

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, "B", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &**  
**SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No. 18/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2019-20

DCIT, Central Circle, Patiala	बनाम	Smt. Madhubala W/o Sh. Krishan Gopal, Ward No.1, Lehargaga, Punjab
स्थायी लेखा सं./PAN NO: ANJPB7890D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Vibhore Garg, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 09/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2018-19

Sh. Pushpinder Singh Sarna, H.No.154, Sector 4, Panchkula	बनाम	The ITO, Ward-3, Panchkula
स्थायी लेखा सं./PAN NO: ADLPS4369Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ajay Jain, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 12/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2018-19

Sh. Parminder Singh, Prop. M/s Lion Industries, B-XXIX-97, Street No.1 Daba Road, Baba Mukund Singh Nagar, Ludhiana	बनाम	The ITO, Ward 5(3), Rishi Nagar, Ludhiana -
स्थायी लेखा सं./PAN NO: ADNPS0589C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Jasvinder Singh, Advocate  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 31/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2018-19

Sh. Sandeep Gupta, 3138, Sector 23-D, Chandigarh	बनाम	The DCIT, Circle 3(1), Chandigarh
स्थायी लेखा सं./PAN NO: AAQPG1644L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Rajesh Sharma, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 32/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2018-19

Metalman Auto Private Limited, JMK Tower NH 8, First Floor, Village Kapashera , New Delhi 110037	बनाम	The ACIT, Circle-1, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM5441M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Amarjit Kamboz, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 394/CHD/2021**

निर्धारण वर्ष / Assessment Year : 2019-20

Ride Link Auto, Ayali Khurd, Ludhiana	बनाम	The ITO, Ward 7(1), Ludhiana
स्थायी लेखा सं./PAN NO: BRYPB7478M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Ms Monvica Kaushal, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 418/CHD/2021**

निर्धारण वर्ष / Assessment Year : 2018-19

The ITO, Ward-6(1), Ludhiana	बनाम	Sh. Sita Ram Singla, 3367, Ferozepur Road, Gurdev Nagar, Ludhiana
स्थायी लेखा सं./PAN NO: AJSPS8914J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**C.O. 1/ CHD/2022**

(Arising from आयकर अपील सं./ ITA No. 418/CHD/2021

निर्धारण वर्ष / Assessment Year : 2018-19

Sh. Sita Ram Singla, 3367, Ferozepur Road, Gurdev Nagar, Ludhiana	बनाम	The ITO, Ward-6(1), Ludhiana
स्थायी लेखा सं./PAN NO: AJSPS8914J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA Nos. 14 & 15/CHD/2022**

निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-20

Vijay Kumar Singh, H.No. 47, Phase-3, Near Shiv Mandir, Housing Board Colony, Baddi-173205	बनाम	The DCIT, CPC, Banglore
स्थायी लेखा सं./PAN NO: ATZPS6604A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ravinder Kumar Sharma, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 78/CHD/2022**

निर्धारण वर्ष / Assessment Year: 2018-19

Tegsons India, Sherpur Bye Pass, Near Yuvraj Motors, Distt. Ludhiana	बनाम	The DCIT, CPC, Banglore (For ITO, Ward 1(3), Ludhiana )
स्थायी लेखा सं./PAN NO: AAAFT7638K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Rishabh Marwaha, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

**आयकर अपील सं./ ITA No. 16/CHD/2022**

निर्धारण वर्ष / Assessment Year: 2019-20

Sh. Vidyadhar Tiwari, Ward No.1,Near Govt. High School, Village Baddi, Solan 173205	बनाम	The DCIT, CPC, Banglore
स्थायी लेखा सं./PAN NO: AGXPT3125G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ravinder Kumar Sharma, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05.04.2022 and 06.04.2022  
उदघोषणा की तारीख/Date of Pronouncement : 21. 04.2022

**आदेश/Order**

**Per Bench:**

The captioned appeals and Cross Objection have been preferred by the assessee / Revenue against the separate orders of the Ld. First Appellate Authority as per the details given below:-

S.No.	ITA No.	Appeal by	First Appellate Authority
1	18/Chd/ 2022	Revenue	11.11.2021
2	9/Chd/ 2021	Revenue	24.11.2021
3	12/Chd/2022	Assessee	22.11.2021
4.	31/Chd/2022	Assessee	02.12.2021
5	32/Chd/2022	Assessee	08.12.2021
6	394/Chd/2021	Assessee	25.10.2021
7	418/Chd/2021	Revenue	25.10.2021
8	C.O. 1/Chd/2022	Assessee	25.10.2021

9.	14/Chd/2022	Assessee	03.12.2021
10.	15/Chd/2022	Assessee	03.12.2021
11.	78/Chd/2022	Assessee	22.12.2021
12.	16/Chd/2022	Assessee	23.12.2021

1.1 Since these appeals involved an identical question, they were heard in a bunch on two separate dates and they are being disposed off by this common order for the sake of convenience.

