed to consider that prior to the amendment made by the Finance Act, 2021 to Sections 36(1)(va) and 43B, the position of law as interpreted by several High Courts, including the jurisdictional High Court, was that employee's contributions to PF/ESI, if deposited before the due date of filing of the return, were allowable as a deduction.*

*5. That the appellant humbly submits that the due date for deposit of Provident Fund contributions is 15 days from the end of the month in which wages are paid, and in cases where salary is disbursed in the following month, the due date is effectively the 15th of the subsequent month. Thus, deposits made within this period are within time under the respective act, and not liable for disallowance.*

*6. Such other grounds as may be urged at the time of hearing.”*

**3.** The brief facts of the case are that the assessee is an individual and filed his return of income on 21/01/2021. The return was processed u/s. 143(1) and thereafter the CPC had passed a rectification order on 08/03/2022 u/s. 153 of the Act by making an addition of Rs. 61,37,696/- being the delayed payment of PF & ESI u/s. 36(1)(va) of the Act. The

assessee had challenged the said rectification order before the Ld.CIT(A) and submitted that the payments were made before filing the return of income u/s. 139(1) of the Act. The Ld.CIT(A) had not accepted the said contention on the ground that the issue was already decided by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC) and dismissed the appeals.

**4.** As against the said orders, the present appeals are filed by the assessee before this Tribunal.

**5.** At the time of hearing, the Ld.AR reiterated the grounds and also submitted that the payments under the respective acts were made prior to the filing of the return u/s. 139(1) of the Act and also furnished the copies of the challans for the said payments and therefore prayed to allow the appeals. The Ld.AR also filed a case law compilation and prayed to allow the appeals.

**6.** The Ld.DR submitted that as per section 36(1)(va) and 43B of the Act, if the employees contribution was not deposited in time, the assessee would not be entitled for deduction. The Ld.DR further submitted that the Hon'ble Supreme Court had clearly dealt with this issue and interpreted that the provisions would be applicable if the payments are not made in time as contained in the respective Statutes.

**7.** We have heard the arguments of both sides and perused the materials available on record.

**8.** The case of the assessee is that they have remitted the contribution under the ESI and PF Acts before the filing of the income tax return and therefore they are entitled for deduction u/s. 36(1)(va) of the Act.

**9.** We have also perused the section 36(1)(va) and 43B of the Act and we found that there is a clear cut provision u/s. 36(1)(va) which mandates that the employees contribution towards the PF & ESI should be credited to the

employees account on or before the due date. Similarly, section 43B(b) also specifies that the employees contribution to the PF & ESI are eligible for deduction only on actual payments. We have also perused the explanation inserted by way of Finance Act, 2021 w.e.f. 01/04/2021 through which the due date has been explained. When we read the provisions simultaneously, the Act mandates that the sum paid by the assessee towards the employees contribution of PF & ESI are eligible for deduction provided the said amounts were paid before the due dates. In order to understand the provision and also to avoid confusion, later on the Explanation to section 36(1)(va) was added on 01/04/2021. Therefore the Act was very specific that the dues should be paid by the assessee within the due dates prescribed under the relevant Statues and if not, the said payments would not be eligible for deduction u/s. 36(1)(va) of the Act.

**10.** The above said provision was considered by the Hon'ble Supreme Court and the Hon'ble Supreme Court had clarified that if the employees contributions were not paid by the assessees within the due dates prescribed under the respective Statues, then the assessees are not entitled for deduction u/s. 36(1)(va) of the Act. In the present facts of the case, there is a provision for availing the deduction u/s. 36(1)(va) and if the condition laid down in the said provision was not complied with, automatically, the assessee is not entitled for deduction u/s. 36 of the Act, whatever may be the reasons for the delayed payment of the employees contributions, the assessees are not entitled for getting the deduction u/s. 36 of the Act.

**11.** In any event, the issue was settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 448 ITR 518 (SC) in which the Hon'ble Supreme Court had clarified that the assessees were not eligible for deduction u/s. 36(1)(va) of the Act if the employees contributions were remitted to the said funds after the due dates prescribed under the respective Statues. The Hon'ble Supreme Court had not laid down a new law but only interpreted the existing provision and gave a finding that the remittance should be before the due date prescribed under the respective Statues for claiming the deduction. The Ld.CIT(A) had rightly

followed the said judgment of the Hon'ble Supreme Court and dismissed the appeal filed by the assessee since the payments were made after the due dates prescribed under the respective Statues. In view of the judgment of the Hon'ble Supreme Court, we are not following the orders passed by the various Tribunals which are all relied on by the assessee.

**12.** We, therefore find no reason to interfere with the orders of the Ld.CIT(A) and dismiss the appeals filed by the assessee.

**13.** In the result, the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 12<sup>th</sup> February, 2026.

Sd/-  
(PRASHANT MAHARISHI)  
Vice – President

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> February, 2026.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore