

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS. ASTHA CHANDRA, JUDICIAL MEMBER**

Sr. Nos	ITA No(s)	Asst. Year(s)	Appeal(s) by Appellant vs. Respondent		Assessee By	Revenue By
			Appellant	Respondent		
1.	318/Del/2022	2018-19	Benson Movers Pvt. Ltd. E-48/4, Phase-2, Okhla Industrial Area, New Delhi, Delhi-110 020 PAN : AADCB 6980 G	Circle – 4(2) New Delhi	--None--	Shri Rajender Jha, Sr. D.R.
2.	367/Del/2022	2018-19	Bhuvan Sharma 828, Sector – 5, Pushpa Bhawan, Pushpa Vihar, Delhi- 110017 PAN : BIKPS 4674 K	Ward – 71(2) Delhi	--None--	--do--
3.	1729/Del/2020	2018-19	Aggarwal Sweet Corner Pvt. Ltd., 3/33, Double Story, Tilak Nagar, New Delhi-110018 PAN : AABCA 0155 E	ACIT Circle – 1(2) New Delhi	Shri Pranav Yadav, Adv.	--do--

Date of hearing:	25.04.2022
Date of Pronouncement:	25.04.2022

ORDER

PER BENCH :

The present appeals are filed by the above mentioned assesses feeling aggrieved by the orders passed by appellate authority for A.Y. 2018-19 mentioned hereinabove.

2. Since the issue in all the appeals are common, therefore we clubbed all of them together for the sake of brevity and convenience. However, we are taking ITA No.318/Del/2022 as a lead case wherein assessee has raised the following grounds:

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. DCIT/CPC in making aggregate addition of Rs.87,65,323/- on account of employee’s contribution to ESI and EPF and that too by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating the facts and circumstances of the case and latest law in this regard.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. DCIT/CPC in making aggregate addition of Rs.87,65,323/- on account of employee’s contribution to ESI- and EPF, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual ground.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the order u/s 143(1) passed by Ld. DCIT/CPC as the jurisdiction was not validly assumed as per law.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. DCIT/CPC in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Similar grounds with different amounts have been raised in other appeals but however the sum and substance and the issue involved in all the appeals are identical.

4. Before us, at the outset, Learned AR submitted that the sole grievance of the assessee is confirming the additions on account of delay in deposit of employee's contribution towards provident fund and ESI fund.

5. Before us, Learned AR submitted that additions has been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Act for the reason that the contribution received towards PF/ESIC by the assessee from its employees was not deposited before the due date. He submitted that though there has been delay in deposit of PF/ESIC Contributions but all the contributions received by the assessee from its employees have been deposited with the appropriate authorities before the filing of return of income by the assessee. He therefore submitted that since the amounts have been deposited before the filing of return of income, no disallowance is called for and for aforesaid proposition, he relied on the decision in the case of **Azamgarh Steel & Power vs. CPC in ITA No.1626/Del/2020 dated 31.05.2021** and **CIT vs. AIMIL Ltd. [2010] 188 Taxman 265 (Delhi)** and various other decisions.

6. Learned DR on the other hand supported the order of lower authorities and also placed reliance on the decision of Delhi Tribunal in the case of **Vedvan Consultants Pvt. Ltd. vs DCIT in ITA No.1312/Del/2020 order dated 26.08.2021**. He also submitted that the amendment brought out by Finance Act 2021 would be applicable to the present case as by the amendment it

has been clarified that provisions of Section 43B of the Act shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub clause (x) of Clause (24) of Section 2 applies.

7. We have heard the rival submissions and perused the material available on record. The issue is no more *res-integra*. The issue has already been settled in favour of the assessee by various judicial pronouncements by the Tribunal. The Hon'ble Jurisdictional High Court of Delhi in the case of ***PCIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA no. 983/2018 dated 10.09.2018*** has already taken a view in favour of the assessee by holding as under:

“In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income Tax versus AIMIL Limited, (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(23)(x) of the Act.”

8. As far as reliance by Learned DR on the amendment brought out by Finance Act 2021 is concerned, “notes on clauses” to the Finance Bill 2021 clearly states that the amendment will take effect from 1st April 2021 and will apply in relation to the assessment year 2021-22 and subsequent assessment year. In

such a situation, we are of the view that the amendment brought out by Finance Act 2021 does not apply to the assessment year under consideration.

9. Before us, Revenue has not placed any material on record to demonstrate that the aforesaid order cited hereinabove has been overruled/stayed/set aside by higher judicial forum. In view of the aforesaid facts, we are of the view that the AO was not justified in denying the deduction claimed by the assessee on account of late deposit of PF/ESI/EPF, albeit before filing the return of income. Admittedly in all the above-stated matters, the Revenue had not contended that the assessee has deposited the contribution after the filing of the return of income. In view of the above, Respectfully following the decision of the Hon'ble High Court cited hereinabove, **we allow the appeals filed by the assessee.**

10. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 25.04.2022

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.04.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI