आयकर अपीलीय अधिकरण, 'A' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 2145/Chny/2025**

निर्धारण वर्ष / Assessment Year: 2019-20

VCO Consultants and Services Private Limited New No.13, Old No.6, 1st Street Sourashtra Nagar Choolaimedu, Chennai – 600 094.	vs.	**The Income Tax Officer** Corporate Ward 3(3) Chennai.
[PAN: AABCV6797M] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N.Arjun Raj, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. Anshu Sharatwat, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 07.08.2026

घोषणा की तारीख/Date of Pronouncement : 16.10.2026

आदेश /O R D E R

PER S. R. RAGHUNATHA, AM :

The present appeal is filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "ld.CIT(A)"), dated 14.12.2021, passed by partly allowing the appeal filed by the assessee against the intimation dated 09.07.2020 issued u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") by the Centralized Processing Centre, Bengaluru

(hereinafter referred to as "CPC"), pertaining to Assessment Year (A.Y.) 2019-20.

2. As notified by the Registry, the appeal is barred by limitation by 1,302 days, and by an effective delay of 1,157 days after excluding the period covered by the order of the Hon'ble Supreme Court extending limitation during the COVID-19 pandemic.

3. The assessee has raised as many as eleven grounds of appeal. Ground Nos.1, 8 and 11 are general in nature and do not require specific adjudication. The effective grievance of the assessee is that the ld.CIT(A) erred in sustaining the disallowance of Rs.43,47,891/- being the belated remittance of the employees' contribution to PF & ESI fund beyond the due dates prescribed under the respective statutes by invoking the provisions of Section 36(1)(va) of the Act (Ground Nos.2, 5 and 6); that such an adjustment, being on a debatable issue, was outside the scope of the adjustments permissible u/s.143(1) of the Act (Ground Nos.3, 4 and 7); and that the impugned order was passed without affording an effective opportunity of being heard (Ground Nos.9 and 10).

4. Brief facts of the case emanating from the records are that the assessee is a private limited company engaged in the business of manpower supply and consultancy services. The assessee filed its return of income for the A.Y.2019-20 on 29.10.2019, within the extended due date, admitting a total income of Rs.5,96,370/-. The return was processed by the CPC vide intimation dated 09.07.2020 u/s.143(1) of the Act, wherein the total income was computed at Rs.57,25,100/- by making a disallowance of Rs.51,28,729/-. The said disallowance comprised

(i) Rs.43,47,891/- (PF Rs.21,69,136/- and ESI Rs.21,78,755/-) u/s.36(1)(va) of the Act, being the employees' contribution remitted beyond the due dates prescribed under the respective statutes,

though admittedly before the due date for filing the return of income u/s.139(1) of the Act, as reported in the tax audit report; and

(ii) Rs.7,80,838/- towards bonus and gratuity claimed u/s.43B of the Act. Consequently, a demand of Rs.16,28,880/- was raised against the assessee.

5. Aggrieved by the intimation, the assessee preferred an appeal before the ld.CIT(A) on 27.08.2020, well within the period of limitation. The appeal was subsequently migrated to the NFAC. The ld.CIT(A), placing reliance on Explanation 2 to Section 36(1)(va) and Explanation 5 to Section 43B of the Act inserted by the Finance Act, 2021, held that the said amendments are clarificatory and retrospective in nature, and confirmed the disallowance of Rs.43,47,891/-. However, the ld.CIT(A) directed the AO to verify and allow the claim of Rs.7,80,838/- towards bonus and gratuity u/s.43B of the Act, and accordingly partly allowed the appeal. We also notice from the impugned order that the ld.CIT(A) issued a communication on 02.12.2021 fixing the hearing on 13.12.2021 and passed the impugned order on the very next day, i.e., on 14.12.2021. The proceedings giving effect to the order of the ld.CIT(A) were completed on 18.03.2025.

6. Aggrieved by the order of the ld.CIT(A) to the extent of sustaining the disallowance of Rs.43,47,891/-, the assessee is in appeal before us. As per Form No.36, the impugned order dated 14.12.2021 was served on the assessee on the same date. The appeal ought to have been filed within sixty days as prescribed u/s.253(3) of the Act, whereas the same was filed on 01.08.2025. As notified by the Registry, the appeal is barred by limitation by 1302 days. The assessee has filed a petition dated 01.08.2025 seeking condonation of delay, supported by an affidavit dated 31.07.2025.

7. When the matter came up for hearing on 03.08.2026, the Bench, after hearing both the parties on the petition for condonation of delay and taking note

of the length of the delay, directed the assessee to pay costs of Rs.10,000/- to the Tamil Nadu State Legal Services Authority (TNSLSA). The assessee has remitted the said cost of Rs.10,000/- to the TNSLSA vide Receipt No.2158 dated 05.08.2026 and has filed a letter reporting compliance dated 07.08.2026 along with a copy of the said receipt, which is placed on record.

