IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI

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

<u>ITA No.39 & 40/Del/2022</u>
Assessment Year: 2018-19 & 2019-20

Mithlesh Kumar Singh **H. No. E 1569 Sainik Colony** **Sector-49, Faridbad** **PAN No.AKNPS8295C**	**Vs**	**CPC** **Bangalore**
(APPELLAN		**(RESPONDENT)**

Appellant by	Sh. Devender Sharma, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

<u>ITA No.253/Del/2022</u>
Assessment Year: 2018-19

Sanjay Kumar Sahay **B-13, Oakwood Estate DLF City, Gurgaon** **Haryana** **PAN No.AARPS9847A**	**Vs**	**Cirlce-30 (1)** **Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	None
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.161/Del/2022
Assessment Year: 2018-19

Drishti Lifestyle Plot No.139D, Sector- 07, IMT Manesar, Gurgaon Haryana -122050 PAN No.AAJFD3460A	**Vs**	**Ward – 1 (4) Gurgaon Haryana**
(APPELLAN		**(RESPONDENT)**

Appellant by	Ms. Gunjan Jain, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.105/Del/2022
Assessment Year: 2019-20

S. N. S Infra Project Pvt. Ltd. C-6/20/2, Safdarjung Development Area, Delhi PAN No.AAOCS4162N	**Vs**	**ITO Ward – 22 (1) Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	Sh. Sumit Lal Chandani, Advocate
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.160/Del/2022
Assessment Year: 2019-20

BLK Lifestyle Ltd, 409, 4th Floor, DLF Tower, Jasola-A, Zakir Nagar, East Delhi Delhi-110025 PAN No.AABCB8273C	**Vs**	**Central Circle – 15 Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.73/Del/2022
Assessment Year: 2018-19

Surender Galhot **710, Janpratinidhi Apartments, Block-5, DLF Phase-4, Sector-28, Gurgaon** **PAN No.AGTPK2780N**	**Vs**	**Ward – 4 (3)** **Gurgaon**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.91/Del/2022
Assessment Year: 2019-20

Kiran Motors Limited **Z-4, Hauz Khas,** **New Delhi-110016** **PAN No.AAACK3828R**	**Vs**	**Circle – 13 (1)** **Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Ashish Goel, CA** **Sh. Ved Jain, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.89/Del/2022
Assessment Year: 2018-19

Mobineers Info Systems Pvt. Ltd. **O-44 A, Basement Lajpat Nagar-II, New Delhi-110024**	**Vs**	**CIT (Appeals) (NFAC)** **New Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Pankaj Jain, ITP**

	Sh. Satish Khosla, Advocate
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.136/Del/2022
Assessment Year: 2018-19

Komal Bhati C/o Rohit Tiwari, 8024, ATS Green Paradiso, CHI IV, Greater Noida UP – 201310 PAN No.AYSPK9154D	Vs	ITO Circle – 2 (2) G. B. Nagar
(APPELLAN		(RESPONDENT)

Appellant by	None
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.262/Del/2022
Assessment Year: 2018-19

Mahagun India Pvt. Ltd. C/o. Prakash Prakash B-1, Sagar Apartments, 6 Tilak Marg, New Delhi-110001 PAN No.AAACM6572A	Vs	DY. CIT Central Circle – 13 3rd Floor, ARA Centre, Jhandewalan, New Delhi-110055
(APPELLAN		(RESPONDENT)

Appellant by	Sh. Ruchesh Sinha, Advocate
Respondent by	Sh. Umesh Takyar, Sr. DR

ITA No.259/Del/2022
Assessment Year: 2018-19

Logix Heights Private Limited C/o. Prakash Prakash B-1, Sagar Apartments, 6 Tilak Marg, New Delhi-110001 PAN No.AABCL9853A	Vs	ACIT Central Circle – 13, Room No.261, E-2 2nd Floor, ARA Centre Jhandewalan, New Delhi
(APPELLAN		(RESPONDENT)

Appellant by	**Sh. Ruchesh Sinha, Advocate**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.282/Del/2022
Assessment Year: 2018-19

Biggie Hospitality LLP **H. No.1569, Sector-28, Faridabad, Haryana-121008** **PAN No.AAPFB7740R**	**Vs**	**Ward -1 (1)** **Faridabad**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.125/Del/2022
Assessment Year: 2019-20

Shradha Saburi Hospitalities Pvt. Ltd. **CB-190, Naraina Village, New Delhi-110028** **PAN No.AAICS9541F**	**Vs**	**DCIT** **C. R. Building** **I. P. Estate, New Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Ashok Sikka, Advocate**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.242/Del/2022
Assessment Year: 2018-19

Saimandeep Industries of India **Industrial Plot No.99, Sector-23, Faridabad** **Haryana -121005** **PAN No.AASFS8283L**	**Vs**	**Ward- 2 (3)** **Haryana** **Faridabad**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Rakesh Kumar Garg, CA** **Sh. Ankit Garg, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.244/Del/2022
Assessment Year: 2018-19

Akisons Corporate Solutions Private Ltd. **Ashoka Enclave-3, 273, 2nd Floor, Sector- 35, Faridabad** **PAN No.AAICA0138L**	**Vs**	**Ward- 1 (1)** **Faridabad** **Haryana**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.129/Del/2022
Assessment Year: 2019-20

Lion Workfree Solutions India Pvt. Ltd. **C/o Kapil Goel, Advocate F-26/124, Sector-7, Rohini, Delhi -110085** **PAN No.AABCL6633J**	**Vs**	**DCIT** **CPC Circle – 15 (2)** **Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Kapil Goel, Advocate**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.180/Del/2022
Assessment Year: 2018-19

Adven Biotech Private Limited, C/o. IPSO Legal, 318, Pocket, D, Mayur Vihar, Phase-2 **New Delhi-110091** **PAN No.AADCA1309E**	**Vs**	**Circle -1 (2)** **Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Ms. Sumangla Saxena, Advocate** **Sh. Rajiv Saxena, Advocate**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.146/Del/2022
Assessment Year: 2018-19

Sukhwir Singh **D-62, South City-1, Gurgaon** **PAN No. ATEPS9984**	**Vs**	**Ward- 4 (3)** **Gurgaon**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Priyanshu Goyal, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.132/Del/2022
Assessment Year: 2017-18

Indica Industries Pvt. Ltd. **A-4, Greater Kailash, Part-1** **New Delhi-110048** **PAN No.AAACI0233Q**	**Vs**	**DY. Commissioner Income Tax, CPC** **Bengaluru**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.112 & 113/Del/2022
Assessment Year: 2018-19 & 2019-20

Amit Aggarwal **2822-23, Sadar Thane Road,** **Delhi-110006** **PAN No.AFRPA8096E**	**Vs**	**ACIT** **CPC** **Ward- 63 (1)** **New Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Smt. Apoorva Bhardwaj, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.32/Del/2022
Assessment Year: 2018-19

Swati Menthol And Allied Chemicals Limited **Opp. Radio Station, Bareily Rampur,** **Uttar Pradesh-244901** **PAN No. AAECS0319M**	**Vs**	**ACIT-I** **Moradabad**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. KVSR Krishna, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.140 & 141/Del/2022
Assessment Year: 2017-18 & 2018-19

Promind Solutions Pvt. Ltd. **C/o A.K. J. & Associates Chartered Accountant 1st Floor, Deep Complex, Begum Bridge Road, Meerut, U.P. 250001** **PAN No.AAFCP5955M**	**Vs**	**DCIT** **CPC** **Circle – 1 (2) (1)** **Bengaluru**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Arjun Jain, CA** **Sh. Arvind Kumar Jain, CA**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

ITA No.305 & 306/Del/2022
Assessment Year: 2018-19 & 2019-20

Delmar Int. Inc. **Stone Delhi Road Moradabad, U.P.** **PAN No.AALFD9593N**	**Vs**	**ITO** **1 (1)** **Uttarpradesh**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

<u>ITA No.83 & 84/Del/2022</u>
Assessment Year: 2018-19 & 2019-20

O.C. Sweaters LLP **F-8, Okhla Industrial Area, Phase-I, Delhi** **PAN No.AAEFO8261B**	**Vs**	**Ward – 29 (5)** **Delhi**
(APPELLAN		**(RESPONDENT)**

Appellant by	**None**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

<u>ITA No.130 /Del/2022</u>
Assessment Year: 2019-20

Gurdev Singh **H. No. C-3, Sai Apartments Batra Colony Kaushal Ganj Rampur, Bilaspur, Rampur U.P. 244921** **PAN No.AMFPS9534G**	**Vs**	**ITO** **I (2)** **Rampur-1, Jurisdictional Assessing Officer** **U.P**
(APPELLAN		**(RESPONDENT)**

Appellant by	**Sh. Hemant Jain, Advocate**
Respondent by	**Sh. Umesh Takyar, Sr. DR**

Date of hearing:	21/03/2022
Date of Pronouncement:	21/03/2022

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(1), 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 (EPD) 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 21.03.2022 in the presence of both the representatives.

Sd/- Sd/-
(ASTHA CHANDRA) **(N. K. BILLAIYA)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

NEHA
Date:- 21.03.2022
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	