1.2 For the sake of convenience, the grounds taken by the various parties in their respective appeals / cross objection are being reproduced herein under:-

2.0 **ITA No. 18/Chd/2022:**

1 *That the Ld.CIT(A) erred in law, in deleting addition/disallowance of Rs.1,01,770/-made by the Assessing Officer in respect of delayed payment of employee's contribution, beyond the prescribed time, to the welfare Funds like PF.*

1(a) *That the Ld CIT(A) erred on facts and law ignoring the distinction between provision of section 36(l)(v) r.w.s 43B and provisions of section 36(l)(va) r.w.s 2(24)(x) of the Income Tax Act, 1961, which clearly provide for different treatment While the delayed payment of employers contribution is allowable if found before the filing of return wherever employee's contribution is disallowed for once and all if payment is delayed beyond the prescribed time.*

1(b) *That the Ld.CIT(A) erred in ignoring and failing to take into account the amendment carried out by Finance Act, 2021 by way of inserting Explanation 1 & Explanation 2 below section 36(l)(va) of the Act which has been interpreted by the Hon'ble Appellate Tribunal, Delhi Bench in M/s Vedvan Consultants*

*Pvt Ltd., New Delhi ITA No.1312/Del/2020 dated 26.08.2021 which was held that the aforesaid explanation was clarificatory.*

2. *That the Ld. CIT(A) erred in ignoring the Circular No.22/2015 issued by the CBDT.*

2.1 **ITA No. 9/Chd/2022**

1. *That the Ld. Commissioner of Income Tax- (Appeals) has wrongly upheld the disallowance of Rs 1353040 on account of delay in deposit of employee share of ESI and EPF without considering the fact that the assessee had deposited before due date of filing of itr and he also ignored the jurisdictional Punjab and Haryana High court decision in favour of appellant.*
2. *That the Ld. Commissioner of Income Tax- (Appeals) has wrongly upheld the disallowance of Rs 1353040 made by CPC under section 143(1) on debatable issue.*
3. *That the assessee craves for permission to add, amend, alter or withdraw any grounds of appeal with the approval of the Hon'ble Bench.*

2.2 **ITA No. 12/Chd/2022**

1. *That the order of the learned C.I.T. (Appeals), National Faceless Appeal Centre is illegal, wrong, arbitrary and against law and the facts of the case.*
2. *That the learned CIT (Appeals) is not justified in concurring with the Ld. A.O and thereby confirming the addition of Rs. 2,24,740/- by disallowing expenditure related to Bonus which is covered u/s 43 B and such action/order of the CIT(A) is perverse and needs interference by this Hon'ble Tribunal for which the appellant respectfully prayeth vide this present appeal.*
3. *That the learned CIT (Appeals) is not justified in concurring with the Ld. A.O and thereby confirming the addition of Rs.*

*13,069/- u/s 36(l)(va) when such amount has been paid before the due date and the amendment regarding insertion of explanation 2 in section 36(l)(va) and explanation 5 in section 43B in the Finance Bill 2021 is with **prospective effect**.*

- 4. That the Appellant craves for leave to add, modify amend or delete any of the grounds of appeals at the time of hearing and all the above grounds are without prejudice to each other.*

### 2.3 **ITA No. 31/Chd/2022**

- 1. That the impugned Order is bad in law, since it has been passed as it has been passed without giving any opportunity to the appellant to present his case.*
- 2. It is settled law before the amendments were made by the Finance Act 2021, that no disallowance can be made under section 36 (1) (va) of the Act, when the assessee has deposited the amount of ESI before due date of filing the return of Income.*
- 3. That the Ld. CIT Appeals has wrongly interpreted the provisions of Finance Act 2021 with regard to clause (va) of sub section (1) of the section 36 of the Act, since the amendments are not applicable from retrospective effect.*
- 4. That the appellant craves leave to amend, alter or delete any of the above grounds of appeal. Any other relief as Your Honour may deem fit and desirable may kindly be allowed.*