8. The ld.AR submitted that the delay in filing the appeal was neither willful nor deliberate, but was due to circumstances beyond the control of the assessee. Referring to the petition for condonation of delay and the affidavit filed in support thereof, the ld.AR submitted that the managing director of the assessee company was in poor health, which restricted his active participation in the affairs of the company. It was submitted that the issue of disallowance of the belated remittance of employees' contribution to PF & ESI was the subject matter of conflicting decisions before various courts, and was ultimately decided against the taxpayers by the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. v. CIT vide judgment dated 12.10.2022. The assessee was not aware of the limited scope of the adjustments permissible u/s.143(1) of the Act, and therefore, on the advice then available to it, did not challenge the order of the ld.CIT(A). Subsequently, the completion of the effect-giving proceedings on 18.03.2025 was brought to the notice of the director of the assessee company, and thereafter the Hon'ble Chhattisgarh High Court, in Raj Kumar Bothra v. DCIT (TAXC No.56 of 2025, dated 08.05.2025), held under identical circumstances that a disallowance on a debatable issue could not be made in an intimation u/s.143(1) of the Act. The assessee thereupon approached its present Chartered Accountant to ascertain the scope of an appeal on the said issue, and on his advice, the present appeal was filed on 01.08.2025.

9. The ld.AR further submitted that the impugned order was passed on 14.12.2021, while the COVID-19 pandemic was still prevailing, and the entire period of limitation for filing the appeal fell within the period from 15.03.2020 to 28.02.2022 excluded by the Hon'ble Supreme Court in In Re: Cognizance for

Extension of Limitation (supra). The disruption caused by the pandemic to the functioning of the assessee, coupled with the ill health of its managing director, prevented the assessee from taking timely steps to pursue its remedy against the impugned order. The ld.AR also brought to our notice that this Tribunal, in the assessee's own case for the A.Y.2020-21 in ITA No.106/Chny/2026 dated 10.04.2026, taking into account the disruption caused by the COVID-19 pandemic, condoned the delay of 1,419 days in filing the appeal before the ld.CIT(A) and remitted the matter for adjudication on merits. It was further submitted that the assessee has complied with the direction of the Bench by paying the costs of Rs.10,000/-, and the ld.AR prayed that the delay be condoned in the interest of substantial justice.

10. On merits, the ld.AR contended that the scope of the adjustments permissible u/s.143(1)(a) of the Act is limited to those enumerated therein, and that an adjustment u/s.143(1)(a)(iv) on the basis of the tax audit report could be made only where the disallowance is beyond the pale of debate. It was submitted that, as on the date of the intimation, i.e., 09.07.2020, the issue stood covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court in CIT v. Industrial Security & Intelligence India (P) Ltd. [2015 (7) TMI 1063 - Madras High Court], which was consistently followed by this Tribunal. It was further submitted that Explanation 2 to Section 36(1)(va) and Explanation 5 to Section 43B were inserted only by the Finance Act, 2021 with effect from 01.04.2021, and the Memorandum explaining the provisions of the Finance Bill, 2021 specifically stated that the amendments would apply in relation to the A.Y.2021-22 and subsequent assessment years. The decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. v. CIT [(2022) 448 ITR 518 (SC)] was rendered on 12.10.2022, long after the intimation was issued. The ld.AR placed strong reliance on the judgment of the Hon'ble Chhattisgarh High Court in Raj Kumar Bothra v. DCIT wherein it was held that, prior to the decision in Checkmate Services (P.) Ltd. (supra), the allowability of the belated remittance of employees' contribution to PF & ESI was a highly

debatable issue, and hence such a disallowance could not be made while processing the return u/s.143(1) of the Act. Therefore, according to the ld.AR, the issue was, at the very least, a debatable one on the date of the intimation and could not have been the subject matter of a prima facie adjustment u/s.143(1) of the Act. The ld.AR submitted that the ld.CIT(A) had not examined this aspect at all and had decided the appeal without affording an effective opportunity of hearing. Accordingly, the ld.AR prayed that the matter be remitted to the file of the ld.CIT(A) for fresh adjudication on merits, and assured the Bench that the assessee would effectively represent and co-operate in the appellate proceedings.

11. Per contra, the ld.DR vehemently opposed the condonation of delay. It was submitted that the assessee has been negligent in pursuing its remedy, and hence the petition for condonation deserves to be rejected. On merits, the ld.DR submitted that the issue is squarely covered against the assessee by the decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra), and therefore no useful purpose would be served by condoning the delay. It was further submitted that the ground relating to the scope of Section 143(1) of the Act was not raised before the ld.CIT(A). The ld.DR prayed for the dismissal of the appeal.

12. We have heard the rival submissions and perused the materials available on record and gone through the orders of the authorities below along with the judicial precedents relied on. The first issue that arises for our consideration is whether the delay of 1302 days in filing the present appeal deserves to be condoned.

13. As notified by the Registry, the appeal has been filed with a delay of 1302 days. The reasons assigned by the assessee, as set out in the petition and supported by the affidavit of its authorised signatory, are: (i) the COVID-19 pandemic, which was prevailing when the impugned order was passed and the

period of limitation was running; (ii) the poor health of the managing director, which restricted his active participation in the affairs of the company; (iii) the unsettled legal position on the issue, which was finally decided against the taxpayers by the Hon'ble Supreme Court only on 12.10.2022, coupled with the assessee's lack of awareness of the limited scope of Section 143(1) of the Act, as a result of which the assessee, on the advice then available to it, did not challenge the order of the ld.CIT(A); and (iv) the completion of the effect-giving proceedings on 18.03.2025 and the subsequent judgment of the Hon'ble Chhattisgarh High Court in Raj Kumar Bothra (supra) dated 08.05.2025, after which the assessee sought fresh professional advice and filed the present appeal on 01.08.2025. The averments made in the petition are supported by an affidavit, and nothing has been brought on record by the Revenue to controvert the same or to show that the assessee deliberately kept away from the appellate proceedings with any ulterior motive.

14. At the same time cannot be oblivious to the fact that the delay is substantial and that the assessee has not been sufficiently vigilant in pursuing its remedy. It was precisely for this reason that the Bench, vide order sheet entry dated 03.08.2026, directed the assessee to pay costs of Rs.10,000/- to the TNSLSA as a condition for considering the petition for condonation of delay. The assessee has complied with the said direction by remitting the costs dated 05.08.2026. In our considered view, the payment of cost adequately answers the lapse on the part of the assessee and balances the equities between the parties. Considering the totality of the facts and circumstances, and in the interest of substantial justice, we are satisfied that the assessee was prevented by sufficient cause from filing the appeal within the period of limitation. Accordingly, subject to the costs of Rs.10,000/- already paid by the assessee, we condone the delay of 1302 days (effective delay of 1157 days) in filing the present appeal and admit the same for adjudication.

15. Coming to the merits, the Ld.DR contends that the issue is covered against the assessee by the decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra), and hence no useful purpose would be served by entertaining the appeal. We are unable to accept this contention at this stage. The principal plea of the assessee before us is not merely on the allowability of the deduction u/s.36(1)(va) of the Act, but goes to the root of the jurisdiction, namely, whether such an adjustment could at all have been made in the summary processing of the return u/s.143(1) of the Act on 09.07.2020, when the decision of the Hon'ble jurisdictional High Court in Industrial Security & Intelligence India (P) Ltd. (supra) held the field in favour of the assessee. The scope of Section 143(1)(a) of the Act is confined to the adjustments specifically enumerated therein, and the question whether the impugned adjustment falls within its ambit is a pure question of law arising from the facts already on record. Such a ground can be raised at any stage of the appellate proceedings, as held by the Hon'ble Supreme Court in National Thermal Power Co. Ltd. v. CIT [(1998) 229 ITR 383 (SC)]. The fact that this plea was not specifically urged before the ld.CIT(A) does not, therefore, preclude the assessee from raising it.

16. On perusal of the impugned order, we find that the Ld.CIT(A) has sustained the disallowance solely on the premise that Explanation 2 to Section 36(1)(va) and Explanation 5 to Section 43B, inserted by the Finance Act, 2021, are clarificatory and retrospective in nature. The Ld. CIT(A) has not examined whether, on the date of the intimation, the issue was a debatable one so as to fall outside the scope of Section 143(1) of the Act, nor has the Ld. CIT(A) had the occasion to consider the effect of the subsequent decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra) on the scope of such a prima facie adjustment. Further, the Ld. CIT(A) passed the impugned order on 14.12.2021, the very next day after the date of hearing fixed on 13.12.2021, without affording any further opportunity to the assessee. In these circumstances, we are of the considered view that the issue requires fresh

consideration by the First Appellate Authority, which will have the benefit of examining the facts as well as the law as it now stands.

17. Accordingly, in the interest of justice, we set aside the impugned order of the ld.CIT(A) insofar as it relates to the disallowance of Rs.43,47,891/- made u/s.36(1)(va) of the Act, and remit the issue back to the file of the ld.CIT(A) with a direction to adjudicate the same afresh on merits, in accordance with law, including the legal ground raised by the assessee on the scope of the adjustment permissible u/s.143(1) of the Act, after providing a reasonable opportunity of being heard to the assessee. The assessee is at liberty to file such submissions and materials as it may deem fit in support of its claim. The assessee is also directed to co-operate in the appellate proceedings, furnish the necessary details and submissions as may be required, and not seek unnecessary adjournments. It is made clear that the relief of Rs.7,80,838/- granted by the ld.CIT(A) towards bonus and gratuity u/s.43B of the Act is not the subject matter of the present appeal and shall remain undisturbed.

18. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th October, 2026 at Chennai.

Sd/-	Sd/-
(एबी टी वर्की)	(एस. आर. रघुनाथा)
(ABY T VARKEY)	**(S. R. RAGHUNATHA)**
न्यायिक सदस्य/Judicial Member	लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 16th October, 2026.
Devadas

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3.आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF