

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. KUL BHARAT, JUDICIAL MEMBER**

Sr. Nos	ITA No(s)	Asst. Year(s)	Appeal(s) by Appellant vs. Respondent		Assessee By	Revenue By
			Appellant	Respondent		
1.	747/Del/2021	2018-19	GI Staffing Services Pvt.Ltd., F-103, Ashish Complex, Mayur Vihar, Phase-1, New Delhi – 110091 PAN : AADCG3694A	ACIT, CPC, Bengaluru	Shri Amit Arora, Adv.	Shri Umesh Takyar, Sr. DR
2.	1006/Del/2021	2018-19	SS4 Safenet, B-5/158, Safdarjung Enclave, South West Delhi, Delhi-110029 PAN-ADIFS8014M	CPC ITD, Bengaluru	Shri Saurab Rohatagi, Adv.	--do--
3.	1387/Del/2021	2018-19	Baba Housekeeping & Facilities Pvt.Ltd., 1 st Floor, Office No.-3, Plot No.5, LSC, Neelkanth Chamber-1, Saini Enclave, Delhi-110092 PAN-AACCB9087H	CIT(A), NFAC, Delhi	Shri Saurbh Kumar, CA	--do--
4.	1389/Del/2021	2019-20	--do--	--do--	--do--	--do--
5.	1390/Del/2021	2018-19	Ultra Wiring Connectivity System Ltd., C/o-Sanmarks & Associates, B-504, 1 st Floor, Nehru Ground, NIT, Faridabad PAN-AAACU7563K	DCIT, CPC Bengaluru	Shri Girish Gupta, CA	--do--
6.	1394/Del/2021	2018-19	Sawhney Global Creations, B-144, Okhla Industrial Area, Phase-I, New Delhi-110020 PAN : ABGFS0873G	CIT(A), NFAC, New Delhi	Shri Anuj Maheshwari, Adv.	--do--
7.	1402/Del/2021	2019-20	Kepler Canon International Pvt.Ltd., C/o-Surinder Mahajan & Associates, A-134, Defence Colony, New Delhi- 110024 PAN-AAFCK1662C	ITD, CPC Bengaluru	Shri Samir Mahajan, CA	--do--

8.	1404/Del/2021	2019-20	Rajnish Gandhi, D-I/16, Vasant Vihar, New Delhi-110015 PAN : AALPG4909R	ADIT, CPC Bengaluru	Shri Kapil Goel, Adv.	--do--
9.	1405/Del/2021	2019-20	Jagrattan Daan Singh & Company, C-71, Mayapuri Industrial Area, Mayapuri, Phase-II, New Delhi-110064 PAN : AAFFJ6097H	CIT(A), NFAC Delhi	-None-	--do--
10.	1406/Del/2021	2019-20	Sonia Chawla, 5R-8, Shop No.212, 2 nd Floor, Opp. SBI Main Branch, N.I.T., Faridabad, Haryana - 122001 PAN : AFVPC4918F	ITO Faridabad	Shri Girish Gupta, CA	--do--
11.	1408/Del/2021	2018-19	THYSSENKRUPP Airport Services SL, 429, Functional Industrial Estate, Parparganj, New Delhi-110092. PAN : AAFCT4860R	ITO, Circle Int. Taxation- 1(1)(1), Delhi	Shri Sankalp Malik, Adv. & Shri Sanjay Malik, Adv.	--do--
12.	1474/Del/2021	2019-20	Pushpa Sharma, H.No.1178, Sector-8, Faridabad, Haryana-121004 PAN : CAQPS5194F	ITO Ward-2(1) Faridabad	-None-	--do--
13.	1539/Del/2021	2018-19	Sophisticated Industrial Materials Analytic Labs Pvt.Ltd., A-3/7, Mayapuri Industrial Area, Phase-II, New Delhi-110064 PAN : AAACS1068D	DCIT, CPC	Shri KVSR Krishana, CA	--do--
14.	1541/Del/2021	2019-20	Geo Connect Ltd., 110, Indra Prakash Building, 21, Barakhamba Road, New Delhi-110001. PAN : AAECs2401C	ACIT, CPC Bengaluru	Shri Gourav Jain, Adv. & Shri Sanket Gupta, Adv.	--do--
15.	1547/Del/2021	2019-20	Cold Forge, Plot No.181, Sector-24, Faridabad-121005. PAN : AADFC9058R	ADIT, CPC, Bangalore	Shri Mahender Gupta, CA	--do--
16.	1565/Del/2021	2018-19	Supreme Securities Ltd., 3 rd Floor, RD Chambers, 16/11, Arya Samaj Road, Karol Bagh, New Delhi-110088. PAN : AAACS2597R	DCIT, CPC, Bengalore	-None-	--do--
17.	1566/Del/2021	2018-19	Jonny, A-284, Sainik Vihar,	ITO, Ward-67(4),	Shri Ramit Kakar, Adv.	--do--

			Meerut, Uttar Pradesh-250001. PAN : AYQPJ0515K	Delhi		
18.	1609/Del/2021	2019-20	Manage Air Products India Pvt.Ltd., 13/1090, Hardhyan Singh Road, New Delhi-110005. PAN-AAACM3546Q	ADIT, CPC, Bangalore	-None-	--do--
19.	1618/Del/2021	2018-19	Richa Global Exports Pvt.Ltd., A-41, Phase-I, Mayapuri Industrial Area, New Delhi - 110064. PAN : AADCRO255L	ADIT, CPC, Bangalore	Shri KVS Krishana, Adv.	--do--
20.	1632/Del/2021	2019-20	JAS Forwarding Worldwide Pvt.Ltd., Global Gateway Tower A, 4 th Floor, MG Road, Near Guru Dronacharya Metro St. Gurugram, Haryana- 122002. PAN-AABCJ5564A	ADIT, CPC, Bangalore	Shri Sanat Kapoor, Adv. & Shri Tarun Chanana, Adv.	--do--
21.	1657/Del/2021	2019-20	BT Data & Surveying Services India Pvt.Ltd., Level-2, Elegance Tower, Jasola District Centre, Old Mathura Road, New Delhi- 110024. PAN : AAFCB7229Q	ITO Circle-4(2), Delhi	-None-	--do--
22.	1697/Del/2021	2019-20	Finesco International, Prabhat Market, Old Rampur road, Moradabad, Uttar Pradesh-244001. PAN-AAAFF4913B	ACIT-2, Moradabad	--do--	--do--
23.	1762/Del/2021	2019-20	Hotel Excelsior Ltd., 10 th Floor, Eros Corporate Tower, Nehru Place, New Delhi-110019. PAN : AABCH1744C	DCIT, CC-1, Delhi	Shri Anubhav Jaggi, Adv.	--do--
24.	1826/Del/2021	2018-19	TFS Corporate Solutions Ltd., 23/26, 2 nd Floor, East Patel Nagar, New Delhi-110008. PAN : AACCI7069B	DCIT, Ward-25(2), New Delhi	Shri Rakesh Kumar Khiwani, CA	--do--
25.	1889/Del/2021	2019-20	Mahipal Singh, 1489, Housing Board Colony, Sector-62, Faridabad, Haryana-121004. PAN : ASJPM9607L	CIT(A), NFAC Delhi	Shri Rajesh Khandelwal, Adv.	--do--

26.	106/Del/2022	2019-20	Green Land Telecom Services Pvt.Ltd., K-701, Ambience Island, Gurgaon, Haryana-122001. PAN-AAGCG3205J	ACIT, CPC, Bangaluru	Shri Sumit Lalchandani, Adv. & Shri Abhinav Gaur, Adv.	--do--
27.	109/Del/2022	2019-20	VVDN Technologies Pvt.Ltd., 12/10, East Patel Nagar, New Delhi – 110008 PAN : AABCE7582R	DCIT, CPC, Bangalore	Shri Lalit Mohan, CA	--do--
28.	488/Del/2022	2019-20	Deepak Behl, IA-9C, Phase-I, Ashok Vihar, Delhi-110052. PAN : AEXPB7448C	ACIT, Circle – 34(1) Delhi	Shri Sanjeev Jain, CA	--do--
29.	555/Del/2022	2019-20	Manisha Tyagi, 36, Sector-9, DDA Pocket-2, Dwarka, New Delhi-110077 PAN : AJQPT1233P	JAO, Ward – 12(4), New Delhi	Shri Hemant Jain, Adv.	--do--
30.	580/Del/2022	2019-20	Global Cargo Forwarders, 142-144, Super Bazar, Station Road, Moradabad, Uttar Pradesh-244001. PAN-AACFG6868N	ACIT-2, Uttar Pradesh	-None-	--do--
31.	583/Del/2022	2019-20	Smt Babita, 331, Singla Fabricator, Urban Estate, Sector-4, Karnal, Haryana-132001. PAN : AFXPB5628K	AO, Ward-4, Karnal	-None-	--do--
32.	604/Del/2022	2018-19	Yogvir Singh, R-22, 310A, Khaneja Complex, Shakarpur, New Delhi-110092. PAN-AKZPS1283J	CPC, Circle-62(1), Delhi	-None-	--do--

Date of hearing:	26.04.2022
Date of Pronouncement:	26.04.2022

ORDER

PER BENCH :

The present appeals are filed by the above mentioned assesseees feeling aggrieved by the orders passed by appellate authority for various assessment years mentioned hereinabove.

2. Since the issue in all the appeals is common and is related to disallowance of employee's contribution of PF/ESI on account of delay in deposits as per the respective Acts. Therefore, we clubbed all of them together for the sake of brevity and convenience and disposing the same by way of this consolidated order. However, we are taking **ITA No.747/Del/2021 [Assessment Year -2018-19]** as a lead case wherein the assessee has raised the following grounds:

1. *“That the CIT(A) has erred on facts and in law in confirming addition of Rs.1,31,24,654 on account of delay in payment of employee's contribution to provident fund as per provision of section 36(l)(va) read with Section 2(24)(x) of the Act.*

1.1 *The Ld. CIT(A) has erred in law in relying on the amendment made by the Finance Act, 2021.*

1.2 *The Ld. CIT(A) has erred in law in not following the decision of Hon'ble High Court of Delhi in the case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 read with law laid down by Hon'ble Apex Court in the case of Vatika Township Private Limited 367 ITR 466.*

1.3 *Without prejudice to above, the Ld. CIT(A) has erred in law in not considering the submission of the appellant wherein it has been stated that the payment was made within the due date (i.e. on 14-08-2017) however due to system glitches the PF*

authorities could able to generate challan at later date (i.e. on 16-08-2017).

The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”

3. Similar grounds with different amounts and assessment years have been raised in other appeals but however, the sum & substance and the issues 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 have been made in the intimation issued by CPC, Bangalore u/s 36(1)(va) of the Income Tax Act, 1961 (“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 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 Sr. 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. in ITA No.983/2018 [Del.]*** order dated 10.09.2018 held 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 Ld. Sr. 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 01st 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, the 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 and respectfully following the decision of the Hon'ble Jurisdictional High Court of Delhi cited hereinabove, we allow the appeal filed by the assessee.

10. In the result, the appeal of the assessee is allowed.

11. In the final result, all appeals of the assessee are allowed.

Order pronounced in the open court on 26.04.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI