

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and**

SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No.3207/DEL/2025
(Assessment Year: 2019-20)**

Alankit Limited,
205-208, Anarkali Complex,
Jhandewalan Extension,
New Delhi – 110 055.

vs.

DCIT, Circle 2(2),
Delhi.

(PAN : AAACE1288P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sumit Lal Chandani, Advocate
Shri Utkarsa Kumar Gupta, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 25.09.2025
Date of Order : 13.10.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-25, New Delhi [“Ld. CIT(A)”, for short] dated 18.03.2025 for the Assessment Year 2019-20.

1. The assessee has taken the following grounds of appeal :-

“1) That the intimation dated 19.05.2020 issued under Section 143(1) of the Income Tax Act, 1961 by the CPC, Bengaluru and the additions made therein is bad in law and without jurisdiction, and is therefore liable to be quashed, as the

adjustments made therein are patently erroneous and made without proper application of mind.

2) That the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] has erred in law and on facts in upholding the disallowance of Rs. 70,67,205/- made under Section 36(1)(va) of the Act in respect of employees' contribution to PF/ESI.

3) That the learned CJT(A) has further erred in ignoring the consistent judicial position that the due date for deposit of employee contributions under Section 36(1)(va) should be reckoned with reference to the actual date of disbursement of salary and not the month to which the salary pertains.

4) That the learned authorities below have erred in not appreciating that the disallowance under Section 36(1)(va) of the Act could not have been made in an intimation issued under Section 143(1) of the Act, as the same involves a debatable issue which is beyond the scope of adjustments permissible under Section 143(1) of the Act.

5) Without prejudice, the disallowance relates to genuine business expenditure allowable under Section 37 of the Act, incurred wholly and exclusively for the purpose of business.

6) Under the facts and circumstances of the case and in law, the CPC in the 143(1) intimation has erred in making an addition of Rs. 3,65,12,758/- to the book profit computed under section 1151B when such amount already forms part of Rs.3,80,05,919 stated in line item 5(m) of the Schedule MAT.

7) That the CPC has erred in law and on facts in making an addition of Rs.3,65,12,758/- to the book profit under section 1151B of the Act on account of deferred tax liability, which has resulted in a double addition.

8. That the final assessment order passed under section 153A does not include or refer to the said disallowance, rendering the earlier adjustment under section 143(1) of the Act legally sustainable.

9. That the said intimation dated 10.05.2020 under section 143(1) of the Act has been issued without affording any proper opportunity to the Assessee, thereby violating the principles of natural justice, and is liable to be set aside on this ground alone.”

2. The only issue involved in this appeal is that the Id. CIT (A) has erred in upholding the disallowances of expenditure of Rs.70,67,205/- made by the Assessing Officer representing delay in remittance of Employee's Contribution towards ESIC and Provident Fund invoking provisions of section 36(1)(va) of the Income-tax Act, 1961 (for short 'the Act'). The other alternative plea was not pressed at the time of hearing.
3. At the time of hearing, Id. counsel for the assessee submitted that the issue involved is relating to confirmation of adjustment of Rs.70,67,205/- u/s.36(1)(va) r.w.s 2(24)(x) on account of delayed deposit of employees contribution to PF and ESI made in the intimation u/s.143(1), without appreciating the fact that employees contribution to PF and ESI are recovered from the employees on disbursement of salary and wages. Accordingly, due date for deposit of employees contribution to PF and ESI i.e. within 15 days of the following month during which salary and wages was actually disbursed among the employees, thus he submitted that employees contribution to PF and ESI was actually deposited on or before 15th of the following month in which salary and wages actually disbursed. In order to support this contention, reliance is placed on the decision of

the Coordinate Bench of the Tribunal in the case of Bensons Movers Pvt. Ltd. vs. ACIT dated 17.11.2023 passed in ITA No. 2710/Del/2022 for assessment year 2019-20. The Ld. Counsel for the assessee submitted that in view of the aforesaid decision, the matter may be restored to the file of AO to ascertain the due date for remittance of the PF/ESI contributions of employees in the present case.

4. On the other hand, ld. DR for the Revenue objected to the submissions made by the ld. AR for the assessee and submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT 143 taxmann.com 178.
5. Considered the rival submissions and material placed on record. We observed that the first plea of the assessee that the issue under consideration is beyond the scope of section 143(1)(a) of the Income-tax Act, 1961 (for short 'the Act'). In our considered view, this issue is already settled in favour of the Department and ld. AR for the assessee relied on the decision of PR Packaging Services 199 ITD 724 (Mum.) and other similar case laws. These case laws are already distinguished by the coordinate Benches. Accordingly, this plea of the assessee is rejected.
6. Coming to alternative plea of the assessee. Considered the rival

submissions and this plea was considered by the coordinate Bench in the case of Benson Movers Pvt. Ltd. (supra) and the relevant decision of the coordinate Bench is as under :-

“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 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. Since the above issue is squarely covered by the above decision, we are inclined to remit the issue back to the file of AO to consider the

alternative plea of the assessee as per law after giving proper opportunity of being heard to the assessee. Accordingly, the appeal filed by the assessee is partly allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 13TH day of October, 2025.

**SD/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

**SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 13.10.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**