

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.33/Del/2022
Assessment Year: 2019-20

Auto Gear Pvt. Ltd. 108, Chopra Complex, Community Centre, Preet Vihar, Delhi-110092 PAN No.AAACA0829N	Vs	Circle – 3 (2) Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. Gurjeet Singh, CA
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.13/Del/2022
Assessment Year: 2018-19

Lion Services Limited, 210, Padma Tower-II, 22 Rajendera Place, Delhi -110008 PAN No.AAACL2280Q	Vs	Circle – 15 (2) Delhi
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.299/Del/2022
Assessment Year: 2018-19

Ved Ram Sharma C-43, Manoj Vihar, Near Jaipuria Mall, Shipra Sun City, Indirapuram, Ghaziabad PAN No.ADHPS2469R	Vs	Jurisdictional Assessing Officer Ward- 2 (1) (3), Ghaziabad, U.P.
(APPELLAN		(RESPONDENT)

Appellant	Sh. Hemand Jain, Advocate
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.155/Del/2022
Assessment Year: 2018-19

Sonu Exim Private Limited B-5/3, Okhla Industrial Area, Phase-II, Delhi-110001 PAN No.AARCS5059H	Vs	Range-8 Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. V. Raj Kumar, Advocate
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.147/Del/2022
Assessment Year: 2018-19

Deepak Chibber 272, Sector-7, Plot No.11, Dwarka, Delhi-110075 PAN No.AARPC5191P	Vs	Ward- 11 (4) Pune Maharashtra
(APPELLAN		(RESPONDENT)

Appellant	Sh. Priyanshu Goyal, CA
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.134 & 135/Del/2022
Assessment Year: 2018-19 to 2019-20

Meena Devi 152, Commercial Complex, Phase-I, Jhandewalan Extension, Delhi-110055 PAN No.AKLPD5288N	Vs	Ward – 2 (4) Gurgaon
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.133/Del/2022
Assessment Year: 2019-20

Indica Industries Pvt. Ltd. A-4, Greater Kailash, Delhi-110048 PAN No.AAACI0233Q	Vs	Circle – 12 (1) Delhi
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.122/Del/2022
Assessment Year: 2019-20

BPS Structures Pvt. Ltd. Unit No.1010, 10th Floor, Vipul Business Park, Sohna Road, Sector-48, Gurgaon Haryana -122018 PAN No. AACCB0931A	Vs	ITO Ward- 1 (3) Gurgaon
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.1725/Del/2020
Assessment Year: 2018-19

Auto Gears Pvt. Ltd. 108, Chopra Centre, Community Centre, Preet Vihar, New Delhi-110092 PAN No.AAACA0829N	Vs	DCIT CPC Bangalore
(APPELLAN		(RESPONDENT)

Appellant	Sh. Gurjeet Singh, CA
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.85/Del/2022
Assessment Year: 2018-19

Global Autoech Limited 83, LGF World Trade Centre, Barakhamba Lane, Delhi-110001 PAN No.AACCG0911B	Vs	Circle -10 (1) Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. Ashish Goel, CA
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.123/Del/2022
Assessment Year: 2018-19

Spectrum Talent Management Pvt. Ltd. B-46, Retreat Apartment 20, I.P. Estate, Delhi-110092 PAN No.AARCS4776M	Vs	Ward- 24 (1) Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. Ashish Goel, CA
Respondent	Sh. M. Baranwal, Sr. DR

ITA No.28/Del/2022
Assessment Year: 2019-20

Sarvottam Aooliances Pvt. Ltd. Plot No.98, Sector-25, Faridabad Haryana 121005 PAN No.AABCS9106K	Vs	ITO Ward – 2 (3) Faridabad
(APPELLAN		(RESPONDENT)

Appellant	Sh. Alok Kumar Gupta, CA
Respondent	Sh. M. Baranwal, Sr. DR

Date of hearing:	22/03/2022
Date of Pronouncement:	22/03/2022

ORDER

PER BENCH:

The captioned appeals by different assessee's are preferred against different orders of the first appellate authority.

2. The captioned appeals have been bunched together in this order for the sake of our convenience and brevity.

3. The common grievance in the captioned appeals pertains to the disallowance of PF and ESI payments on account of these payments being made beyond the due date specified under the specific parent legislation.

4. Respective representatives of the assessee and the DR fairly conceded that the issue in the captioned appeals are identical and on such concession the appeals were heard.

5. After carefully perusing the common grievance in the captioned appeals, we are of the considered opinion that the issue is now well settled in favour of the assessee and against the revenue by the decision of the Hon'ble High Courts as follows :-

• **Sagun Foundry (P) Ltd, vs. CIT, 145 DTR 265 (All)** has held in favour of the assessee and adjudged that :

By way of First Proviso Section 43-B, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax duty cess or fee is paid before the date of filing of the return under Act 1961, Assessee would then be entitled to deduction. This relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer should not sit on the collected contributions and deprive workmen of the rightful

benefits under social welfare legislations by delaying payment of contributions to the welfare funds.

“27. ... In the result when contribution had been paid, prior to filing of return under Section 139(I), Assessee/employer would be entitled for deduction....”

28. we find that irrespective of the fact that deduction in respect of sum payable by employer contribution was involved, but Court did not restrict observations, findings and declaration of law to that context but looking to the objective and purpose of insertion of Section 43B applied it to both the contributions. It also observed clearly that Section 43B is with a non-obstante clause and therefore override even if, anything otherwise is contained in Section 36 or any provision of Act 1961.

29. Therefore, we are clearly of the view that law laid down by High Courts of Karnataka, Rajasthan, Punjab & Haryana, Delhi, Bombay and Himachal Pradesh have rightly applied Section 43B in respect to both contributions i.e. employer and employee. ...

30. In view of above all the questions formulated above are answered against Revenue and in favour of Assessee.

31. Appeal is therefore allowed

- **CIT vs. AIMIL LIMITED, (2010) 188 Taxman 265 (Del.)**

"If the employee's contribution is not deposited by the due date prescribed under the relevant acts and is deposited late, the employer not only pays interest on delayed payments but can incur penalties also, for which specific provisions are made in the provident fund act. Therefore, the act permits the

employer to make the deposit with some delay, subject to aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before due date of filing the return under section 139(1)."

- **PR. CIT vs. PRO INTERACTIVE SERVICE (INDIA) PVT. LTD., ITA 983/2018, DATED 10.09.2018 (DEL)**

"In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income-Tax versus AIMIL Ltd., [2010] 321 ITR 508 (Del) the issue is covered against the Revenue and, therefore, no substantial question of law arises for consideration in this appeal.

The legislative intent was/is to ensure that the amount paid is allowed as an 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 under section 2(24)(x) of the Act."

6. In the light of the common issues raised in the light of the decisions cited here in above, we direct the AO to delete the impugned disallowances in the hands of respective appellants.

7. In the result, the captioned appeals are allowed.
8. The order is pronounced in the open court on 22.03.2022 in the presence of both the representatives.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 22.03.2022

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	22.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	