

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'SMC': NEW DELHI)  
(THROUGH VIDEO CONFERENCING)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 999/Del/2021  
(Assessment Year: 2019-20)**

Pachouli Wellness Clinic LLP, New Delhi.	Vs.	Income Tax Officer, Ward 23(3), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AATFP2489F</b>		

**Assessee By : Shri Ashok Khandelwal, CA  
Revenue By : Shri Om Prakash, Sr. DR**

**ITA No:- 1000/Del/2021  
(Assessment Year: 2019-20)**

Global Groupware Solutions Limited, Gurgaon.	Vs.	Income Tax Officer, Ward 10(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AABCG3483B</b>		

**Assessee By : Shri Ashok Khandelwal, CA  
Revenue By : Shri Om Prakash, Sr. DR**

**ITA No:- 1011/Del/2021**  
**(Assessment Year: 2018-19)**

Naveen Kumar, Gurgaon.	Vs.	Income Tax Officer, Ward 1(5), Gurgaon.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: ALIPK6755F</b>		

**Assessee By** : Shri V.P. Bansal, CA  
**Revenue By** : Shri Om Prakash, Sr. DR

**Per Anadee Nath Misshra, AM**

(A) For the sake of convenience and brevity these three appeals by different assessees are disposed off through this consolidated order. Grounds taken in these appeals of the three different Assesseees are as under:

**ITA No.-999/Del/2021**

*"I. Action of the CIT(A) in confirming the action of A.O. in making an addition of Rs. 82,346/- u/s 36(1)(va) of the I.T. Act 1961 for delayed deposit of employees contribution of EPF and ESI but before the due date of filing of return is unjust, illegal, arbitrary and against the facts and circumstances of the case."*

**ITA No.-1000/Del/2021**

*"I. Action of the CIT(A) in confirming the action of A.O. in making an addition of Rs. 9,49,894/- u/s 36(1)(va) of the I.T. Act 1961 for delayed deposit of employees contribution of EPF and ESI but paid before the due date of filing of return is unjust, illegal, arbitrary and against the facts and circumstances of the case."*

**ITA No.-1011/Del/2021**

- "1. *That the Impugned order of Ld. CIT(A) National Faceless Appeal Centre, Delhi u/s 250 of Income Tax Act, 1961 for the assessment year 2018-19 dated 23-07-2021 is bad in law and illegal on the facts and in the circumstances of the case and legal position.*
2. *That on the facts and circumstances of the case and the legal position, the learned CIT(A) has erred in the confirming the addition of Rs. 3,10,435/- on account of employee's contribution towards PF/ESI deposited with the authorities after the due date but before the due date of filing the return of the Income; whereas the same is allowable in view of various judicial decisions.*
3. *That on the facts and circumstances of the case and the legal position, the learned CIT(A) has erred on relying upon the amendments made by the Finance Act 2021,*
  - i. in clause (va) of sub-section 1 of Section 36 of the Act by inserting Explanation 2, and*
  - ii. in Section 43B of the Act by inserting Explanation 5.*

*Whereas as per 'Notes on Clauses' to the Finance Budget 2021, "the aforesaid amendments will take effect from 1<sup>st</sup> April 2021 , and will, accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years."*
4. *Without prejudice e to the above, that on the facts and circumstances of the case and the legal position, the learned CIT(A) has erred in confirming the aforesaid addition under section 143(1) of the IT Act 1961 ; whereas:-*
  - i. power to make an adjustment u/s 143(1)(a) can be invoked only when the claim is 'prima facie inadmissible'*
  - ii. the scope of the powers to make prima fc ie adjustment under section 143(1)(a) is somewhat similar to the powers to rectify a mistake apparent from the record under section 154*
  - iii. the deduction claimed must be inadmissible on the face of the return and the documents and accounts accompanying it.*
  - iv. if the Assessing Officer doubts correctness of any claims, he is required to follow the procedure prescribed under section 143(2) and (3) of the Act.*

*v. in view of various judicial decisions, the aforesaid additions cannot be made u/s 143(1) of the I.T. Act, 1961.*

5. *That the appellant craves leave to add, alter, delete, amend, modify, or vary any ground (s) of appeal before or at the time of hearing of appeal."*

**(B)** In each of these appeals a common legal issue is involved. The assessee claimed the deduction on account of payment of PF/ESI. These payments were made by the respective assessees after due date of payment prescribed under the respective acts. However, these payments were made before due date of filing of return under the Income Tax Act, 1961 ("I.T. Act", for short). The respective Assessing Officers have made the disallowances under Section 36(1)(va)Section 43B of I.T. Act. The quantum of disallowance is Rs. 9,49,894/- in the case of M/s Global Groupware Solutions Limited; Rs. 82,346/- in the case of Pachouli Wellness Clinic LLP and Rs. 3,10,435/- in the case of Mr. Naveen Kumar. Vide the respective impugned appellate orders dated 13.07.2021, 27.07.2021 and 23.07.2021 of the respective learned Commissioner of Income Tax (Appeals), the aforesaid disallowances were confirmed. The present appeals before us have been filed by the assessees in Income Tax Appellate Tribunal ("ITAT", for short) against these impugned appellate orders of the respective Ld. CIT(A). At the time of hearing before us, it was submitted on behalf of the assessees (Appellants) that the issue in dispute is covered in favour of the assessee(s) by order of Co-ordinate Bench of ITAT, Delhi in the case of DCIT vs. Planman HR (P) Ltd. in ITA No. 5152/Del/2017. It was further brought to our attention that the issue in dispute is also covered in favour of the assessee(s) by numerous other orders of Hon'ble High Court, and ITAT; such as, the following:

1. Order dated 10.09.2018 vide ITA No. 983/2018 in the case of ITO vs Aimil Ltd. (2010) 321 ITR 508 (Delhi)
2. CIT v. Nipso Polyfabriks Ltd. [2013] 350 ITR 326
3. CIT vs. Merchem Ltd. 378 ITR 443 (Kerala)
4. Sagun Foundry (P.). vs. CIT[2017] 291 CTR 557 (Allahabad)
5. CIT vs. Bharat Hotels Ltd. [2019] 103 taxmann.com 295/410 ITR 417 (Delhi)
6. Order dated 01.07.2021 in the case of Raodways Private Limited [TS-510-ITAT-2021 (HYD)], ITAT, Hyderabad.
7. Order dated 31.05.2021 of Delhi Bench of ITAT in ITA No. 1626/Del/2020 in the case of Azamgarh Steel & Power Pvt. Ltd.
8. Salzgitter Hydraulics Pvt. Ltd. vs. ITO 128 taxman.com 192[Hyderabad Tribunal]
9. M/s Crescent Roadways Pvt Ltd. vs. Dy. CIT – ITA No. 1952/Hyderabad/2018
10. Order dated 14.06.2021 of Agra Bench of ITAT, in ITA No. 20 & 21/Agr/2021 in the case of M/s Mahadev Cold Storage
11. M/s Essae Teraoka (P.) Ltd. vs. DCIT- [2014] 43 taxmann.com 33 (Karnataka)
12. Order dated 19.05.2021 vide ITA No. 4192/Mum/2012 and 197/HYD/2017 in the cases of Anand Kumar Jain vs. ITO and Value Momentum Software Services Private Limited vs. DCIT.
13. Order dated 28.09.2021 vide ITA Nos. 51 & 54-55/Jodh/2021 in the case of Mohan Ram Chaudhary vs. ITO.

14. Bata India Ltd. vs. DCIT [2020] 180 ITD 464 (Kolkata-Trib.)
15. DCIT vs. Eastern Power Distribution Company of A.P. Ltd. [2016] 160 ITD 432 (Visakhapatnam-Trib.)
16. Nuzivedu Swati Coastal Consortium vs. ITO [2015] 62 taxmann.com 258 (Hyderabad-Trib.)
17. Order dated 30.07.2021 of ITAT, Delhi in ITA No. 1609/Del/2020 in the case of Yogi Ji Technoequip Pvt. Ltd. vs. DCIT,
18. DCIT vs Teesta Valley Tea Co. Ltd. [2017] 85 taxmann.com 301 (Kolkata-Trib.)
19. Order dated 11.10.2021 of Bangalore Bench of ITAT in ITA No. 307/Bang/2021 in the case of M/s Jana Urban Services for Transformation Pvt. Ltd. vs. The Dy. Commissioner of Income Tax
20. Order dated 28.09.2021 of Jodhpur Bench of ITAT in ITA No. 54/Jodh/2021 in the case of Mohan Ram Chaudhary vs. The ITO.
21. Order dated 01.09.2021 of Kolkata Bench of ITAT, in ITA No. 244/Kol/2021 in the case of AKS Equipments (P) Ltd. vs. DCIT.
22. Order dated 27.10.2021 of ITAT, Delhi, in ITA No. 1822/Del/2020 in the case of Amandeep Singh Khurana.

**(C)** The learned Sr. Departmental Representative ("Ld. Sr. DR", for short) for Revenue relied on the orders of the Assessing Officers, and the respective impugned orders of the Ld. CIT(A).