### 2.4 **ITA No. 32/Chd/2022**

- 1. The Ld. Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts of the case by arbitrarily and wrong! / confirming the adjustment, by way of disallowance of revenue business expenses, made by CPC of employee contribution to ESI/Provident Fund for Rs 6,55,889/-, paid after the due date prescribed under the respective Act but before the due date of filing of return of income u/s 139(1).*

2. *The Ld. Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts of the case by not following the judgments of the Hon'ble Supreme Court of India and Hon'ble Jurisdictional Punjab and Haryana High Court on similar facts as it constitutes mistake apparent on record arising as a result of interpretation of law.*
3. *The assessee craves permission to file/raise/amend any other ground of appeal before or at the time of hearing.*

2.5 **ITA No. 394/Chd/2021:**

1. *That the appellant denies its liability to be assessed at total income of Rs. 1922100/- as against returned income of Rs. 1141500/- and accordingly denies its liability to pay tax, cess and interest demand thereon.*
2. *That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on the facts in confirming the action of the Ld. Assessing officer in making adjustments u/s 143(1) of the Income Tax Act, 1961 by disallowing the contribution received from employees towards ESI and EPF amounting to Rs. 780599/-.*
3. *That the action of the Assessing officer as well as of CIT(A) is under challenge since not having appreciated the facts, documents, paper book, evidence, decision relied & provision of act in its true sense & spirits.*

2.6 **ITA No. 418/Chd/2021:**

1. *That the Ld. CIT(A) erred in law, in deleting addition/disallowance of Rs. 46,992/- made by the Assessing Officer in respect of delayed payment of employee's contribution, beyond the prescribed time, to the Welfare Funds like EPF.*
- 1(a) *That the Ld. CIT(A) erred on facts and law ignoring the distinction between provision of section 36(1)(v) r.w.s 43B and provisions of section 36(1)(va) r.w.s 2(24)(x) of the*

*Income Tax Act, 1961, which clearly provide for different treatment. While the delayed payment of employers contribution is allowable if found before the filing of return whereas employee's contribution is disallowed for once and all if payment is delayed beyond the prescribed time.*

- 1(b) *That the Ld. CIT(A) erred in ignoring and failing to take into account the amendment carried out by Finance Act, 2021 by way of inserting Explanation 1 & Explanation 2 below section 36(1 )(va) of the Act which has been interpreted by the Hon'ble Appellate Tribunal, Delhi Bench in M/s Vedvan Consultants Pvt Ltd., New Delhi ITA No.1312/Del/2020 dated 26.08.2021 which was held that the aforesaid explanation was clarificatory.*
2. *That the Ld. CIT(A) erred in ignoring the Circular No. 22/2015 issued by the CBDT.*

2.7 **C.O.No.1/Chd/2022 (arising in ITA 418/Chd/2021)**

1. *That the Ld. ITO, Ludhiana has erred in law and on the fact of the case while making disallowance of Rs. 46922/- against the payment of PF and added back to the taxable income.*
2. *That the respondent craves leave and sanction to file additional evidence, if so, required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be adduced or filed before the lower authorities either because proper and sufficient opportunity/ time was not provided or because it was not solicited or its need was not provided or because its need was appreciated.*

2.8 **ITA No. 14/Chd/2022:**

- 1 *The Ld. CIT(A) has wrongly confirmed the addition of Rs. 173490 under section 36, when in fact the actual EPF payments were made before the due date of filing the ITR as per challans submitted before CIT(A) and several judicial pronouncements are in favour of the assessee.*

- 2 *Any other ground of grounds as may be urged at the time of hearing.*

*“The appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.”*

2.9 **ITA No. 15/Chd/2022:**

- 1 *The Ld. CIT(A) has wrongly confirmed the addition of Rs. 5011008/- under section 36, when in fact the actual ESI and EPF payments were made before the due date of filing the ITR as per challans submitted before CIT(A) and several judicial pronouncements are in favour of the assessee.*

- 2 *Any other ground of grounds as may be urged at the time of hearing.*

*“The appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.”*

2.10 **ITA No. 78/Chd/2022:**

1. *The Ld. CIT(A), National Faceless Appeal Centre, Delhi erred on facts and law in confirming the action of the AO of disallowing the amount of Rs 4,78,732/- u/s 36(i)(va) on account of payment of employees contribution beyond the due date as prescribed under the relevant Act as the issue is covered by the judgments of the Hon'ble P&H High Court.*
2. *The Ld. CITA), National Faceless Appeal Centre, Delhi erred on facts and law in confirming the action of the AO of disallowing the amount of Rs. 4,78,732/- u/s 36(i)(va) on account of payment of employees contribution beyond the due date as prescribed under the relevant act because the amendment by Finance Bill 2021 is prospective and not retrospective as held by the Chandigarh/ Ahmadabad*

*bench of the ITAT and CIT(A), National Faceless Appeal Centre, Delhi in various cases.*

3. *The Ld. CIT(A), National Faceless Appeal Centre, Delhi erred on facts and law in confirming the action of the AO of disallowing the amount of Rs. 4,78,732/- u/s 36(i)(va) on account of payment of employees contribution beyond the due dates as prescribed under the relevant Act because the CIT(A), National Faceless Appeal Centre, Delhi has acted against the principals of judicial consistency as held by the Hon'ble Supreme Court in various cases.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

2.11 **ITA No. 16/Chd/2022:**

- 1 *The Ld. CIT(A) has wrongly confirmed the addition of Rs. 452475/- under section 36, when in fact the actual ESI and EPF payments were made before the due date of filing the ITR as per challans submitted before CIT(A) and several judicial pronouncements are in favour of the assessee.*
- 2 *Any other ground of grounds as may be urged at the time of hearing.*

*“The appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.”*

3.0 At the request of the Ld. Sr. DR, the case bearing ITA No.18/Chd/2022 in the case of DCIT, Central Circle, Patiala Vs. Smt. Madhubala for assessment year 2019-20 was taken as the lead case. The Ld. Authorised Representatives (ARs) representing the assessee had no objection to the same.

4.0 The Ld. Sr. Departmental Representative (Sr. DR) submitted that the sole issue in these bunch of appeals is whether employees' contribution to Provident Fund deposited in the account of the government after the due date but before filing the return of income is an allowable deduction. The Ld. Sr. DR submitted that, invariably, in all the appeals, during the course of assessment proceedings, the Assessing Officer (AO) had noticed that the payment made by the assessee/s towards employees' contribution to Provident Fund (PF) and ESI was deposited after the due date prescribed in the respective Statutes and hence proceeded to make addition under section 36(1)(v) read with section 2(24)(x) of the Income Tax Act, 1961 (herein after called 'the Act).

4.1 The Ld. Sr. DR drew our attention to Section 36(1)(va) of the Act which reads as under:

*"Section 36(1): The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*

*(va) 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. —For the purposes 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;"*

4.2 It was submitted that clause (24) of section 2 of the Income Tax Act, 1961 provides an inclusive definition of income. It was submitted that sub-clause (x) to the said clause provides that income includes any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.

4.3 The Ld. Sr. DR argued that on a plain reading of the section, it would be clear that the assessee would be entitled for deduction qua the sum received from any employee to which provisions of sub-section (x) of clause (24) of section 2 is applied, only, if such sum is credited by assessee to the employees' account in the relevant fund or funds on or before the due date. It was submitted that the due date is further defined in the Explanation, which means the date by which the assessee is required as an employer to credit employee's contribution to the employees' account in the relevant fund under any Act or Rule or Order or Notification issued thereunder or any standing order or award or service or otherwise. She argued that, therefore, in case, where the employer fails to deposit the entire amount towards employee's contribution on account of PF and ESI with the concerned department on or before the due date under PF and ESI Acts, the assessee shall not be

entitled for deduction to that extent. She underlined that according to the Employees Provident Funds Scheme of 1952, all payments owed to employees regarding wages for a given month must be paid within 15 days of the month's end.

4.4 The Ld. DR further argued that provisions of Section 36(1) (va) of the Act are very clear and unambiguous. There is no scope for liberal interpretation or for that matter interpretation at all when the law is stated in clear and unambiguous terms whatever the consequential effects be. The Ld. Sr. DR submitted that many assessee's rely on the judgment of Hon'ble Supreme Court of India in the case of CIT v. Alom Extrusions Ltd. [2009] 185 Taxman 416/319 ITR 306. She submitted that this judgement is not applicable to the facts because the Hon'ble Supreme Court has decided the issue in Alom Extrusions Ltd. case [*supra*] qua employers' contribution as per section 43B(b) of the Act and not qua employee's contribution u/s 36(1) (va) of the Act.

4.5 It was further argued that many assessee's also rely on the judgement of the Hon'ble Supreme Court of India in case of CIT vs. Vinay Steels Ltd. [2007] 213 CTR 268 (SC) but the said judgement is also not applicable as here the Hon'ble Supreme Court has not discussed section 36(1) (va) read with section 2(24) (x) at all which is the subject matter of appeal in the instant appeals. She submitted that Section 43B pertains only to Employer's contribution and not employee's contribution which is clearly mentioned in the Act. She also drew our attention to Circular No. 22/2015 dated 17th December

wherein, it is clarified that no disallowance shall be made for employers' share of contribution which is deposited before 'due date' of filing of return of Income. However, it further clarifies that this Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act.

4.6 Another argument of the Ld.DR was that Section 36(1)(va) of the Income Tax Act, 1961 cannot be read with Section 43B as Sections 36(1)(va) and 43B(b) function in distinct spheres, with the former addressing employee contributions and the latter addressing employer contributions. As a result, an assessee is only entitled to the deduction under section 43B as allowed by the proviso for the portion of the amount paid by the employer to the contributory fund. In the case of the employee's contribution, the assessee is only entitled to a deduction under section 36(1)(va) if the sums received from the employee is credited in a specified account by the due date established by the applicable statute. The Ld. Sr. DR also drew our attention to the judgement of the Hon'ble Madras High Court in Unifac Management Services (India) (P.) Ltd. vs DCIT in 409 ITR 225 wherein it has been stated that *"The scope of section 43B and section 36(1)(va) are different and thus, there is no question of reading both provisions together to consider as to whether the assessee is entitled to deduction in respect of the sum belatedly paid towards such contribution, especially when such sum is, admittedly, a sum received by the assessee/employer from his employee. Therefore, for considering such*

*question, application of section 36(1)(va) read with section 2(24)(x) alone is the proper course and any other interpretation would only defeat the object and scope of both the provisions viz., 43B (b) and 36(1)(va).”*

4.7 The Ld. Sr. DR further submitted that vide Finance Act 2021, the Government has further amended the law to bring certainty to the issue. She submitted that explanation to section 36(1)(va) has been added clarifying that provision of section 43B does not apply and is deemed to never have been applied for the purpose of determining the "due date" under this clause; and further section 43B has been amended by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and are deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of 2(24)(x) applies. This makes it amply clear that the provisions will be applied retrospectively but the Memorandum explaining Finance Bill says that these amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years. However, the language of Section 36(1)(va) and section 43B have explanations 2 and 5, respectively where it is stated that this amendment is to clarify that the provisions of section 43B do not apply and are deemed never to have been applied to employees' contribution.

4.8 The Ld. Sr. DR also submitted that further in the case of Allied Motors (P) Ltd vs. Commissioner of Income Tax, Delhi (Tax Reference No. 1/94, CA Nos.3175/91 and 2380/91 vide Judgement dated 10.03.1997), the Hon'ble Supreme Court of India has upheld the curating and retrospective application of amendment to Section 43 of Income Tax Act. She further submitted that even in the case of Alom Extrusions Ltd. (supra) the Hon'ble Supreme Court has held that amendment, as enacted by Finance Act 2003, led to equating tax, duty, cess and fee with contributions to welfare funds. The Hon'ble Supreme Court also held that the amendments to the said section brought about by the Finance Act, 2003 with effect from 1st April 2004 were retrospective in nature and would operate from 1st April 1988, as these were clarificatory in nature.

4.9 The Ld. Sr. DR further submitted that as amendments to Section 36(1)(va) and Section 43B are curative and clarificatory, so these are to be applied retrospectively. She argued that plain reading of these sections before the amendments were effected, clearly state about the non-availability of deduction to the assessee in case of late deposit of employees contribution.

4.10 The Ld. Sr. DR also placed reliance on the following judgments:-

- i) CIT v. Bharat Hotels Ltd [2019] 103 taxmann.com 295/410 ITR 417 (Delhi) :
- ii) CIT v. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100/223 Taxman 398/366 ITR 170

- iii) Unifac Management Services (India) (P.) Ltd. vs DCIT in  
409 ITR 225 of Hon'ble Madras High Court (Supra)

5.0 Per contra, the Ld. Authorised Representatives appearing on behalf of the captioned assessee submitted that it is settled law by now that employees' contribution to ESI and PF, though not paid within the due dates prescribed under the respective Act, but paid well before the due date of filing of the return of income u/s 139(1) of the Act, was an allowable expense. It was the contention of the Ld. ARs that in the captioned appeals, the respective assessee had deposited the employees contribution towards ESI and PF well before the due date of filing of the return of income u/s 139(1) of the Act and that this fact of filing of return before the due date prescribed u/s 139(1) of the Act was not in dispute. The Ld. ARs placed reliance on a plethora of orders of the various Benches of the Tribunal across the country as well as of jurisdictional High Court namely Hon'ble Punjab & Haryana High Court. It was submitted that the Hon'ble Karnataka High Court, Hon'ble Delhi High Court, Hon'ble Rajasthan High Court, Hon'ble Patna High Court, Hon'ble Allahabad High Court and Hon'ble Gauhati High Court had ruled in favour of the assessee on the issue. Reliance was placed on the following judicial precedents laid down by the Hon'ble Punjab & Haryana High Court :-

- a. CIT vs M/s Mark Auto Industries Limited reported in 358 ITR 43
- b. CIT vs M/s Hemla Embroidery Mills Pvt. Ltd., ITA No. 16 of 2009 order dated 27.09.2012

- c. CIT vs Nuchem Ltd., ITA No. 609 of 2009 order dated 22 September, 2014
- d. Lakhani Rubber Udyog Punjab and Haryana, 312 ITR 0014.

5.1 It was submitted that furthermore, similar judgments have been passed by almost all the other Hon'ble High Courts as under: -

- a) Essae Teraoka Pvt. Ltd. 366 ITR 408, Karnataka HC.
- b) Karnataka High Court in the case of Peerless General Finance and Investment Co.
- c) Bombay High Court in the case of Ghatage Patil Transports Ltd. [2014] 368 ITR 749 (Bom.)
- d) Delhi High Court in the case of AIMIL Limited [2010] 321 ITR 508 (Delhi)
- e) Rajasthan High Court in the case of TATE Bank of Bikaner & Jaipur 363 ITR 70
- f) Punjab & Haryana High Court in the case of Lakhani Rubber Udyog (2009) 312 ITR 0014 (154 order)
- g) Patna High Court in the case of Bihar State Warehousing Corporation Ltd. [2017] 393 ITR 386
- h) Allahabad High Court in the case of Sagun Foundry Pvt. Ltd. (2017) 145 DTR 0265 (All)
- i) Gauhati High Court in the case of George Williamson (Assam) Limited [2006] 284 ITR 619

5.2 In addition, our attention was also drawn to the following orders of the ITAT, Chandigarh Bench, wherein the deduction of employees' contribution, if paid, before the due date of filing of return u/s 139(1) of the Act, was allowed:-

- a. Digiqal Solution Services Pvt. Ltd. In ITA No.176/Chd/2021 dated 04.10.2021
- b. Ajay Piplani Vs ADIT, CPC, Bengaluru in ITA No. 114/CHD/2021 order dated 04.10.2021

- c. M/s Jupiter Aqua Lines Pvt. Ltd vs DCIT, Circle 6(1) Mohali in ITA No.83/Chd/2021 dated 27th August 2021 (DB)
- d. The Sirsa Coop. Marketing- cum-Processing LC Society, vs CPC Bengaluru in ITA no. 274/CHD/2021 dated 02.12.2021
- e. Mohan Bakery, vs DCIT in ITA no. 273/CHD/2021 dated 02.12.2021
- f. Raja Ram Vs. ITO, Yamunanagar in ITA Nos.191 & 192/Chd/2021 dated 20/10/2021

5.3 It was the contention of the Ld. ARs that in the light of the above judicial precedents, the assessee should be allowed the benefit of deduction of Employees' Contribution to ESI and PF, if the same have been deposited before the due date of filing of return u/s 139(1) of the Act . It was fairly accepted by the parties that the issue was common in all the captioned appeals and would apply mutatis mutandis in all cases.

6.0 We have heard the rival submissions and have also perused the material on record. The fact that in all the captioned appeals, the employees' contribution of ESI and PF had been deposited before the due date of filing of return u/s 139(1) of the Act is not in dispute. It is seen that the said issue, as far as the present Forum is concerned, stands fully covered in favour of the assessee not only by the consistent orders of the various Benches of the ITAT across the country but also by the consistent orders of the Chandigarh Bench of the ITAT. It is seen that all along, the Co-ordinate Benches have held that the amendments to Sections 36(1)(va) and u/s 43B of the Income Tax Act effected by the Finance Act, 2021 are applicable prospectively and not retrospectively. While coming to the said conclusion, the Benches have

relied upon the Notes on Clauses at the time of introduction of the Finance Act, 2021 and have held that the amendment is applicable in relation to the assessment year 2021-22 and subsequent years and not retrospectively. Thus, in view of this legal position, as considered by the Co-ordinate Benches and duly taking note of the judgements of the jurisdictional High Court in the case of CIT Vs Nuchem Limited (ITA 323 of 2009) and CIT Vs Hemla Embroidery Mills Pvt. Ltd. (2014) 366 ITR 167, we are of the view that the additions cannot be made or sustained on the strength of the amendment effected by Finance Act, 2021 to Sections 36(1)(va)/43B of the Act as the legal position thereon is very clear. The departmental stand that it is clarificatory in nature has consistently been rejected. Thus, in the face of the clear legal position, we find that the claim of the assessee is to be allowed. Although, the Ld. DR has argued at length and has forwarded many reasons in support of her contention, we are unable to subscribe to the same as they are contrary to the law laid down by the Jurisdictional High Court i.e. the Hon'ble Punjab & Haryana High Court and we are bound to apply the law as laid down by the Jurisdictional High Court. We also note that only four Hon'ble High Courts i.e. Gujarat High Court, Madras High Court, MP High Court and Kerela High Court have given dissenting view as of now on the said issue. However, we are bound by the law laid down by the Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Hemla Embroidery Mills (P) Ltd (supra) wherein it was categorically held that the respondent – assessee was entitled to

deduction in respect of employer and employee's contribution to ESI and Provident Fund as the same had been deposited prior to the filing of the return u/s 139(1) of the Act. The judgment of the Hon'ble Gujarat High Court has been distinguished by Chandigarh Bench of the ITAT in the case of Gilco Exports Ltd. Vs. ACIT, Circle 2(1) reported in (2019) 178 ITD 865 (Chd. Trib.) and it has been held that any sum received from employees towards EPF & ESI contribution deposited late but before the due date of filing of return would be entitled to deduction. It is also to be noted that in terms of Article 227 of the Constitution of India, when decision of Jurisdictional High Court is available on the issue, non-Jurisdictional High Court cannot be followed. It is trite that when there is judgment of Jurisdictional High Court for any authority within its territorial jurisdiction subjected to its superintendence, decision recorded by High Court is a binding precedent to be followed. It is also to be noted that even the Memorandum explaining the amendments has laid down that the amendments shall be effective from assessment year 2020-21 and, therefore, considering the entirety of facts and circumstances (which are identical in this bunch of appeals) and respectfully following the judgement of the Jurisdictional High Court as well as the Coordinate Benches of the Tribunal, we are of the considered view that the claim of the assesseees with respect to the deposit of employees' contribution towards ESI and PF paid before the due date of filing of return of income u/s 139(1) of the Act deserve to succeed.

7.0 Accordingly, the appeals of the Department bearing ITA Nos. 18/Chd/2022 and 418/Chd/2021 are dismissed and appeals of the assessee bearing ITA Nos. 09/Chd/2022, 12/Chd/2022, 31/Chd/2022, 32/Chd/2022, 394/Chd/2021, 14 & 15/Chd/2022, 78/Chd/2022 and 16/Chd/2022 are allowed. Also, the C.O. No 01/Chd/2022 being supportive in nature is allowed.

Order pronounced on 21<sup>st</sup> April, 2022.

**Sd/--**  
**( N. K. SAINI )**  
**Vice President**  
**Dated : 21.04.2022**  
“आर.के.”

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**Judicial Member**

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar