

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: A : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2267/Del/2025
Assessment Year: 2017-18

Climax Overseas Pvt. Ltd., C/o Rakesh Khiwani & Co., Chartered Accountants, E-8, Kirti Nagar, New Delhi - 110 015.	Vs	DCIT, Circle-4(2), New Delhi.
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PAN: AABCC5665R

(Appellant)

(Respondent)

Assessee by	: Shri Rakesh Kumar Khiwani, CA
Revenue by	: Shri Ajay Kumar Arora, Sr. DR

Date of Hearing	: 03.09.2025
Date of Pronouncement	: 17.09.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 21.02.2025 of the Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred to as the Id. First Appellate Authority or 'the Id. FAA' for short) in Appeal No.NFAC/2016-17/10363227 arising out of the appeal before it against the order dated 29.03.2024 passed u/s 154 of the Income Tax Act,

1961 (hereinafter referred to as 'the Act') by the ACIT, Circle-4(2), Delhi (hereinafter referred to as the Ld. AO).

2. On hearing both the sides, we find that the assessee's return of income was selected for scrutiny and assessment was completed u/s 143(3) of the Act vide order dated 29.12.2019. However, subsequently, exercising the powers u/s 154 of the Act, the AO had made addition u/s 43B of the Act on the basis that the assessee had not paid the liability on or before the due date of filing of the return u/s 139 of the Act and based on the audit report u/s 144AB of the Act, it was found that certain payments towards ESI and Provident Fund were deposited after the due date. Similarly, the auditor's report was taken into consideration towards interest payment and late payment of TDS which was not paid or added back in the computation of total income. This rectification order was challenged before the Id.CIT(A) wherein the assessee had partly succeeded in regard to disallowance of expenditure u/s 37 of the Act and addition made by the AO u/s 43B was sustained to the extent of Rs.7,31,403/- while disallowance of belated payment of employee's contribution were decided against the assessee. The assessee is in appeal raising the following grounds:-

"1. That the order passed by the AO u/s 154 is bad in law on the facts of the case.

2. That the Ld. Commissioner of Income Tax (Appeals) NFAC has erred in sustaining the disallowance of the claim, of deduction of Rs. 17,35,685/- on account of employee's contribution towards ESI & PF deposited beyond due dates of the specified acts, but before the due date of filing of return u/s

139(1), by the assessing officer in the order u/s 154 dated 29.03.2024 though the claim was fully accepted and allowed in the original assessment proceedings u/s 143(3) dated 29.12.2019. The claim of the assessee cannot be disallowed u/s 154 on grounds of an order of the H'ble SC at a later date on 12.10.2022 in the case Checkmate.

3. That the assessee craves indulgence to amend, alter, add or modify any or all the grounds of appeal and/or take additional grounds of appeal."

3. Although the Id. DR has vehemently supported the order of the Id. tax authorities below, however, the issue raised in the form of ground before us is squarely covered in favour of the assessee wherein the coordinate Bench in MAs No.324 & 325/Del/2022 arising out of ITAs No.1101 & 1102/Del/2021 titled ITD, CPC vs. Shri Dinesh Kumar, vide order dated 31.03.2025, has taken into consideration the issue of applicability of the decision of the Hon'ble Supreme Court in ***Checkmate Services P. Ltd. vs. CIT, 143 Taxmann.com 178*** and in the light of the decision of the Hon'ble Bombay High Court in ***Writ Petition 17175 of 2024 Infantry Security and Facilities through proprietor Tukaram M. Suryawanshi vs. The Income Tax Officer, Ward-4(5)***, concluded that the issue of PF and ESI deposits was a highly debatable issue and, accordingly, if the assessee is benefitted, cannot be made to suffer on the basis of subsequent decision of the Hon'ble Supreme Court.

4. In the light of the aforesaid, we are inclined to sustain the ground holding that the disallowance in regard to delayed deposits of employees contribution

could not have been made by way of rectification proceedings u/s 154 of the Act. The ground is sustained. The appeal is allowed.

Order pronounced in the open court on 17.09.2025.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 17th September, 2025.

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Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi