

**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:-1086/Del/2021
(Assessment Year: 2018-19)**

ECON C-16/13, Tamanna Building Sector-10C, Vasundhara, Ghaziabad, UP-201012	Vs.	ADIT CPC Bangalore
APPELLANT		RESPONDENT
PAN NO. AABFE3537D		

Assessee By : None
Revenue By : Shri Om Prakash, SR DR

**ITA No:-1048/Del/2021
(Assessment Year: 2018-19)**

M/s. PS PC Press Private Limited , E-8, Rani Jhansi Road, Jhandewalan Estate, New Delhi -11005	Vs.	DCIT CPC Bangalore
APPELLANT		RESPONDENT
PAN No.AADCP6034B		

Assessee By : Shri Manish Kumar, CA
Revenue By : Shri Om Prakash, SR DR

(A) For the sake of convenience these two appeals are being disposed off through this consolidated order. These appeals by two different assesseees are filed against the respective impugned orders of Learned Commissioners of Income Tax (Appeals), [“Ld. CIT(A)”, for short], dated 29.07.2021 and 26.04.2021 for Assessment Year 2018-19. Grounds taken in these appeals of assesseees are as under:

ITA No.1086/Del/2021 (A.Y.2018-19)

1. Ld. CIT (A) has erred in law and on merits of the case was not justified in confirming the addition of Rs.4.98,153/- made by A.O. (CPC) on account of late deposit of employee contribution towards PF/ESI, even it is paid before the due date of filing of ITR in view of Section 43B of The Income Tax Act, 1961 and ignored various judicial pronouncement cited by the assessee.

2. CIT (A) has erred in law in confirming the disallowance of employee contribution to PF/ESI in the light of amendment in sections 36(va) as well as in section 43B by inserting corresponding explanations through finance Act 2021. Although the impugned employee PF/ESI now comes under the provision of section 36(va) only, but the memorandum explaining Finance Bill 2021 says that these amendments will take effect from 01.04.2021 and will accordingly apply to AY 2021-22 and subsequent assessment years. Thus the legislature itself has condoned the impugned default before 01.04.2021.

3. ITAT Branch of Delhi in the case of Insta Exhibitions Pvt Ltd vs ACIT ITA no. 6941/DEL/2017 (and ITA no. 4959/DEL/2016) wherein it was held that the belated payments of ESI and PF cannot be treated as deemed income under section 2(24) . Further it was held that notes on clauses introducing Finance Bill

holds that amendment is effective from AY 2021-22 and thus deleted the addition on this account.

4. That the appellant craves leave to add, amend or alter any of the grounds of appeal on or before the date of hearing.

ITA No.1048/Del/2021 (A.Y.2018-19)

- 1. The CIT(A) failed to appreciate the amendment vide Finance Act 2021 that the relevant funds as well as Section 36(l)(va) specifically contemplates that payment should be made on or before the due date fixed at the relevant fund only, the employer is not entitled to claim the deduction towards such payment if he paid the same after such date but before the filing of return is applicable from AY2021-22 Prospective and not retrospective and therefore the instant case of assessee for AY 2018-19 is not hit by this amendment.*
- 2. The CIT(A) while upholding the disallowance of late deposit of PF& ESI of Rs1,81,855/- failed to appreciate that the Hon'ble supreme court vide the case of CIT v/s Alom Extrusions Ltd 319 ITR 306 set at rest the issue of Late deposit of PF & ESI after the due date as per the respective Act but before the due date of return u/s 139(1)in view of the omission of the second Proviso to section 43-B of the Income Tax Act by the Finance Act 2003.*
- 3. The CIT(A) failed to appreciate that the revenue in the case of CIT v/s Lakhani Rubber Works 326 ITR 415(P& H) did not press the question relating to late deposit of PF & ESI of Employee's Contribution as the issue was no more res integra in view of Judgment of CIT v/s Alom Extrusions Ltd 319 ITR 306 (SC).*

4. *The CIT(A) failed to appreciate that Section 43-B is non obstante Clause as it begins with Notwithstanding anything contained in any other provision of this Act which makes it clear that the Provision of Clause (b) of section 43B overrides the explanation (va) of subsection (.1) of section 36.*
5. *The CIT(A) failed to appreciate that the word "Contribution" used in clause(b) of section 43-B of the Act means the Contribution of the employee & employer and thus being so, if the contribution is made on or before the due date of furnishing return of income under Section 139(1) the employer is entitled to deduction.*
6. *The .CIT(A) failed to appreciate that if on any issue there is bifurcation of Opinion between courts or in other words on any issue if two views are available then view which is favorable to assessee should be adopted in view of the settled legal position by the Hon'ble Supreme court vide the case of CIT v/s Vegetable Products Limited 88 ITR 192.*
7. *The appellant/assessee Craves your honour leave to add, delete or modify any grounds of appeal during the course of hearing.*

