

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**Before Sh. Challa Nagendra Prasad, Judicial Member
&
Sh. Renu Jauhri, Accountant Member**

ITA No. 6600/Del/2025 : Asstt. Year : 2018-19

ITA No. 6601/Del/2025 : Asstt. Year : 2019-20

ITA No. 6602/Del/2025 : Asstt. Year : 2020-21

R. K. & Company Manpower Pvt. Ltd. C/o The Tax Chambers, C-177, Defence Colony, LGF, New Delhi-110024	Vs	DCIT, Circle-9(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCR8884Q		

Assessee by : Ms. Swati Talwar, Adv.

Revenue by : Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing: 09.04.2026

Date of Pronouncement: 29.04.2026

ORDER

Per Renu Jauhri, Accountant Member:

The above captioned appeals in ITA Nos. 6600, 6601 & 6602/Del/2025 are preferred by the assessees against the order dated 20.08.2025, passed by Ld. CIT(A)/Addl./JCIT(A)-1, Surat u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for A.Ys. 2018-19, 2019-20 & 2020-21, respectively.

2. The assessees has raised following grounds of appeal:

ITA No. 6600/Del/2025

"1. That on the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre - CIT (A), NFAC, ("Ld. CIT(A)") dated 20.08.2025 (hereinafter referred to as 'impugned appellate order') is erroneous, arbitrary, without jurisdiction, illegal and bad in law.

2. That the Ld. CIT(A) has grossly erred in law and on facts of the case in confirming the order passed by Deputy Commissioner of Income Tax, Circle 19(1), Delhi (hereinafter referred to as "Ld. AO") u/s 254 r.w.s. 143(1) of the Income Tax Act in case of the Appellant and making addition amounting to Rs.2,38,15,146/- on account of late deposit of on account of late deposit of Bonus and employees contribution towards PF/ESI.

3. That on the facts and circumstances of the case and in law, original intimation order passed by Ld. AO u/s 143(1) of the Income Tax Act making an adjustment of Rs.2,38,15,146/- dated 23.10.2019 in this case is bad in law, without jurisdiction, illegal and therefore the said intimation order is liable to be quashed.

4. That the Ld. AO and Ld. CIT(A) erred both in law and on facts in making disallowance on account of late deposit of Bonus and PF and ESI u/s 36(1)(va) to the tune of Rs.2,38,15,146/- at the time of processing of return u/s 143(1) even though this does not fall within the ambit of prima facie adjustment as per provisions of Section 143(1)(a) of the Income Tax Act. Therefore, such disallowance is beyond the scope of Section 143(1) and the Ld. AO should not have resorted to provisions of section 143(1).

5. The Ld. AO and CIT(A) erred both in law and on facts by not appreciating the fact that disallowance pertaining to late deposit Of employee's contribution towards PF/ESI which is made before the due date of filing the ITR u/s 139(1) constituted a debatable issue at the time of processing of return and the adjustments u/s 143(1)(a) of Income Tax Act by way of intimation u/s 143(1) of Income Tax Act, on debatable and controversial issues, is beyond the scope of Section 143(1) of Income Tax Act.

6. That the Authorities below failed to consider/appreciate the submission of appellant made at various dates in response to their notice u/s. 250 of the Act and proceeded with confirming the impugned addition without considering the documentary evidence submitted and explanation given in support of assessee's claim

7. That the Ld. CIT(A) grossly erred in placing reliance on amended provisions of Section 36(1)(va) and Section 43B as per Finance Act, 2021 by concluding that these amended provisions apply retrospectively for sustaining disallowance under section 36(1)(va) of Rs. Rs.2,38,15,146/- in the impugned AY.

8. The appellant is contractor and/or sub-contractor, providing Facility management & manpower services mainly to various entities which are principal Employers, thus Primary liability is of Principal Employer under the respective PF & ESI Act and not of Contractor/Sub-Contractor. Thus there should no applicability' of Sec 36(1)(va) on Contractor/Sub- Contractor.

9. Without prejudice to above grounds, disallowance made by the Ld. AO u/s 36(1)(va) r.w.s 43B for late deposit of employees contribution to ESI/PF for Rs. 2,38,15,146/- that has been deposited by the appellant before the due date for filing of return of income u/s 139(1) is allowable as business expense u/s 37 of the Income Tax Act as laid down by Hon'ble Supreme court (SC) in the case of Travancore Titanium product ltd. 1966 AIR 1250.

10. That the Appellant denies liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief."

ITA No. 6601/Del/2025

"1. That on the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre - CIT (A), NFAC, ("Ld. CIT(A)") dated 20.08.2025 (hereinafter referred to as 'impugned appellate order') is erroneous, arbitrary, without jurisdiction, illegal and bad in law.

2. That the Ld. CIT(A) has grossly erred in law and on facts of the case in confirming the order passed by Deputy Commissioner of Income Tax, Circle 19(1), Delhi (hereinafter referred to as "Ld. AO") u/s 254 r.w.s. 143(1) of the Income Tax Act in case of the Appellant and making addition amounting to Rs.1,73,88,975/- on account of late deposit of on account of late deposit of Bonus and employees contribution towards PF/ESI.

3. That on the facts and circumstances of the case and in law, original intimation order passed by Ld. AO u/s 143(1) of the Income Tax Act making an adjustment of Rs. 1,73,88,975/- dated 27.12.2020 in this case is bad in law, without jurisdiction, illegal and therefore the said intimation order is liable to be quashed.

4. That the Ld. AO and Ld. CIT(A) erred both in law and on facts in making disallowance on account of late deposit of Bonus and PF and ESI u/s 36(1)(va) to the tune of Rs. 1,73,88,975/- at the time of processing of return u/s 143(1) even though this does not fall within the ambit of prima facie adjustment as per provisions of Section 143(1)(a) of the Income Tax Act. Therefore, such disallowance is beyond the scope of Section 143(1) and the Ld. AO should not have resorted to provisions of section 143(1).

5. The Ld. AO and CIT(A) erred both in law and on facts by not appreciating the fact that disallowance pertaining to late deposit Of employee's contribution towards PF/ESI which is made before the due date of filing the ITR u/s 139(1) constituted a debatable issue at the time of processing of return and the adjustments u/s 143(1)(a) of Income Tax Act by way of intimation u/s 143(1) of Income Tax Act, on debatable and controversial issues, is beyond the scope of Section 143(1) of Income Tax Act.

6. That the Authorities below failed to consider/appreciate the submission of appellant made at various dates in response to their notice u/s. 250 of the Act and proceeded with confirming the impugned addition without considering the documentary evidence submitted and explanation given in support of assessee's claim

7. That the Ld. C1T(A) grossly erred in placing reliance on amended provisions of Section 36(1)(va) and Section 43B as per Finance Act, 2021 by concluding that these amended provisions apply retrospectively for sustaining disallowance under section 36(1)(va) of Rs. Rs. 1,73,88,975/- in the impugned AY.

8. The appellant is contractor and/or sub-contractor, providing Facility management & manpower services mainly to various entities which are principal Employers, thus Primary liability is of Principal Employer under the respective PF & ESI Act and not of Contractor/Sub-Contractor. Thus there should no applicability' of Sec 36(1)(va) on Contractor/Sub- Contractor.

9. Without prejudice to above grounds, disallowance made by the Ld. AO u/s 36(1)(va) r.w.s 43B for late deposit of employees contribution to ESI/PF for Rs. 1,73,88,975/- that has been deposited by the appellant before the due date for filing of return

of income u/s 139(1) is allowable as business expense u/s 37 of the Income Tax Act as laid down by Hon'ble Supreme court (SC) in the case of Travancore Titanaium product ltd. 1966 AIR 1250.

10. That the Appellant denies liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief."

ITA No. 6602/Del/2025

"1. That on the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre - CIT (A), NFAC, ("Ld. CIT(A)") dated 20.08.2025 (hereinafter referred to as 'impugned appellate order') is erroneous, arbitrary, without jurisdiction, illegal and bad in law.

2. That the Ld. CIT(A) has grossly erred in law and on facts of the case in confirming the order passed by Deputy Commissioner of Income Tax, Circle 19(1), Delhi (hereinafter referred to as "Ld. AO") u/s 254 r.w.s. 143(1) of the Income Tax Act in case of the Appellant and making addition amounting to Rs.1,33,47,818/- on account of late deposit of on account of late deposit of Bonus and employees contribution towards PF/ESI.

3. That on the facts and circumstances of the case and in law, original intimation order passed by Ld. AO u/s 143(1) of the Income Tax Act making an adjustment of Rs.1,33,47,818/- dated 18.12.2021 in this case is bad in law, without jurisdiction, illegal and therefore the said intimation order is liable to be quashed.

4. That the Ld. AO and Ld. CIT(A) erred both in law and on facts in making disallowance on account of late deposit of Bonus and PF and ESI u/s 36(1)(va) to the tune of Rs.1,33,47,818/- at the time of processing of return u/s 143(1) even though this does not fall within the ambit of prima facie adjustment as per provisions of Section 143(1)(a) of the Income Tax Act. Therefore, such disallowance is beyond the scope of Section 143(1) and the Ld. AO should not have resorted to provisions of section 143(1).

5. The Ld. AO and CIT(A) erred both in law and on facts by not appreciating the fact that disallowance pertaining to late deposit Of employee's contribution towards PF/ESI which is made before the due date of filing the ITR u/s 139(1) constituted a debatable issue at the time of processing of return and the adjustments u/s 143(1)(a) of Income Tax Act by way of intimation u/s 143(1) of Income Tax Act, on debatable and controversial issues, is beyond the scope of Section 143(1) of Income Tax Act.

6. That the Authorities below failed to consider/appreciate the submission of appellant made at various dates in response to their notice u/s. 250 of the Act and proceeded with confirming the impugned addition without considering the documentary evidence submitted and explanation given in support of assessee's claim

7. That the Ld. C1T(A) grossly erred in placing reliance on amended provisions of Section 36(1)(va) and Section 43B as per Finance Act, 2021 by concluding that these amended provisions apply retrospectively for sustaining disallowance under section 36(1)(va) of Rs. Rs.1,33,47,818/- in the impugned AY.

8. The appellant is contractor and/or sub-contractor, providing Facility management & manpower services mainly to various entities which are principal Employers, thus Primary liability is of Principal Employer under the respective PF & ESI Act and not of

Contractor/Sub-Contractor. Thus there should no applicability' of Sec 36(1)(va) on Contractor/Sub- Contractor.

9. Without prejudice to above grounds, disallowance made by the Ld. AO u/s 36(1)(va) r.w.s 43B for late deposit of employees contribution to ESI/PF for Rs.1,33,47,818/- that has been deposited by the appellant before the due date for filing of return of income u/s 139(1) is allowable as business expense u/s 37 of the Income Tax Act as laid down by Hon'ble Supreme court (SC) in the case of Travancore Titanaium product ltd. 1966 AIR 1250.

10. That the Appellant denies liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief."

3. As common issues are involved in all the three appeals. ITA No. 6600/Del/2025 for A.Y. 2018-19 is taken up as the lead case.

3.1 Brief facts are that the assessee company filed its return for A.Y. 2018-19 on 31.10.2018 declaring income of Rs.1,35,79,360/-. The case was processed u/s 143(1) vide intimation order dated 23.10.2019 wherein addition of Rs.2,55,73,010/- was made in respect of late deposit of employees contribution to PF/ESIC. Aggrieved the assessee filed an appeal before Id. CIT(A) which was party allowed vide order dated 31.10.2022 as under:

S.No.	Amount in Dispute before CIT (Appeals)	Allowed by CIT(Appeals)	Disallowed	Reason
1	23815146	0	23815146	Late Deposit of PF ESIC
2	1743407	1255524	487883	Payment of Bonus

Further aggrieved, the assessee preferred an appeal before the ITAT only in respect of the issue relating to late deposit of PF/ESIC amounting to Rs.2,388,15,146/- vide order dated

29.11.2023, the co-ordinate bench allowed the assessee's appeal for statistical purposes and issued direction to the Id. AO as under:

"Before us, it is the specific contention of the assessee that due date, as per section 36(1)(va) of the Act, should be the date on which salary was actually disbursed to the employees and not the date on which salary was due. In this context, learned counsel has relied upon following judicial precedents:

- i. Rakesh Janghu, ITA No. 2675/Del/2022, dated 09.10.2023*
- ii. Prime Comfort Products Pvt. Ltd. Vs. ACIT, ITA No.530/Dei/2023, dated 26.04.2023.*

No doubt, the issue whether the delayed payment of employees' contribution to PF and ESI is allowable as deduction is no more res Integra in view of the ratio laid down by the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. (supra). However, it is the specific plea of the assessee before us that the due date as provided under section 36(1)(va) of the Act should be construed from the date on which salary was actually disbursed to the employees and not the date on which salary was due. In our view, the aforesaid contention of the assessee merits consideration.

We have further observed, while considering similar pleadings made by the assessee, the Coordinate Benches have restored the issue to the Assessing Officer for consideration in the light of judicial precedents. Following the judicial precedents cited before us, we restore this issue to the file of the Assessing Officer for de novo adjudication after providing due and reasonable opportunity of being heard to the assessee and further, the Assessing Officer must pass a well-reasoned order after considering the submissions of the assessee and the ratio laid down in the decisions to be cited before him. Grounds are allowed for statistical purposes.

In the result, appeals are allowed for statistical purposes.

3.2 In pursuance of decision of the co-ordinate bench, the AO issued a notice to the assessee and passed the order on 21.03.2025 holding as under:

"5.1 The assessee has not filed any explanation and documentary evidence in response to the show cause notice. In view of non-responsiveness of the assessee and in view of the detailed discussion made in the show cause notice, it is held that as per provisions of section 36(1)(va) of the Income Tax Act read with the provisions of the ESI ct, it is clear that the due date for deposit of the employee's contribution is to be calculated from the date on which salary was due to the employee not the date on which the salary was actually disbursed. Accordingly, addition of Rs.2,38,15,146/- as made in the order u/s 143(1) is found to be correct and the same is added back to the total income of the assessee."

[Addition of Rs.2,38,15,146/-]

3.3 Aggrieved the assessee filed appeal before Id. CIT(A). Vide order dated 20.08.2025, Id. CIT(A) dismissed the assessee appeal. Further aggrieved, the assessee is in appeal before the Tribunal.

4. Before us, Id. AR has submitted that the lower authorities have mainly relied on the decision of the Hon'ble Apex Court in the case of Checkmate Services (P) Ltd. Vs. CIT (2022) 448 ITR 518 which is misplaced considering the facts of the case. He has argued that the impugned addition has been made u/s 143(1) when such an adjustment is clearly outside the scope of adjustments envisaged under the section. Further Id. AR has placed reliance on multiple decisions of the co-ordinate benches wherein on similar facts and circumstances disallowance made

u/s 143(1) in respect of late deposit of employees' contribution to PF/ESI has been deleted especially in cases pertaining to the assessment years prior to the decision of the Hon'ble Supreme Court in the case of Checkmate Services (supra). Some of the decisions relied upon by the Id. DR are as under:

- 1) *Rajesh Kumar Garg Vs. ACIT in ITA No. 970/Del/2025 order dated 22.08.2025*
- 2) *Dondapati Sudhakara Rao, Hyderabad Vs. DCIT in ITA No. 701/Hyd/2025 order dated 20.08.2025*
- 3) *M/s Tinna Rubber and Infrastructure Ltd. Vs. DCIT in ITA No. 816 & 817/Del/2025 order dated 31.07.2025*
- 4) *Ranbir Singh Sorout Vs. ITO in ITA No. 52 to 54/Del/2023 order dated 20.08.2025*
- 5) *A2Z Infra Services Ltd. Vs. DCIT in ITA No. 970/Del/2023 order dated 16.06.2025*

5. On the other hand, Id. DR has also filed his written submissions wherein reliance has been placed on the decisions of the Hon'ble Supreme Court in Checkmate Services (supra).

6. We have heard the rival submissions and perused the material on record as well as the relevant judicial pronouncements. Admittedly, the additions u/s 143(1) have been made in the Assessment Year prior to the decision of the Hon'ble Apex Court. We are, therefore, of the considered view that the impugned addition was outside the scope of adjustments permissible u/s 143(1) of the Act. Accordingly, respectfully following the decisions of the co-ordinate benches cited hereinbefore, we delete the addition of Rs.2,38,15,146/-

u/s 36(1)(va) of the Act. The appeal of the assessee is hereby allowed.

7. As identical issues are involved in ITA Nos. 6601/Del/2025 (for A.Y. 2019-20) and ITA No. 6602/Del/2025 (for A.Y. 2020-21), the above decision shall apply *mutatis mutandis* in these appeals also.

8. In the result, all the three appeals are hereby allowed.

Order Pronounced in the Open Court on 29/04/2026.

Sd/-

(Challa Nagendra Prasad)
Judicial Member

Dated: 29/04/2026

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Renu Jauhri)
Accountant Member

ASSISTANT REGISTRAR