

ITA No. 52/KOL/2022(AY-2017-18)-Greenage Griha Nirman (P) Ltd.  
ITA No. 15/KOL/2022(AY-2017-18)-Rajiv Sarkar, Kolkata  
ITA No. 44/KOL/2022(AY-2018-19)-Vareli Tecnac (P) Ltd.  
ITA No. 24/KOL/2022(AY-2019-20)-Prakash Road Lines Corporation Ltd.

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Manish Borad, Accountant Member**

**(1) I.T.A. No. 52/KOL/2022  
Assessment Year: 2017-2018**

***Greenage Griha Nirman (P) Limited,.....Appellant  
C/o. M/s. Salarpuria Jajodia & Co.,  
7, C.R. Avenue, 3<sup>rd</sup> Floor,  
Kolkata-700072  
[PAN: AADCB3044P]***

**-Vs.-**

***Assistant Commissioner of Income Tax,.....Respondent  
CPC, Bengaluru***

**Appearances by:**

*Sri Siddharth Jhajharia, FCA, appeared on behalf of the assessee  
Shri Biswanath Das, Addl. CIT, appeared on behalf of the Revenue*

**&**

**(2) I.T.A. No. 15/KOL/2022  
Assessment Year: 2017-2018**

***Rajiv Sarkar,.....Appellant  
Ad-145, Sector-1, Salt lake City,  
Kolkata-700064  
[PAN: ATHPS3222J]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-50(3), Kolkata,  
Uttarapon Complex DS-IV, Manicktala,  
Kolkata-700067***

**Appearances by:**

*Sri I. Banerjee, FCA, appeared on behalf of the assessee  
Shri Biswanath Das, Addl. CIT, appeared on behalf of the Revenue*

**&**

**(3) I.T.A. No. 44/KOL/2022  
Assessment Year: 2018-2019**

***Vareli Tecnac Pvt. Limited,.....Appellant  
14/1B, Ezra Street, 9<sup>th</sup> Floor,  
Kolkata-700001***

ITA No. 52/KOL/2022(AY-2017-18)-Greenage Griha Nirman (P) Ltd.  
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ITA No. 24/KOL/2022(AY-2019-20)-Prakash Road Lines Corporation Ltd.

**[PAN: AAACV8790P]**

**-Vs.-**

**ITD, Centralized Processing Centre,.....Respondent**  
**Income Tax Department,**  
**Bangaloe-560500**

**Appearances by:**

*Sri B.K. Poddar, FCA., appeared on behalf of the assessee*

*Shri Biswanath Das, Addl.CIT, appeared on behalf of the Revenue*

**&**

**(4)**

**I.T.A. No. 24/KOL/2022**  
**Assessment Year: 2019-2020**

**Prakash Road Lines Corporation Limited,.....Appellant**  
**C/o. M/s. Salarpuria Jajodia & Co.,**  
**7, C.R. Avenue, 3<sup>rd</sup> Floor,**  
**Kolkata-700072**  
**[PAN: AABCP9611J]**

**-Vs.-**

**Additional Director of Income Tax,.....Respondent**  
**CPC, Bengaluru**

**Appearances by:**

*Sri Siddharth Jhajharia, FCA, appeared on behalf of the assessee*

*Shri Biswanath Das, Addl. CIT, appeared on behalf of the Revenue*

**Date of concluding the hearing : March 24, 2022**

**Date of pronouncing the order : March 24, 2022**

**O R D E R**

**Per Bench:-**

The present appeals are directed at the instance of the assesseees against the orders of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi dated 15.12.2021 (ITA No. 52/KOL/2022) passed for A.Y. 2017-18; dated 13.11.2021 (ITA No. 15/KOL/2022) for A.Y. 2017-18; dated 29.10.2021 (ITA No. 44/KOL/2022) for A.Y. 2018-19 and dated 15.11.2021 (ITA No.24/KOL/2022) for A.Y. 2019-20. The common issue involved in all these appeals is whether the assesseees are entitled for deduction of

employees' contribution towards PF & ESI paid before the due date of filing of the return.

2. The appeal in ITA No. 44/KOL/2022 is time-barred by 27 days. Shri Rajat Bagrodia, Director of the assessee-company has filed an affidavit dated 21.01.2022 praying to condone the delay in view of COVID 19 pandemic and relaxation given in the limitation period by Hon'ble Supreme Court and on the basis of contents of this affidavit, we condone the delay and the appeal is admitted on merit.

3. Since most of the issues in all these appeals are common, therefore, we have decided to dispose of the appeals by a common order for the sake of convenience and brevity.

4. From the perusal of the grounds of appeals, we find that the only common issue relates to the disallowance of employees' contribution to PF & ESI made by the Assessing Officer in view of the provisions of section 2(24(x) read with section 36(1)(va) of the Act. The first common facts narrated by the respective ld. counsels for the assessees are that the alleged amount of employees' contribution towards PF & ESI for the year under respective appeals have been deposited before the due date of filing of the return of income prescribed under section 139(1) of the Act. Second common contention is that the amendment brought in by way of insertion of our Explanation to Section 36(1)(va) of the Act to Finance Act, 2021 is not retrospective but is prospective in nature and is applicable from assessment year 2021-22 and onwards. Per contra, ld. D.R. vehemently supported the order of ld. CIT(Appeals).

5. We have heard the rival contentions and gone through the material available on record. We find that this common issue of disallowance of employees' contribution to PF & ESI has been dealt by this Tribunal in the

case of Lumino Industries Ltd. –vs.- ACIT (ITA No. 231 & 365/KOL/2021) dated 17.11.2021, wherein this Tribunal after considering the judicial precedence as well as the judgment of the Hon'ble Jurisdictional High Court in the case of CIT –vs.- Vijayshree Ltd. in ITAT No. 243 of 2011 & GA No. 26607 of 2011, has held as under:-

*“17. Have heard both the parties. We note that the Finance Bill, 2021 has brought in an amendment which disallows the employees' contribution made in PF and ESI if not made within the due date as prescribed by the respective statutes (PF and ESI Act). So after the amendment has been inserted according to Shri Miraj D Shah takes effect from 1<sup>st</sup> April, 2021 i.e AY 2021-22 and subsequent assessment year and if the remittance of PF/ESI Employees' Contribution is not made within the time prescribed by the PF/ESI Act then the remittance cannot be allowed as a deduction which is prospective in operation. Whereas according to Ld. CIT(A), the amendment brought in is clarificatory in nature so, retrospective in operation. So we have to adjudicate this issue whether the amendment brought in by Finance Act, 2021 is prospective or retrospective in operation. We note that before this amendment has been inserted by Finance Bill, 2021, the Hon'ble Jurisdictional Calcutta High Court in the case of Shri Vijayshree Ltd. Ltd.(supra), M/s Philips Carbon Black Ltd.(supra), M/s Coal India Ltd.(supra), M/s Akzo Nobel India Ltd. (supra) has held that the payment of employees' contribution if made by an assessee before the due date of filing of return of income u/s 139(1) of the Act, is allowable as a deduction. We note that by Finance Act, 2021, the provision of Section 36(1 )(va) as well as Section 43B has been amended to this extend by inserting the Explanation 2 whereby it is clarified that the provision of Section 43B shall not apply and shall be deemed never to have been applied for the purpose of determining the due date under this clause. For ready reference, we reproduce the Explanation-2 to Section 36(1 )(va) as under:*

*“Section 36(1 )(va)*

*Explanation-2 - For the removal of doubts, it is hereby clarified that the provisions of Section 43B shall not apply and shall be deemed never to have been applied for the purpose of determining the 'due date' under this clause'*

*18. We find that this amendment has been brought in the Act to provide certainty about the applicability of Section 43B in respect of belated payment of employees' contribution. In order to test whether the amendment brought in later is retrospective or not one has to apply the test as laid by the Hon'ble Supreme Court in the case of M/s Snowtex Investment Ltd. (supra) wherein the Hon'ble Supreme court took note of the law laid down on this issue by the Constitution Bench in M/s Vatika Township Ltd. and held that the intent of the Parliament/legislature need to be looked into for ascertaining whether the amendment should be retrospective or not. In Vatika Township Ltd. (supra) the Hon'ble Supreme Court held that the notes on clauses appended to the Finance Bill will throw light as to the legislative intent; because it has to be borne in mind that Parliament/legislature is aware of three concepts before an amendment is brought in, which can be discerned from reading*

*of the "Notes on Clauses" to the Bill which are (i) prospective amendment with effect from a fixed date; (ii) retrospective amendment with effect from a fixed anterior date; and (iii) clarificatory amendments which are retrospective in nature. So when we adjudicate whether the view of Ld CIT(A) that the explanation 2 brought in by Finance Act, 2021 is retrospective, let us look at the "Notes on Clauses and the relevant clauses 8 & 9 of the Finance Bill, 2021 (supra) pertaining to the issue in hand which in clear and unambiguous terms spells out the intention of Parliament that the amendment shall take effect from 1<sup>st</sup> April, 2021 and therefore will accordingly apply to Assessment Year 2021-22 and subsequent years. So since the legislative intent is clear, the amendment brought in by Finance Act, 2021 on this issue as discussed is prospective and Ld. CIT(A) erred in holding otherwise. So till AY 2021-22, the Jurisdictional High Court's view in favor of assessee will hold good and is binding on us. As discussed the decision of the Hon'ble Delhi High Court in Bharat Hotels Ltd. (supra) which was in favor of revenue has not considered the decision of the Co-ordinate Division Bench decision in M/s Aimil Ltd.(supra) which is in favour of assessee. So we note that later decision of the Delhi/Hyderabad Tribunal have followed the decision favouring assessee in the light of the Hon'ble Supreme Court decision in M/s Vegetable Products (supra). In the light of the aforesaid decision and relying on the ratio of the Hon'ble Supreme Court in the case of Vatika Township Pvt. Ltd. (supra) and M/s Snowtex Investment Ltd. (supra) and also taking note of the binding decision of the Hon'ble Jurisdictional Calcutta High Court on this issue before us in Shri Vijayshree Ltd. Ltd.(supra), M/s Philips Carbon Black Ltd.(supra), M/s Coal India Ltd.(supra), M/s Akzo Nobel India Ltd. (supra), we set aside the impugned order of Ld CIT(A) and direct the AO to allow the claim of deduction in respect of employees contribution shares towards ESI, PF, by the assessee before the due date of filing of return u/s 139(1) of the Act. Therefore the appeal of assessee succeeds and so, it is allowed in favor of assessee".*

6. After examining the common facts of the instant appeals qua common issue of disallowance of employees' contribution to PF & ESI in the light of the above decision of this Tribunal, we find that though there is a delay in depositing employees' contribution to PF & ESI before the due date prescribed under the law governing PF & ESI, but the alleged amounts have been deposited before the due date of filing of the return of income prescribed under section 139(1) of the Act for the relevant assessment year and the same is verifiable from the documents placed on record including the tax audit report providing the date of deposit of the said amounts. Therefore, the decision of this Tribunal in the case of *Lumino Industries Ltd. -vs.- ACIT* (supra) is squarely applicable on this common issue raised in the instant appeal and the explanation inserted

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by Finance Act, 2021 in section 36(1)(va) of the Act is also held to be prospective in nature and thus not applicable to the years under appeals before us and the same remained uncontroverted by the Id. D.R. being unable to place any binding precedence in its favour. We, therefore, allow this common issue in favour of the assessee and delete the respective disallowances made towards delay in depositing employees' contribution to PF & ESI. Thus this issue raised in the ground of appeal in the case of assessee, namely M/s. Greenage Griha Nirman (P) Ltd. in ITA No. 52/KOL/2022 and M/s. Vareli Tecnac (P) Limited in ITA No. 44/KOL/2022 are allowed. Thus both these appeals of the assessee in ITA No. 52/KOL/2022 and ITA No. 44/KOL/2022 are allowed.

8. As regards the appeal in the case of Rajiv Sarkar in ITA No. 15/KOL/2022 is concerned, Grounds No. 1 to 4 pertain to the disallowance of employees' contribution towards PF & ESI and in view of discussion hereinabove, this common issue raised in Grounds No. 1 to 4 are allowed and the alleged disallowance is deleted.

9. As far as Ground No. 5 in *Rajiv Sarkar (supra)* relating to disallowance of late fees of Rs.36,300/- paid by the assessee for delay in filing of VAT returns is concerned, the Id. counsel for the assessee has not pressed this ground of appeal due to smallness of amount. We, therefore, dismiss this ground as not pressed. In the result, ITA No.15/KOL/2022 is partly allowed.

10. As regards the appeal in the case of Prakash Road Lines Corporation Limited in **ITA No. 24/KOL/2022** is concerned, Grounds No. 1, 2 & 3 relate to the disallowance of employees' contribution to PF & ESI at Rs.37,39,972/-. Since the assessee has provided all the documents proving that the amount has been deposited before the due date of filing of the return of income, the said disallowance is deleted in view of our

discussion made hereinabove after placing reliance on the decision of this Tribunal in the case of Lumino Industries Limited (supra). Thus Grounds No. 1, 2 & 3 of the assessee's appeal are allowed.

11. As far as Ground No. 4 is concerned, it relates to the disallowance under section 43B of the Act pertaining to employer's contribution to PF at Rs.13,62,502/-, employer's contribution to ESI at Rs.15,441/- and GST payable at Rs.51,77,942/- and the total amount in dispute is Rs.65,55,885/-.

12. Before us, ld. counsel for the assessee submitted that there was an error in the original audit report filed by the tax auditor on 11.10.2019 and 'e' filed by the auditor on 31.10.2019. The alleged amount was deposited before the due date of filing of the return of income and the same was mentioned by the tax auditor in Column 26(i)(B(a) of the Form No. 3CD attached with the Tax Audit Report filed on Form 3CD. But due to the typographic error, the same amount pertaining to employer's contribution and GST totalling to Rs.65,55,885/- was mentioned in Column 26(i)(B)(b), which is meant for the amount not paid on or before the due date of filing of the return of income under section 139(1) of the Act. It is further submitted that during the course of proceeding before the ld. CIT(Appeals), the assessee has referred to the unsigned audit report uploaded on 08.07.2020, wherein the mistake was corrected but the ld. CIT(Appeals) did not entertain since report was not digitally signed.

13. Before us, the ld. counsel for the assessee prayed that the said amount is liable to be allowed under section 43B of the Act and the assessee may be granted an opportunity to explain and prove the same before the Assessing Officer. This request of the ld. counsel for the assessee was not opposed by the D.R.

14. We have heard the rival contentions and perused the relevant material available on record. Before us, the issue raised by the assessee in Ground No. 4 relates to the disallowance of Rs.65,55,885/- under section 43B of the Act for employer's contribution to PF at Rs.13,62,502/- employer's contribution to ESI at Rs.15,441/- and GST payable at Rs.51,77,942/-. Perusal of the record shows that in the original Tax Audit Report on Form 3CD attached to form 3CB under column 26(i)(B)(a) the alleged amount is certified to be allowable under section 43B as the same has been deposited with the respective authorities before the due date of filing of the return under section 139(1) of the Act. But the same amounts have again been repeated in the next column 26(i)(B)(b) of Form 3CD, which is meant for those amounts, which are disallowable as not paid before the aforesaid date. Since the returns are processed electronically, this observation of the auditor given in column 26(i)(B)(b) was captured by the system and disallowance has been made. Thereafter before the ld. first appellate authority, the assessee has submitted the revised audit report which has been uploaded with necessary correction but the same was not entertained by the ld. CIT(Appeals).

15. Before us, ld. counsel for the assessee has filed the report of the tax auditor dated 11.10.2019 along with Annexure H of this report and it is certified that the alleged amount has been deposited before the due date of filing of the return of income and is thus allowable u/s 43B of the Act. But since there was a mistake in the original audit report and revised report is unsigned, therefore, we in the interest of justice restore this issue to the file of the Assessing Officer before whom the assessee will provide the necessary documents to prove that the alleged amounts of Rs.65,55,885/- has been deposited before the due date of filing of the return of income under section 139(1) of the Act and if the Assessing Officer is satisfied with these documents, then alleged disallowance will

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be uncalled for. Needless to mention the assessee shall be provided sufficient opportunity of being heard. Thus ground no. 4 of the assessee's appeal is allowed for statistical purposes. In the result, the appeal in ITA No.24/KOL/2022 in the case of Prakash Road Lines Corporation Limited is partly allowed for statistical purposes.

**16. To sum up, the appeals in ITA Nos. 52 & 44/KOL/2022 are allowed, ITA No.15/KOL/2022 is partly allowed and ITA No. 24/KOL/2022 is partly allowed for statistical purposes.**

Order pronounced in the open Court on March 24, 2022.

**Sd/-  
(Rajpal Yadav)  
Vice-President (KZ)**

**Sd/-  
(Manish Borad)  
Accountant Member**

***Kolkata, the 24<sup>th</sup> day of March, 2022***

- Copies to :**
- (1) *Greenage Griha Nirman (P) Limited,  
C/o. M/s. Salarpuria Jajodia & Co.,  
7, C.R. Avenue, 3<sup>rd</sup> Floor, Kolkata-700072***
  - (2) *Rajiv Sarkar,  
Ad-145, Sector-1, Salt lake City,  
Kolkata-700064***
  - (3) *Vareli Tecnac Pvt. Limited,  
14/1B, Ezra Street, 9<sup>th</sup> Floor, Kolkata-700001***
  - (4) *Prakash Road Lines Corporation Limited,  
C/o. M/s. Salarpuria Jajodia & Co.,  
7, C.R. Avenue, 3<sup>rd</sup> Floor, Kolkata-700072***
  - (5) *Assistant Commissioner of Income Tax,  
CPC, Bengaluru***
  - (6) *Income Tax Officer,  
Ward-50(3), Kolkata,  
Uttarapon Complex DS-IV, Manicktala, Kolkata-700067***
  - (7) *ITD, Centralized Processing Centre,  
Income Tax Department, Bangaloe-560500***
  - (8) *Additional Director of Income Tax, CPC, Bengaluru***

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**(9) Commissioner of Income Tax (Appeals),,  
National Faceless Appeal Centre (NFAC), Delhi**

(10) Commissioner of Income Tax- ,  
(11) The Departmental Representative  
(12) Guard File

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**