(B) In each of these appeals, common legal issue is involved. The assessees claimed deduction on account of payment of PF/ESI. These payments were made after the due date of payment prescribed under respective acts. However, these payments were made before due date of filing of return under IT Act, 1961. The respective Assessing Officers have made the disallowances under section 36(1) (va) / section 43B of IT Act. The quantum of disallowance is Rs.1,81,855/- in the case of M/s. PSPC Press Private Limited and Rs.4,98,153/- in the case of M/s. ECON Ghaziabad. Vide the respective impugned appellate orders dated 29.07.2021 and 26.04.2021, the respective

Ld. CIT(A) confirmed the aforesaid disallowances of Rs.4,98,153/- and 1,81,855/-. The present appeals before us have been filed by the assesseees in Income Tax Appellate Tribunal (ITAT, for short) against these impugned appellate orders dated 29.07.2021 and 26.04.2021 of the respective Ld. CIT(A). In the course of appellate proceedings in ITAT the following written submissions were filed from the assessee's side in the case of M/s. PS PC Press Private Limited, reproduced as under :-

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The instant appeal has been filed against the order dated 26.04.2021 passed by CIT(A) National Faceless Appeal Centre for the A.Y 2018-19.

All the grounds i.e. **Ground No. 1 to 6** raised vide Form 36 are relating to sole issue i.e. sustenance of addition of Rs. 1,81,855/- relating to late deposit of PF & ESI. **Ground No 7** are general in nature and need not require any adjudication.

The facts in brief of the case are that for the A.Y 2018-19 the assessee filed the return of income of income on 23.10.2018 vide e-filing acknowledgment No. 3428918512131018 declaring income at nil. The CPC Bangalore while processing the return u/s 143 (1) had increased the business income from Rs. 79,371/- to Rs. 2,61,226/- by making disallowance of Rs. 1,81,855/- which relates to late payment of provident fund and ESI of Employee's contribution.

Being aggrieved with the aforesaid disallowance the assessee rectified the return wherein it was stated that the aforesaid alleged disallowance of PF and ESI were made before the due date of return u/s 139 (1) of the Act, hence allowable deduction. However, CPC Bangalore vide the rectification order u/s 154 of the Act dated 28.11.2019 did not grant any relief and

reiterated the same order and thus created a demand of Rs. 48,363/-. Being aggrieved against the same the appeal was filed before the CIT(A) which has been dismissed against which the instant appeal has been filed.

First and foremost, it is submitted that the CIT (A) has dismissed the appeal in view of the amendment made with respect to late deposit of statutory payment of PF and ESI vide Finance Act, 2021 which is applicable from A.Y 2021-22 and the instant appeal is for the A.Y 2018-19, so the present appeal is to be governed by the law and judicial position and judicial interpretation of the respective provision which existed prior to amendment vide the Finance Act 2021.

It is also an undisputed position that all the alleged deposits of PF and ESI were made on or before the due date of return u/s 139 (1) of the Act. The complete details of alleged deposit are being tabulated as under for convenience of the Hon'ble Bench.

Month	Employees Contribution (PF) & ESI (Rs.)	Due Date as respective Act	Actual date of Deposit	Due date of return u/s 139(1) as extended.
April 2017 (PF)	57,539/-	15/05/2017	16.5.2017	31.10.2018
May 2017 (PF)	57,912/-	15/06/2017	16/06/2017	31.10.2018
June 2017 (PF)	57,564/-	15/07/2017	01/08/2017	31.10.2018
July 2017(PF)	8,840/-	15/07/2017	01/08/2017	31.10.2018
Total...	1,81,855/-			

From the aforesaid table, it is apparently clear that the aforesaid payment of PF and ESI (Employee's Contribution) are late as per the due date prescribed vide the respective Act of PF and ESI, but undisputedly all the deposit have been made before the due date of return u/s 139(1) of the Act which was **31.10.2018** as extended and applicable for A.Y 2018-19.

It is submitted that with respect to the issue relating to the late deposit of PF & ESI (Employee's Contribution), there are dichotomy of opinion among various Courts, but it is

a well settled position in law that when two judgments are available giving different views then the judgment which is favour of assessee shall apply as held in case of **CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC)**.

It is also relevant to submit that the decision of the Hon'ble jurisdictional Delhi High Court vide the case of **CIT Vs. Bharat Hotels Ltd. reported in 410 ITR 417** are against the assessee, but the same judgment is not a good law for the reason that while delivering this judgment the **Hon'ble High Court** omitted to take into account the other decisions i.e. **CIT Vs. Aimil Ltd. 321 ITR 508** and **CIT Vs. P.M. Electronics 313 ITR 161** which also delivered by the jurisdictional High Court in favour of assessee..

It is submitted that the Hon'ble Delhi Tribunal vide its judgment dated 08.04.2021 in the case of **DCIT Vs. Dee Development Engineers (ITA No. 4959/Del/2016)** got occasion to deal with this issue and the Hon'ble Tribunal allowed the appeal in favour of assessee by dismissing the appeal of the revenue.

The relevant **para 7** of the said judgment is being reproduced as under for perusal and ready reference.

"7. we have heard both the parties and perused all the relevant material available on record. As regards **Ground No.1**, the assessee company has not deposited the employee's contributions within the due date which is prescribed under the said statute i.e. Provident Fund & ESIC. This issue is dealt by the Hon'ble Delhi High Court in the case of **CIT Vs. M/s Bharat Hotels Ltd. 410 ITR 417** wherein the issue is decided in favour of the revenue, without considering the decision of **the Hon'ble Delhi High Court** in the case of **CIT Vs. Aimil Ltd. 321 ITR 508 (Del)**. But the **Ld. A.R.** relied upon the decision of the **Hon'ble Delhi High Court** in case of **Pr.CIT Vs. Pro Interactive Service (India Pvt. Ltd. ITA No. 983/2018** pronounced on 10.09.2018 wherein the **Hon'ble Delhi High Court** decided the issue in favour of

the assessee relying upon the judgment of AIMIL Ltd. (Supra) The Hon'ble Delhi High Court held that the legislative intent was /is to ensure that the amount paid is allowed as expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer u/s 2 (24) (x) of the Act. It is settled law that when two judgments are available giving different views then the judgment which is in favour of assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court. Hence, in light of latest decision in case of Pro Interactive Service (India Pvt. Ltd.), the issue is covered in favour of assessee. Hence, Ground No. 1 dismissed".

The Hon'ble Delhi Tribunal also in the case of DCIT Vs. Planman HR Pvt. Ltd. ITA No. 5152/Del/2017 by dismissing the appeal of the revenue has also held that PF & ESI deposited on or before the due date of return is an allowable deduction.

The reliance is also placed on the coordinate bench (SMC) of the Hon'ble Tribunal wherein it has been held that PF & ESI employee's contribution deposited on or before the due date of return u/s 139 (1) is an allowable deduction.

- i) **Yogi ji Technoequip Pvt. Ltd. Vs. DCIT (ITA No. 1609/Del/2020).**
- ii) **Mr. Vansh Jain Vs. DCIT CPC (ITA No. 1853/Del/2020).**
- iii) **Azamgarh Steel & Power Pvt. Ltd. Vs. CPC (ITA No. 1626/Del/2020).**
- iv) **M/s Aroon Facilitation Vs. DCIT CPC (ITA No. 1824/Del/2020).**

Secondly with respect to the amendment made vide Finance Act 2021 and whether the same is applicable retrospective for the instant A.Y 2018-19, it is submitted that in the Finance Bill 2021, amendments were made in Section 36 and 43 B vide clause 8 and 9 and in the memorandum of explanation according to which the amendments will take effect from 01.04.2021 and will accordingly apply to A.Y. 2021-22 and subsequent assessment years.

It is further submitted that Section 1 (2) (a) of Finance Act 2021 specifically mentions that Section 2 to 88 shall come into force on the first day of April 2021. However, as per Finance Act 2021, Section 9 relates to amendment to Section 36 and Section 11 relates to amendment to Section 43 B. Thus the said amendment is applicable for A.Y. 2021-22 and onwards and the CIT (A) erroneously dismissed the appeal of the assessee by holding that the aforesaid amendment is applicable retrospectively.

The SMC Bench of the Hon'ble Delhi Tribunal in the case of Mr. Vansh Jain Vs. DCIT (ITA No. 1853/Del/2020) has got occasion to deal with the appeal for A.Y 2018-19 concerning late deposit of PF and ESI employee's contribution vis-à-vis amended provision in law vide Finance Act 2021 and held vide para 7 of the judgment as under:

7. Further with respect to the argument of the Ld. Departmental Representative that amendment made with Finance Act 2021 wherein explanation 1 is added u/s 36 (1) (va) of the Act with effect from 1st April 2021, is applicable to the present case, we referred to the "Notes on clause" at the time of introduction of the Finance Bill 2021 which says as under:-

" clause 8 of the bill seeks to amend Section 36 of the Income Tax Act, relating to other deductions. Sub-section (1) of the said section provides for allowing of deduction provided for in the clause thereof for computing the income referred to in section 28 of the said Act. Clause (va) of the said sub-section provides for allowance of deduction for any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that for the purpose of this clause "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any

standing order, award, contract of service or otherwise. It is proposed to insert Explanation 2 to clause (va) of sub-section (1) of the said section so as to clarify that the provisions of section 43 B shall not apply and shall be deemed never to have been applied for the purpose of determining the “due date” under the said clause.

This amendment will take effect from 1st April 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years”.

The reliance is also placed on the decision of **M/s Aroon Facilitation Vs. DCIT CPC (ITA No. 1824/Del/2020)** wherein it has been held that PF & ESI employee’s contribution deposited on or before the due date of return u/s 139 (1) prior to A.Y. 2021-22 is an allowable deduction and the amendment made in this regard vide Finance Act 2021 is applicable from A.Y. 2021-22 and onwards.

The **Honb’ble Jodpur Tribunal** while deciding multiple appeals for the A.Y 2018-19 vide the common order in the leading case of **Mohan Ram Chaudhary Vs. ITO (ITA No. 51/Jodh/2021)** held that in view of the amended provision vide the Finance Act 2021 in this regard, the PF and ESI deposited on or before the due date of return is allowable deduction and the amendment is applicable from A.Y 2021-22 and onwards.

The **Honb’ble Jodpur Tribunal** also while deciding multiple appeals for the A.Y 2018-19 and 2019-20 vide the common order in the leading case of **Arpit Gulecha Vs. DCIT CPC, Bengaluru (ITA No. 57/Jodh/2021)** held that in view of the amended provision vide the Finance Act 2021 in this regard, the PF and ESI deposited on or before the due date of return is allowable deduction and the amendment is applicable from A.Y 2021-22 and onwards.

The **Honb’ble Jaipur Tribunal** while deciding appeals for the A.Y 2018-19 vide the case of **Shashi Rajawat Vs.. ITO (ITA No. 81/JP/2021)** held that in view of the amended provision vide the Finance Act 2021 in this regard, the PF and ESI deposited on or before the due date

of return is allowable deduction and the amendment is applicable from A.Y 2021-22 and onwards.

Keeping in view the aforesaid factual and legal positions it is submitted that all the alleged payment of PF and ESI have undisputedly been deposited on or before the due date of return and the same are prior to the amendment which is applicable from 01.04.2021 and therefore the instant appeal kindly be allowed by deleting the additions in the interest of justice. ↵

(B.I) At the time of hearing before us the Ld. Counsel for the assessee in the case of M/s. PS PC press Private Limited relied on the aforesaid written submissions. In the case of ECON, Ghaziabad the assessee was represented by none at the time of hearing before us. The Learned Senior Departmental Representative (Ld. DR, for short) relied on the respective orders of Assessing Officers and Ld. CIT(A) in the case of M/s. PS PC Press Private Limited as well as in the case of ECON, Ghaziabad.

(C) We have perused the materials available on record. We have heard the Ld. Sr. DR for Revenue and Ld. Counsel for the assessee in the case of M/s. PS PC Press Private Limited. It is not in dispute that the payments on account of PF/ ESI were made by the assesees after due date prescribed in the respective acts; but before due date of filing of return under the IT Act. A similar issue had come up before us in the case of Pachouli Wellness Clinic LLP Vs. ITO vide order dated 25.11.2021 in ITA No.999/Del/2021. We have decided the issue in favour of the assessee and against Revenue. The relevant portion of our order dated 25.1.2021 in the case of M/s. Pachouli Wellness Clinic LLP Vs. ITO is reproduced as under :-

(D) We have heard the Ld. Sr. DR as well as the Ld. Authorized Representative ("Ld. AR", for short) of the assessees. 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 assessees 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 DR 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 I.d. 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 ld.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.

(C.1) In view of the foregoing; and consistent with the view already taken by ITAT in the aforesaid case of Pachouli Wellness Clinic LLP Vs. ITO (supra) and in the case of DCIT Vs. Planman HR (P) Ltd. vide ITA No.5152/Del/2017 vide order dated 15.07.2021; we decide the issue in dispute before us in the present two appeals, also, against Revenue and in favour of the assesseees. Accordingly, we direct the respective Assessing Officers to delete the aforesaid amounts of Rs.1,81,855/- and Rs.4,98,153/- respectively.

In the result, these appeals filed by the two assesseees are allowed.

This order was already pronounced orally on **25th November, 2021** in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 26.11.2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 26.11.2021
(NEHA)

Copy forwarded to:

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

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

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	