IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B"NEW DELHI

BEFORE SHRIMAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A Nos.4402 & 4403/Del/2025
' '/Assessment Years: 2018-19 & 2019-20

RATIONAL BUSINESS CORPORATION PRIVATE LIMITED, Bahalgarh Chowk, Delhi, Sonepat Road, Bahalgarh (73), Sonipat. PAN No.AADCR1837J	ब म Vs.	DCIT, Circle 19(1), C.R. Building, I.P. Estate, New Delhi.
अ Appellant		/Respondent

Assessee by	Shri Amit Kumar Gupta, CA
Revenue by	Shri Sabyasachi Roy, Sr. DR

ी / Date of hearing:	16.12.2025
× ी /Pronouncement on	31.12.2025

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of two appeals which are time barred by 289 days and 166 days respectively. The assessee has requested for condonation of the same through affidavits filed. The affidavit filed for AY 2018-19 [ITA No.4402/Del/2025], as illustration for both the years, is as under:

AFFIDAVIT

1. I, Ashok Gupta. Director of Rational Business Corporation Private Limited, O/o Bahalgarh Chowk, Delhi Sonipat Road, Sonipat, Haryana 131001 solemnly affirm and state as under:

2. We appointed CA Pankaj Jain for handling CIT appeal matter for AY 2018-19 and AY 2019-20.

3. That AR Sh. Pankaj Jain was not aware of the legal issue in the present appeal i.e. CPC cannot make disallowance u/s 36(1)(va) r.w.s 143(1)(a)(iv). Therefore the Ld. A.R. Shri Pankaj Jain advised us that the matter has attained finality in the light of decision of Apex Court in the case of Checkmate Services Private Limited v. CIT dated 12.10.2022, 448 ITR 518.

4. That, when we sought the legal opinion in this regard from Dr. Adv. (C.A.) Amit Kumar Gupta, then we came to know that CPC was not legally correct to make disallowance on the date of order as the issue was highly debatable at that time.

5. That, my father Radhey Shyam Gupta aged 82 (D.O.B. 12.12.1942), who is also director in the company is also not well due to old age and is suffering from multiple health issues and my son's marriage was also there on 14.12.2024.

6. That all the aforesaid factors contributed in delay filing of this appeal before the Hon'ble ITAT.

VERIFICATION

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Sd/-
Ashok Gupta
Deponent

I verify that the contents of this affidavit are true to the best of my knowledge and belief.
Date: 16.07.2025

Sd/-
Ashok Gupta
Deponent

Place: Delhi

1.1 The CA, Shri Pankaj Jain has also submitted a separate affidavit and has stated that due to a doubt regarding the applicability of the Checkmate Services case [448 ITR 518 (SC)] he had advised the client to not file any appeal.

1.2 The affidavits of the assessee and his tax consultant have been perused and on the basis of the averments thereon, the delay in both the cases is condoned and the appeals are admitted for adjudication through a single order.

2. The appeal for AY 2018-19 (ITA No.4402) arises from order dated 16.07.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter as "the Act") by Ld. Addl./JCIT (Appeal)-1, Mumbai. The appeal for AY 2019-20 arises from order dated 22.11.2024, passed u/s 250 of the Act by Ld. Addl./JCIT(A)-1, Lucknow. In both of the years the Ld. AO CPC, while processing the returns u/s 143(1) of the Act, had disallowed belated payments of Employees Contribution to PF & ESI. The assessee could not succeed at first level since both the Appellate Authorities relied on the case of Checkmate Services reported in 448 ITR 518 (SC).

2.1 The assessee has raised several grounds of appeal, which for the sake of convenience the grounds pertaining to ITA No.4402 (AY 2018-19) are extracted for reference: -

Additional legal Grounds of appeal for the AY 2018-19

"1. That the Authorities below erred in confirming/sustaining the addition made towards belated payment of Employee's contribution to PF& ESI of Rs.51,73,397/- (PF-Rs.44,84,052/- and ESI 6,89,345/-), since no additions u/s 36(1)(va) could be done, as per the mandate of section 143(1)(a) thus there was no adherence of relevant section and therefore it is clear cut case of mistake of law.

2. That the Authorities below failed to appreciate the fact that the no addition by way of adjustment while processing/intimation the return of income u/s 143(1)(a) towards

the delayed deposit of the employees' contribution towards ESI and PF [though deposited within the due date of filing of return u/s 139(1)] can be made as It would not fall under clause (iv) of section 143(1)(a) and that the jurisdiction of HC & SC was in favour of assessee at the time of processing under that section. Thus, it was debatable issue at the time of processing of return.

3. That the Authorities below erred both in law and facts by disallowing the employee's contribution EPF/ESI. Hence same is allowable deduction u/s 37(1) as laid down by Hon'ble Supreme Court (SC) in the case of Travancore Titanium Products Ltd. 1966 AIR 1250.

4. That there is no misuse of funds by the assessee. So, there was no breach of law as envisaged in memorandum explanation of the bill in which this option was incorporated in the Act.

5. That the order passed by Authorities below is also erroneous, illegal and against the principals of Natural Justice and Equity and the well settled laws of the land. Thus, the department has not demonstrated that there were misuse of funds and disallowed the same."

3. Before us, the Ld. AR stated that when the processing was done in 2019 the issue of allowing PF& ESI payments beyond the due date was debatable at best. It was the submission that the issue was settled only on 12.10.2022 when the Hon'ble Supreme Court give its judgment in the Checkmate Services case (supra). The Ld. AR relied on several ITAT orders and laid emphasis on the Hon'ble Chattisgarh High Court's decision in the case of Raj Kumar Bothra reported in 476 ITR 249 through which, it was pointed out, that prior to the order of the Hon'ble Supreme Court the issue was debatable and hence outside the purview of Section 143(1)(a) of the Act. The Ld. AR pointed out several orders of Coordinate Benches of ITAT which have followed the Hon'ble Chattisgarh High Court's decision and have not supported the action of AOs in disallowing

EPF/ESI payments u/s 143(1)(a) of the Act prior to the date of the Checkmate Services judgement. The Ld. AR also read extensively from written submissions filed before us and pointed out the relevant portions from the authorities relied upon by him.

3.1 On the other hand, the Ld. DR relied on the impugned orders and stated that the Checkmate Services case (supra) would not apply prospectively from 12.10.2022. It was the submission that the Hon'ble Supreme Court interprets the law from the date on which it is brought on the statute book and there is no question of any retrospective or prospective application of the same.

4. We have carefully considered the documents before us, the case laws relied upon by the Ld. AR and heard the rival submissions. We have also carefully gone through the case of Checkmate Services reported in 448 ITR 518 (SC).We feel that after a combined reading of the cases cited before us and the perusal of the legislative history of the sections of the Act under consideration in the present adjudication, there is a requirement of discussion as to how, purportedly, the issue has been clarified post the Checkmate Services case (supra).

4.1 Before the Supreme Court's decision in the Checkmate Services Pvt. Ltd. v. CIT(supra)case, there was considerable judicial debate on whether delayed employee contributions to PF and ESI could be allowed as deductions under Section 43B of the Act or not, provided they were

paid before the due date of filing the return of income (ROI). In Checkmate Services case (supra) the Supreme Court provided much needed clarity on the interpretation of Sections 43B and 36(1)(va) of the Act. The Hon'ble Apex Court held that employee contributions to PF and ESI are governed exclusively by Section 36(1)(va) of the Act, and not by Section 43B of the Act. The court emphasized that employee contributions must be deposited within the due dates specified under the relevant statutes. Failure to do so would result in disallowance of the deduction, even if the payment was made before the due date for filing the ROI. We need to remind ourselves that this is exactly the case in the present appeal. The judgment reinforced the distinction between employer and employee contributions. While an employer's contributions could be governed by section 43B of the Act, employees' contributions are strictly under Section 36(1)(va) of the Act. This ruling overturned many High Court decisions that allowed deductions for delayed employee contributions under Section 43B of the Act, setting a precedent for stricter compliance.

The Apex Court focused on the basic principle that whenever a special law exists for any particular situation it would be covered under the special law and not the general law. The Latin phrase of the same being *"Lex specialis derogate legi generali"*, meaning "a specific law overrides a general law" when both apply to the same situation, a core principle in legal interpretation that ensures specialized rules take precedence over

broader ones for more precise outcomes. Thus, as special provisions were existing in the Act by virtue of 36(1)(va) of the Act for the employee contributions, thereby they would prevail over general provisions of Section 43B of the Act. Most importantly, the Supreme Court's decision in Checkmate Services (supra) raised concerns regarding its retrospective application. But it is a settled position that the Supreme Court case laws have a retrospective effect on the interpretation of statutes, meaning that they apply to past events as well as future ones, unless the judgment itself explicitly states it should only apply prospectively. It is a further settled position that the Hon'ble Supreme Court's role is to interpret existing laws, and its decisions are seen as clarifying the true meaning of those laws, not creating new ones. Therefore, the Apex Court's interpretation has to be considered to be the correct interpretation of law as it existed from the outset, making it applicable retrospectively.