**(D)** We have heard the Ld. Sr. DR as well as the Ld. Authorized Representative ("Ld. AR", for short) of the assessee. We have also perused the materials available on record. It is not in dispute that the payments on account of PF/ ESI were made by the assessee after due date prescribed under the respective acts, but before due date of filing of return under the I.T. Act. The Ld. Sr. DR has also not contradicted the contentions made from the assessee's side that the issue in dispute is covered in favour of the assessee by the aforesaid orders in the cases of ITO vs Aimil Ltd. (supra), CIT v. Nipso Polyfabriks Ltd. (supra), CIT vs. Merchem Ltd. (supra), Sagun Foundry (P.) vs. CIT (supra), CIT vs. Bharat Hotels Ltd. (supra), Raodways Private Limited (supra), Azamgarh Steel & Power Pvt. Ltd. (supra), Salzgitter Hydraulics Pvt. Ltd. vs. ITO (supra), M/s Crescent Roadways Pvt Ltd. vs. Dy. CIT – (supra), M/s Mahadev Cold Storage (supra), M/s Essae Teraoka (P.) Ltd. vs. DCIT- (supra), Anand Kumar Jain vs. ITO (supra), and Value Momentum Software Services Private Limited vs. DCIT. (supra), Mohan Ram Chaudhary vs. ITO. (supra), Bata India Ltd. vs. DCIT (supra), DCIT vs. Eastern Power Distribution Company of A.P. Ltd. (supra), Nuzivedu Swati Coastal Consortium vs. ITO (supra), Yogi Ji Technoequip Pvt. Ltd. vs. DCIT (supra), DCIT vs Teesta Valley Tea Co. Ltd. (supra), M/s Jana Urban Services for Transformation Pvt. Ltd. vs. The Dy. Commissioner of Income Tax (supra), Mohan Ram Chaudhary vs. The ITO (supra), AKS Equipments (P) Ltd. vs. DCIT (supra), Amandeep Singh Khurana (supra). No facts and circumstances, or order legal precedents have been brought to our attention from either side to persuade us to take a view against the assessee in the matters under dispute in the present appeals before us. We also find that the aforesaid

order dated 15.07.2021 in the case of DCIT vs. Planman HR (P) Ltd. vide ITA No.- 5152/Del/2017 was passed by Co-ordinate Bench of ITAT, Delhi in which one of us (the Judicial Member) was the co- author, the relevant portion of which is reproduced below:

“

11. Ground of appeal No.2 raised by the Revenue reads as under:-

“2. On the facts and under the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs. 8,85,62,590/- made by the AO without appreciating the fact that the assessee company did not comply with the provisions of section 2(24)(x) and 36(1)(va) of the Income Tax Act, 1961 on account of payments to be made on or before the due date as prescribed under the law of such funds on account of employees contribution towards provident Fund or any other fund mentioned u/s 2(24)(x).”

12. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, observed from the details contained in the tax audit report that the assessee company did not comply with the provisions of section 2(24)(x) and section 36(1)(va) on account of payments to be made on or before the due date as prescribed under the law of such funds on account of employees' contribution towards Provident Fund or any other fund mentioned under section 2(24)(x). He, therefore, confronted the same to the assessee and asked the assessee to file the details. Rejecting the various explanations given by the assessee, the AO made addition of Rs.8,90,53,240/- to the total income of the assessee by invoking the provisions of section 36(1)(va) r.w.s 2(24)(x) of the IT Act.

12.1 In appeal, the Id.CIT(A) deleted the addition made by the AO by observing as under:-

“5.3. I have carefully considered the order passed by the AO and the written submissions filed by the Ld. AR. He has relied on a number of judgements wherein the Hon'ble Courts, Tribunals have ruled that delayed payments of employee's contribution to Provident Fund/ESIC is allowable if it is deposited before the return is filed u/s 139(1). He has also stated that the Hon'ble ITAT Delhi for the A.Y. 2013-14 in ITA Nos.5028/Del/2016 vide order dated 3301.2017 has dismissed the appeal of Revenue against the order of the CIT(Appeals) allowing relief to the appellant on similar facts. The Hon'ble Delhi High Court in the case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 has held that the assessee can get the benefit of deduction if the payment is made before the return is filed, as per the principle laid down by the Hon'ble Supreme Court in the case of CIT vs. M/s Vinay Cement Ltd. 213 ITR 268. I find that the appellant has paid the Employee's contribution to provident fund at Rs.6,98,27,223/- ESIC of Rs. 1,29,88,031/- and professional tax of Rs.57,47,336/- out of Rs.62,37,986/- aggregating to Rs.8,85,62,590/- out of Rs.8,90,53,240/- disallowed in the assessment order before the due date of furnishing the return u/s 139(1) of the I.T. Act, 1961. In view of the legal position on the issue and the order of the Hon'ble ITAT, Delhi in the appellant's own case, the company is eligible for deduction of Rs.8,85,62,590/- out of the disallowance made by the AO at Rs.8,90,53,240/- by invoking provisions of Section 36(1)(va) read with 2(24)(x) and 43B of the Act. The AO is, therefore, directed to delete the addition of Rs.8,85,62,590/-. This ground is partly ruled in favour of the appellant.”

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

14. The Id. DR heavily relied on the order of the AO.

15. The Id. Counsel for the assessee, on the other hand, referring to the decision of the coordinate Bench of the Tribunal in the case of DCIT vs. Dee Development Engineers Ltd., ITA No.4959/Del/2016, order dated 08.04.2021, submitted that similar disallowance on account of delay in deposit of employees contribution to

Provident Fund and ESI fund was deleted. Referring to the decision of the Hon'ble Delhi High Court in assessee's own case i.e., PCIT vs. Planman HR (P) Ltd., ITA 599/2017, order dated 11.09.2017, he submitted that under identical facts and circumstances, the Tribunal has upheld the order of the CIT(A) in deleting the disallowance made by the AO on account of delayed payment of contribution to Provident Fund and on further appeal by the Revenue the Hon'ble High Court dismissed the appeal filed by the Revenue. He accordingly submitted that in view of the decision of the jurisdictional High Court in assessee's own case, the ground raised by the Revenue should be dismissed.

16. We have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.80,90,53,240/- on account of late payment of ESI and PF and professional tax on the ground that the assessee has violated the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the IT Act. We find, the Id.CIT(A) deleted the addition the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the CIT(A) on this issue. The Hon'ble Delhi High Court in assessee's own case for the immediately preceding assessment year, has dismissed the appeal filed by the Revenue on this very issue by observing as under:-

“1. This appeal by the Revenue is directed against an order dated 23rd January 2017 passed by the Income Tax Appellate Tribunal (‘ITAT’) in ITA No. 5028/Del/2016 for the Assessment Year (‘AY’) 2013-14.

2. The question urged is as under:

“Whether on facts and in the circumstances of the case Ld. ITAT was correct in a case in deleting the addition of Rs. 7,91,59,691/- made by the AO on account of late deposit of PF, ESI and professional tax ignoring the provisions of Section 36(l)(va) and Section 7(24)(x) of the Income-tax Act, 1961?”

3. Factually, it has been found by the Commissioner of Income Tax (Appeals) [‘CIT(A)’] as well as by the ITAT, concurrently, that the payment by the Assessee employer towards the employees’ contribution of the Provident Fund was made before the date of filing of the return by the Assessee and thus, in terms of the decision of this court in *Commissioner of Income Tax v. AIMIL Ltd. [2010] 321 ITR 508 (Del)*, it was within the ‘due date’ for the purpose of Section 36 (1) (va) of the Income Tax Act, 1961 (‘Act’) read with Section 43 (B) thereof.

4. Learned counsel for the Revenue attempted to persuade this Court to reconsider the correctness of its decision in *Commissioner of Income Tax v. AIMIL Ltd.* (supra). The Court finds that the decision has consistently been followed in later decisions of this Court and even by the Allahabad High Court in *Sagun Foundry Private Limited v. Commissioner of Income Tax, Kanpur (2017) 291 CTR (All) 557* and the Karnataka High Court in *M/s Essae Teraoka Pvt. Ltd. v. Deputy Commissioner of Income Tax [2014] 366 ITR 408 (Kar)*.

5. Accordingly, the Court is not persuaded to frame the question of law as urged by the Revenue. The appeal is dismissed.”

17. Since the Id.CIT(A) while deleting the addition has followed the order of the Tribunal in assessee’s own case for A.Y. 2013-14 and since the decision of the Tribunal has been upheld by the Hon’ble High Court, therefore, in absence of any contrary material brought to our notice against the decision of the jurisdictional High Court in assessee’s own case, we do not find any infirmity in the order of the

CIT(A) deleting the disallowance made by the AO on this issue. Accordingly, the same is upheld and the ground raised by the Revenue is dismissed. ”

**(E)** In view of the foregoing, and consistent with the view already taken by Co-ordinate Bench of ITAT, Delhi, in order dated 15.07.2021 in the aforesaid case of DCIT vs. Planman HR (P) Ltd. vide ITA No.- 5152/Del/2017; we decide the issues in dispute before us in the present appeals, against Revenue and in favour of the assesseees. Accordingly, we direct the respective Assessing officers to delete the aforesaid amounts of Rs. 9,49,894/- and Rs. 82,346/- and Rs. 3,10,435/- in the cases of M/s Global Groupware Solutions Limited; Pachouli Wellness Clinic LLP and Mr. Naveen Kumar, respectively.

**(F)** In the result, all the three appeals filed by the assesseees are allowed for statistical purposes.

Order was orally pronounced in Open Court on 22.11.2021 after conclusion of hearings in the respective cases. Now this order in writing is signed today on 25.11.2021.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 25/11/21  
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	