4.2 We may also discuss some other cases.

(a) In the case of Saurashtra Kutch Stock Exchange Ltd 305 ITR 225 (SC), some relevant portions need to be extracted:

"In the instant case, miscellaneous application came to be filed by the assessee under sub-section (2) of section 254 stating therein that a decision of the 'Jurisdictional Court', i.e., the High Court of Gujarat in Hiralal Bhagwati's case [246 ITR 188 (Guj)], was not brought to the notice of the Tribunal and, thus, there was a 'mistake apparent from record' which required rectification. [Para 39]

The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court or of the Supreme Court can be said to be a 'mistake apparent from the record'? Both, the Tribunal and the High Court were right in holding that such a

mistake can be said to be a 'mistake apparent from the record' which can be rectified under section 254(2). [Para 40]

It is also well - settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, the Judges do not make law; they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make a new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite sometime, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood. [Para 42]

In the instant case, according to the assessee, the Tribunal had decided the matter on 27-10-2000. Hiralal Bhagwati's case (supra) was decided few months prior to that decision, but it was not brought to the attention of the Tribunal. In the circumstances, the Tribunal had not committed any error of law or of jurisdiction in exercising power under sub-section (2) of section 254 and in rectifying 'mistake apparent from the record'. Since no error was committed by the Tribunal in rectifying the mistake, the High Court was not wrong in confirming the said order. Both the orders, therefore, were strictly in consonance with law and no interference was called for. [Para 47]"

(b) In the case of Rohan Korgaonkar 298 Taxman 159 (Bom), the following extracts are relevant for the issue at hand:

"The ITAT, in this case, has noted that the Assessee failed to deposit contributions to ESI and PF in the employees' accounts for the relevant assessment year before the due date under the PF/ESI Acts. However, such contributions were deposited before the Assessee filed returns under Section 139 (1) of the IT Act. The ITAT relying upon the decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. v. CIT held that based upon such delayed deposits, no adjustments or deductions could be claimed".[Para 3]"

"In Checkmate Services (P.) Ltd. (supra), the Hon'ble Supreme Court considered the conflicting decisions on the subject and finally held that deductions or adjustments could be claimed only when the Assessee deposits the contribution before the due date provided under the Employees Provident Fund/Employee State Insurance Act. If the employees' contributions are deposited after the due date set out under the said Act, there is no question of deduction or adjustment on the ground that such contributions

were deposited before the filing of returns under section 139(1) of the IT Act." [Para 4]."

"The ITAT has relied upon Chekmate Services (P.) Ltd. (Supra), and its reasoning is entirely consistent with the law laid down in Checkmate Services (P.) Ltd. (supra). Therefore, no case is made to interfere with the AO, CIT(Appeals), and ITAT decisions." [Para 5]

"However, Ms Kamat submitted that Checkmate Services (P.) Ltd. (Supra)was a matter where the assessment was made under section 143(3) of the IT Act and not under section 143 (1) (a) as in the present case. She also relied upon P.R. Packaging Service v. Asstt. CIT [2023] 148 taxmann.com 153 (Mum. - Trib) ITA No. 2376/MUM/2022, decided by the ITAT 07/12/2022 to support her contention." [Para 6].

"Though the decision cited was that of the ITAT, we have considered the same. In our judgment, however, the fact that the assessment order in Checkmate Services (P.) Ltd. (supra) was incidentally under section 143(3) and the assessment order in the present case is under section 143(1)(a) of the IT Act, makes no difference to the principle involved in this matter. The ITAT decision does not discuss why this circumstance constitutes a distinguishing feature based on which the ratio of Checkmate Services (P.) Ltd. (supra) could be departed from." [Para 7].

"Checkmate Services (P.) Ltd. (Supra)holds that the deductions can be claimed or adjustments can be made under section I4l(l)(a)(iv), read with section 36(1)(va) only when the employer deposits the contributions in the employees' accounts on or before the due date prescribed under the Employees Provident Fund /Employees State Insurance Act. In this case, admittedly, the contributions were deposited in the employees' accounts beyond the due date. The circumstance that the assessment order was made under section 143(1)(a) of the IT Act can make no difference." [Para 8].

(c) Furthermore, in the case of Diversified Services 293 Taxman 48 (Guj)- 2023, the matter was u/s 143(1) of the Act and it is illuminating to read the questions of law before the Hon'ble Court and the decision thereon. In this regard question 'c' is of importance. Some relevant extracts are as under:

" The appellant has framed and proposed following questions of law as substantial questions of law for this Appeal, urging to admit the Appeal for consideration of the said questions, reproduced below,

"(a) Whether the Income-tax Appellate Tribunal erred in law and in facts in not appreciating that payment of employee's contribution to PF/ESI having already been done by the appellant before due date of filing of return, the same ought to have been allowed as deduction under section 36(1)(va) read with section 43B of the IT Act?

(b) Whether the Income-tax Appellate Tribunal erred in law and in facts in not appreciating that jurisdiction under section 143(1)(a) of the IT Act is limited in nature and when different High Courts have

taken different view on allowance of deduction under section 36(1)(va) read with section 43B of the IT Act with respect to payment of employee's contribution to PF/ESI having already been done by the appellant before due date of filing of return, the same cannot be termed as apparently incorrect claims from the information in the return?

(c) Whether the Income-tax Appellate Tribunal erred in law and in facts in holding that amendment made section 36(1)(va) and section 43B of the Income-tax Act vide Finance Act, 2021 (No.13 of 2021) is applicable retrospectively?"[Para 2.1]

"In view of the law emerging from the decision of the Supreme Court in Checkmate Services (P.) Ltd. (supra), the contentions and the questions raised by the appellant could be said to be no longer res integra. The law as holding the field operates against the appellant." [Para 6].

4.3 At this stage we also need to discuss the proposition advanced by the Ld. AR that on the date of the order by Ld AO there was no judgement of the Hon'ble Apex Court and hence the issue was debatable at best. On this issue it needs to be pointed out, as done earlier in this order, that any interpretation of a statute by the Hon'ble Supreme Court imparts a meaning to it from the date on which a particular provision was brought on the statute book. Thus, this line of argument does not help the assessee. There was another argument that the amendments to sections 36(1)(va) and 43B of the Act were introduced with effect from AY 2021-22 only, whereas this case pertains to AY 2020-21. On this point it needs to be mentioned that the Hon'ble Apex Court was aware of these amendments as we can see from para 5 of the Checkmate (supra) order. Therefore, the said judgement considers the impact of such amendments and it is not for us to take any view other than the *ratio decidendi* of the Checkmate (supra) judgement. We may draw our own

conclusions from relevant extracts from the case of Rohan Korgaonkar 298 Taxman 159 (Bom):

> *"However, Ms Kamat submitted that Checkmate Services (P.) Ltd. (Supra)was a matter where the assessment was made under section 143(3) of the IT Act and not under section 143 (1) (a) as in the present case. She also relied upon P.R. Packaging Service v. Asstt. CIT [2023] 148 taxmann.com 153/199 ITD 724 (Mum. - Trib) ITA No. 2376/MUM/2022, decided by the ITAT 07/12/2022 to support her contention." [Para 6]*
>
> *"Though the decision cited was that of the ITAT, we have considered the same. In our judgment, however, the fact that the assessment order in Checkmate Services (P.) Ltd. (supra) was incidentally under section 143(3) and the assessment order in the present case is under section 143(1)(a) of the IT Act, makes no difference to the principle involved in this matter. The ITAT decision does not discuss why this circumstance constitutes a distinguishing feature based on which the ratio of Checkmate Services (P.) Ltd. (supra) could be departed from." [Para 7]*

The Raj Kumar Bothra case (supra), could have had persuasive value in case there was unavailability of judicial pronouncements on the effect on law of the Hon'ble Apex Court's judgements. Since we are sufficiently fortified by the numerous authorities discussed above, we respectfully follow the Checkmate Services case (supra) and the other authorities discussed above.

4.4 We are also conscious that one of the limbs of several arguments advanced by the Ld. AR pertained to the Checkmate Services case (supra) being pronounced after the date of the Ld. AO's order, rendering it as a debatable issue, beyond the pale of section 154 of the Act. In this regard we draw sustenance from the order of the Hon'ble Gujrat High Court in the case of Saurashtra Kutch Stock Exchange Ltd, reported in 262 ITR

146 (Gujarat). A relevant portion from this case deserves to be extracted:

> *"Whether the judgment of jurisdictional Court would constitute a mistake apparent from the record or not is no longer res intergra. In the case of Parshuram Pottery Works Co. Ltd. v. D.R. Trivedi, WTO [1975] 100 ITR 651 (Guj.) facts before the Court were that the petitioner-company claimed deduction of certain amount in respect of the provision for taxation while computing its net wealth. The said claim was disallowed by the Assessing Officer as according to him the provision for tax liability did not constitute a 'debt owed' on the valuation date. Though the said assessment was not challenged by way of appeal, when the petitioner came to know subsequently about a decision of the Tribunal allowing such a claim in some other case, the petitioner applied to the Assessing Officer for rectifying the assessment order under section 35 of the Wealth-tax Act, 1957. The said application came to be rejected on the ground that there was no mistake apparent on the face of the record. The petitioner filed revision application before the Commissioner of Wealth-tax but did not succeed. Thereupon the petitioner applied to the High Court for exercising writ jurisdiction to quash the order and for direction to rectify the assessment order. The High Court after referring to earlier decision of this Court in the case of CWT v. Raipur Mfg. Co. Ltd. [1964] 52 ITR 482 and of the Supreme Court in the case of Kesoram Industries Cotton Mills Ltd. v. CWT [1966] 59 ITR 767 held that the provision of taxation was 'debt owed' and was deductible while computing the net wealth of the assessee. Therefore, the High Court held that there was clearly an error of law apparent on face of the record and the assessment order was erroneous. Repelling the contention of the revenue that the aforesaid judicial pronouncements were subsequent to the date of the assessment order it is laid down that the said decisions merely stated what the law had always been and must always be understood to have been. The fact that the said decisions were not before the Assessing Officer when he made the assessment order had not material bearing on the question whether the said order discloses any mistake apparent from the record and was liable to be rectified under section 35 of the Wealth-tax Act, 1957. It was further held that the decision in the case of Raipur Mfg. Co. Ltd. (supra) had been brought to the attention of the Commissioner during the course of hearing of revision petition and as he failed to apply the said decision there was an error of law apparent on the face of the record. That non-preferring of appeal against the assessment could not disentitle the assessee to seek rectification once patent error of law appeared on face of the record." [Para 27]*

> *"The aforesaid principle has been reiterated by this Court in the case of Suhrid Geigy Ltd. v. CST [1999] 237 ITR 834 wherein one of us (Hon'ble Mr. Justice A.R. Dave) was a party to the decision. It is laid down in the said decisions that:*

> *"Section 13 of the Companies (Profits) Surtax Act, 1964 provides for rectification of mistake apparent from the record. A point which is debatable cannot be termed a mistake. But when the point is covered by a decision of the Supreme Court or concerned High Court, either*

rendered prior to or subsequent to the order proposed to be rectified, then the point ceases to be a debatable point and it also ceases to be a point requiring elaborate arguments or detailed investigation/inquiry. The subsequent decisions of the jurisdictional High Court do not enact the law but declare the law as it always was. . ." (emphasis added) [Para 28]

Hence, it is well settled that a decision of the jurisdictional High Court, even if rendered subsequently, would constitute a mistake apparent from the record investing an authority with jurisdiction to rectify the mistake…..." [Para 29]

We may also refer to the judgement in the case of Quality Steel Tubes Ltd reported in 33 taxmann.com 571 (Allahabad) [2012]. In this case, the Lordships of the Hon'ble Allahabad High Court have followed the Saurashtra Kutch case (supra) and concluded as under:

"The Division Bench dealt with the contention canvassed by the Revenue that the Tribunal cannot obliterate its earlier finding/reasoning/order and the original order cannot be wiped out and came to hold as follows:

'(a) The Tribunal has power to rectify a mistake apparent from the record on its own motion or on an application by a party under s. 254(2) of the Act;

(b) An order on appeal would consist of an order made under s. 254(1) of the Act or it could be an order made under sub-s. (1) as amended by an order under sub-s. (2) of s. 254 of the Act;

(c) The power of rectification is to be exercised to remove an error or correct a mistake and not for disturbing finality, the fundamental principle being, that power of rectification is for justice and fair play;

(d) that power of rectification can be exercised even if a mistake is committed by the Tribunal or even if a mistake has occurred at the instance of party to the appeal;

(e) A mistake apparent from record should be self-evident, should not be a debatable issue, but this test might breakdown, because judicial opinions differ, and what is a mistake apparent from the record cannot be defined precisely and must be left to be determined judicially on the facts of each case;

(f) Non-consideration of a judgment of the jurisdictional High Court would always constitute a mistake apparent from the record, regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified; (emphasis added)

(g) After the mistake is corrected, consequential order must follow, and the Tribunal has power to pass all necessary consequential orders.' [Para 10]"

5. In light of the discussion above it is held that the findings in the impugned orders do not deserve to be disturbed, and accordingly the same are upheld. The assessee's two appeals are hereby dismissed.

Order pronounced in the open court on 31.12.2025

Sd/-	Sd/-
(MAHAVIR SINGH)	(SANJAY AWASTHI)
VICE PRESIDENT	ACCOUNTANT MEMBER

Dated: 31.12.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI