

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

Sr. Nos	ITA No(s)	Asst. Year(s)	Appeal(s) by		Assessee By	Revenue By
			Appellant	vs. Respondent		
			Appellant	Respondent		
1.	97/Del/2022	2019-20	Shankar Fenestration & Glasses India Pvt.Ltd., F-3, South Side, G.T.Road, Industrial Area, Vijay Nagar, Ghaziabad, Uttar Pradesh-201001. PAN : AAYCS8335H	Assessing Officer, Ward-2(2)(3), Ghaziabad	Shri Rakesh Kumar, CA	Shri Sanjay Kumar Nargas, Sr. DR
2.	111/Del/2022	2019-20	Dayal Industries Pvt.Ltd., C/o-Sanjiv Sapra & Associates, LLP Chartered Accountants, C-763, New Friends Colony, New Delhi-110019. PAN-AABCD2004M	Assessing Officer, Circle-1(1)(1), Meerut	Shri Sanjay Sapra, FCA	--do--
3.	124/Del/2022	2018-19	Shradha Saburi Hospilatities P.Ltd., CB-190, Ground Floor, Naraina Village, New Delhi-110028. PAN-AAICS9541F	DCIT, Circle-22(2), New Delhi	--None--	--do--
4.	127/Del/2022	2019-20	Naresh Kumar Chawla, House No.2272, Sector-9, Faridabad, Haryana-121006. PAN-AAUPC9820C	ADIT, Bengaluru	Shri S.K.Bansal, CA	--do--
5.	291/Del/2022	2019-20	Mare Sanitation Pvt.Ltd., A-2, SMA Co-op, Industrial Estate, New Delhi-110033. PAN-AAACM8683J	DDIT, CPC, Bengaluru	Shri Sant Kapoor, Adv.	--do--
6.	292/Del/2022	2018-19	--do--	--do--	--do--	--do--
7.	293/Del/2022	2019-20	Dinesh Bhardwaj, A-5, Ashok Vihar, Gurgaon, Haryana. PAN-BBDPD3698C	DCIT, CPC, Banglore	--None--	--do--
8.	310/Del/2022	2018-19	IDP Education India Pvt.Ltd., 5 th , 6 th & 7 th Floor, Tower-B, Global Gateway, Village Sikanderpur, Ghosi Sector-6, Gurgaon, Haryana-122002. PAN-AABCI6253M	Assessing Officer, National e-Assessment Centre, Delhi	S/Shri Kamal Sawhney, Adv. & P. Mehrchandani, Adv.	--do--
9.	311/Del/2022	2019-20	--do--	ADIT, CPC Bengaluru	--do--	--do--

10.	313/Del/2022	2018-19	Rohit Salwan, A-97/1, New Ashok Nagar, Delhi-110096. PAN : ATXPS1785L	DCIT, CPC Bengaluru	--None--	--do--
11.	328/Del/2022	2019-20	Sansun Staffing Solutions Pvt.Ltd., B—102/2, East of Kailash, South Delhi, New Delhi. PAN : AAICS2876B	ITO, Ward-22(3), New Delhi	Shri Shrey Chakarbarty, Adv.	--do--
12.	341/Del/2022	2018-19	TK Elevator India Pvt. Ltd. (Earlier known as Thyssenkrupp Elevator India Pvt.Ltd.), Plot No.429, Functional Industrial Estate, Patparganj, Delhi-110092. PAN-AABCT6921F	ACIT, Circle-25(1), New Delhi	Shri Pravesh Sharma, Adv	--do--
13.	388/Del/2022	2018-19	Salve Pharmaceuticals Pvt.Ltd., Plot No.48, Second Floor, Rama Road, Najafgarh Road Industrial Area, Kirti Nagar, Delhi-110088. PAN : AAJCS6793C	CPC Bangalore	Shri Manoj Sabarwal, Adv.	--do--
14.	546/Del/2022	2018-19	Pankaj Kumar, C/o-PKSN Associates, IG-43BP, 2 nd Floor, NI, Faridabad, Haryana-121001. PAN : AIOPK6966D	ITO, Ward-3(2), Gurgaon.	--None--	--do--
15.	653/Del/2022	2019-20	Rakesh Kumar Gutpa, C-111, Antriksh Apartment, Sector-14, Rohini, Delhi-110085. PAN : AAKPG4091R	Assessing Officer, Delhi	Shri Suresh K Gupta, CA	--do--
16.	665/Del/2022	2018-19	Shri Garuna Management Service Pvt.Ltd., C/o-Kapil Goel, Adv., F-26/124, Sector-7, Rohini, New Delhi-110085. PAN : AAWCS2278K	DCIT, CPC, Ward-27(3), New Delhi.	S/Shri Kapil Goel, Adv. & Sandeep Goel, Adv.	--do--
17.	673/Del/2022	2019-20	Venus Hotelware Pvt.Ltd., 39, DLF Industrial Area, Kirti Nagar, New Delhi-110015. PAN : AAACVO339A	Assessing Officer, Ward-26(2), Delhi	Ms. Vibha Kulkarni, Adv. & Sh. H.Aggarwal, Adv.	--do--
18.	696/Del/2022	2019-20	S.V.S.Facilitators, C-96, Anand Niketan, New Delhi-110021. PAN-ACFFS7777P	ADIT, Banglore	Shri J.S.Kochar, CA	--do--
19.	698/Del/2022	2018-19	Shri Ashok Kumar, 874/2, 2 nd Floor, Bus Stand Near Mamta Hospital, Secto-12A, Chowkk Main Post Office, Gurgaon,	ITO, Gurgaon	Shri Krishna Kumar, CA	--do--

			Haryana-122001. PAN : AQKPK0286E			
20.	699/Del/2022	2019-20	--do--	--do--	--do--	--do--
21.	734/Del/2022	2018-19	Stelatoes Shoe Bazar, J-87, Shop No.3, Main Market, Rajouri Garden, New Delhi-110027. PAN : ABLFS9758H	DCIT, CPC, Bengaluru	Shri Yishu Goel, CA	--do--
22.	744/Del/2022	2018-19	GDA Security P.Ltd., 604-611, Eros Apartment, 56, Nehru Place, New Delhi-110019. PAN-AAACG1109P	CPC, Bangalore	--None--	--do--
23.	745/Del/2022	2019-20	GDA Security P.Ltd., 601-603, Eros Apartment, 56, Nehru Place, New Delhi-110019. PAN-AAACG1109P	CPC, Bangalore	--None--	--do--
24.	750/Del/2022	2017-18	Prime Services, F-30, Moti Nagar, New Delhi-110015. PAN-AAEFP1841N	ACIT, Circle-43(1), Delhi	Shri Manoj Sabharwal, Adv.	--do--
25.	751/Del/2022	2018-19	--do--	--do--	--do--	--do--
26.	776/Del/2022	2019-20	VE Commercial Vehicle Limited, 3 rd Floor, Select City Walk A-3, District Centre, Saket, New Delhi-110017. PAN-AABCE9378F	Asst. DIT, CPC, Bengaluru	Ms.Manisha Sharma, Adv.	--do--
27.	935/Del/2021	2019-20	Rommana Herbal Care Pvt.Ltd., E-43, Flatted Factory Complex, Jhandewalan Extension, New Delhi-110055. PAN : AAECR1038C	ADIT, CPC, Bengaluru	Shri Arvind Kumar Mehashwari, CA	--do--
28.	962/Del/2021	2019-20	Amar Ujala Ltd., 1101, 11 th Floor, Antriksh Bhawan, 22, K.G.Marg, New Delhi-110001. PAN : AADCA0275H	CPC, ITD Bengaluru	Shri Ashish Goel, CA	--do--
29.	1024/Del/2021	2018-19	Dayal Fertilizers Pvt. Ltd., C/o-Sanjiv Sapra & Associates LLP, Chartered Accountants, C-763, New Friends Colony, New Delhi-110025. PAN : AAACD8005H	DCIT, CPC, Bangalore	Shri Sanjeev Sapra, CA & Shri Satish Sapra, Adv.	--do--
30.	1085/Del/2021	2018-19	Vidhyut Control (India) Pvt.Ltd.,D-12, Kavi Nagar Industrial Area, Sector-17, Ghaziabad, Uttar	DCIT, CPC, Bangalore	Shri Sunil Gupta, CA	--do--

			Pradesh-201002. PAN-AAACV4403B			
31.	1101/Del/2021	2018-19	Dinesh Kumar, C/o-Pankaj Mahesh & Co., F-36, First Floor, Raheja Square, Opp. Medeor Hospital, IMT Manesar, Gurgaon, Haryana-122050. PAN : BKMPK1962N	ITD, CPC, Bengaluru	Shri Manoj Garg, CA	--do--
32.	1102/Del/2021	2019-20	--do--	--do--	--do--	--do--
33.	1105/Del/2021	2019-20	Nepal Singh, House No.724, Secotr- 3, Faridabad, Haryana-121004. PAN-AONPS8818M	ADIT, CPC, Bangalore.	--None--	--do--
34.	1143/Del/2021	2017-18	Munish Ahmed, Mohalla Imam Sahab, Old Gohana Road, Ward-20, Panipat, Haryana-132103. PAN- ADXPA0591N	ITD, CPC, Bengaluru.	Shri Canitin Kanwar, Adv.	--do--
35.	1155/Del/2021	2018-19	Dilbag Singh Kahlon, C-22, Green Park Main, New Delhi-110016. PAN-AFMPK2345B	Jurisdictional Assessing Officer, New Delhi	--None--	--do--
36.	1156/Del/2021	2019-20	--do--	--do--	--None--	--do--
37.	1183/Del/2021	2019-20	Cargo Construction Company Pvt.Ltd., 1/9-B, Jindal House, Asaf Ali Road, New Delhi-110002. PAN-AAACC5291J	DCIT, Circle-4(2), New Delhi.	Shri Ashok Khandelwal, CA	--do--
38.	1184/Del/2021	2019-20	Cargo Motors Pvt.Ltd., 1/9-B, Jindal House, Asaf Ali Road, New Delhi-110002. PAN-AAACC2744C	DCIT, Circle-4(2), New Delhi.	--do--	--do--
39.	1187/Del/2021	2018-19	Bird Execujet Airport Services Pvt.Ltd., E-9, Connaught Place, New Delhi-110001. PAN-AACCB7218E	NFAC, New Delhi	--None--	--do--
40.	1213/Del/2021	2018-19	Source Soft Solution Pvt.Ltd., House No.61, Lane No.2, Krishna Nagar, A-1, Safdarjung Enclave, Vinay Nagar, New Delhi-110029. PAN-AALCS1030J	ITD, CPC, Bengalure.	--None--	--do--
41.	1234/Del/2021	2018-19	M/s. Elegant Overseas, 507, Express Tower, Commercial Complex, Azadpur, New Delhi-110033. PAN-AAAFE2738F	ITO, CPC, Bengaluru	Shri S.Krishanan, Adv.	--do--
42.	1235/Del/2021	2019-20	--do--	--do--	--do--	--do--
43.	1247/Del/2021	2018-19	M/s. Technico Industries Ltd.,	CPC, Bangalore	Shri Rahul Chaurasia,	--do--

			103, Pratap Bhawan Bahadurshah Zafar Marg, New Delhi-110002. PAN-AAACT4445P		CA	
44.	1304/Del/2021	2019-20	Jain Industrial Products, 47, 70, IDC, Hisar Road, Hisar, Haryana-124001. PAN-AAAFJ5741R	DCIT, CPC, Bengalure	Shri Lalit Mohan, Adv.	--do--
45.	1434/Del/2021	2019-20	B M Gupta Estates Pvt.Ltd., 5948 & 5949, Room No.2, Basti Harphool Singh, Sadar Thana Road, New Delhi-110006. PAN-AADCA0609B	ADIT, CPC, Delhi	Shri Saten Setri, Adv.	--do--
46.	1435/Del/2021	2018-19	Vijay Pal Singh, Shop No.05, Amar Shree Complex, Delhi Road, Meerut, Uttar Pradesh-250002. PAN-ADLPS2026A	ADIT, CPC, Bengaluru	Shri Rajeev Mago, CA	--do--
47.	1436/Del/2021	2018-19	Harish Chander, 274/3, Khandsa Road, Hari Nagar, Gurgaon, Haryana-122001. PAN-AGEPC7410N	ADIT, CPC, Bengaluru	--do--	--do--
48.	1437/Del/2021	2019-20	--do--	DCIT, CPC, Bengalure	--do--	--do--
49.	1513/Del/2021	2018-19	Airif Engineers Pvt.Ltd., 117, Tagore Garden, Model Town, New Delhi-110009. PAN-AADCA8285H	DCIT, CPC, Bengaluru	Shri Vijay Singla, CA	--do--
50.	1580/Del/2021	2019-20	Lumenis India Pvt.Ltd., B-376, 3 rd Floor, Nirman Vihar, Near Legal Banquet Hall, New Delhi-110092. PAN-AABCL1617J	ADIT, CPC, Delhi	--None--	--do--
51.	1601/Del/2021	2019-20	Singla Motors Pvt.Ltd., Pingli Road, Karnal, Haryana-132001. PAN-AAPCS1308D	DCIT, Circle, Karnal	--None--	--do--
52.	1602/Del/2021	2018-19	Kishiv Motors Pvt.Ltd., 103, Sector-14, Urban Estate, Kaithal, Haryana-132001. PAN-AADCK9038J	DCIT, Circle, Karnal	--None--	--do--
53.	1605/Del/2021	2018-19	Sunridges Sporting Goods Pvt.Ltd.,C-32- C/o-R.K.Garg, Adv., T- 314, Ganga Plaza, Meerut-250001. PAN-AAKCS4748L	Assessing Officer, Circle-2(1), Meerut	--None--	--do--
54.	1706/Del/2021	2019-20	Systematic	ITO,	Shri Sushil	--do--

			Communication Pvt.Ltd., 216, RG Square, Patparganj, New Delhi-110092. PAN-AAGCS6646F	Ward-22(4), New Delhi	Wadhva, CA	
55.	1756/Del/2021	2018-19	Chase Detective & Security Agency Pvt.Ltd., G-8, GF 56/1, Kalu Sarai, Begum Pur, Malviya Nagar, New Delhi-110017. PAN-AACCC5574E	DCIT, CPC, Bengaluru	Shri Shrey Chakarbarty, Adv	--do--
56.	1874/Del/2021	2019-20	Triple Play Interactive Network Pvt.Ltd., Premises No.1002, 10 th Floor, Galleria Complex, Gurgaon, Haryana-122009. PAN-AADCT3507B	CIT(A), NFAC	Shri Tilak Channa, Adv	--do--
57.	1876/Del/2021	2018-19	Sukbir Singh, F-2469, Ansal Palam Vihar, Gurgaon, Haryana-122917. PAN-AQRPS3030P	DCIT, CPC, Bengaluru	--None--	--do--
58.	1878/Del/2021	2018-19	Quality Buildcom Pvt.Ltd., 301-305, 3 rd Floor, Anupam Arcade, Mayur Vihar Extension, Phase-I, Delhi-110091. PAN-AAACQ0168L	CIT(Appeals), NFAC	Shri Satya Ahuja, CA	--do--
59.	1916/Del/2021	2019-20	Welgrow Hotels Concepts O.Ltd., B-6, Geetanjali Enclave, Malviya Nagar South, New Delhi-110017. PAN-AAACW5407C	ITO, Ward-27(3), New Delhi	Shri S.Krishanan, Adv.	--do--
60.	1876/Del/2021	2018-19	Sukbir Singh, F-2469, Ansal Palam Vihar, Gurgaon, Haryana-122917. PAN-AQRPS3030P	DCIT, CPC, Bengaluru	--None--	--do--
61.	1940/Del/2021	2018-19	Sheryl Strategic Solutions Pvt.Ltd., 418, Manhatan 09 Tower, Mahagun Moderne, Sector-78, Gautam Budh Nagar, Noida-201301. PAN-AAXCS5193A	Ward-5(1)(1), Gautam Budh Nagar	--None--	--do--
62.	1945/Del/2021	2018-19	Rakesh Kumar Sharma, H.No.2, SD-5, Sector-45, Sadarpur, Noida, U.P-201301. PAN-FEJPS9471H	Ward-5(3)(1), Gautam Budh Nagar	--None--	--do--
63.	1957/Del/2021	2019-20	Kaizen Metal & Forming Pvt.Ltd., J-89, UPSIDC Site-5,	DCIT, Ward-14(1), Delhi	Shri Anuj Tiwari, Adv.	--do--

			Industrial Area, Area Kasna, Gr.Noida, Ghaziabad, U.P. PAN-AACCK1286B			
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Date of hearing:	18.05.2022
Date of Pronouncement:	18.05.2022

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.97/Del/2022 [Assessment Year -2019-20]** as a lead case wherein the assessee has raised the following grounds:

1. *"Ld. CIT(A) has erred in law and on merits of the case was not justified in confirming the addition of Rs 40504/- & Rs. 236490/- made by A.O (CPC) on account of late deposit of employee contribution towards ESI/PF , even it is paid before due date of filing of ITR in view of Section 43B of the Income Tax Act, 1961 and ignored various judicial pronouncement cited by the assessee like CIT v.*

Alom Extrusions Ltd. [2009] 319 ITR 306 (SC); CIT v. Vinay Cement Ltd. [2007] 213 CTR 268 (SC); Pr. CIT v. Raj. State Bev. Corpn. Ltd. [2017] 84 taxmann.com 185 (SC); CIT v. AIMIL Limited [2010] 321 ITR 508 (Delhi)

In a latest order dated 10.09.2018 the Jurisdictional High Court of Delhi in ITA 983/2018 Pro Interactive Service (India) Pvt. Ltd has held this issue in the favor of assessee and held that: 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.”

2. *CIT(A) has erred in law in confirming the disallowance of employee contribution to ESI in the light of amendment in sections 36(1)(va) as well as in section 43B by inserting corresponding Explanations through Finance Act, 2021. Although the impugned employee PF/ESI now comes under the provision of section 36(1)(va) only, but the memorandum explaining Finance Bill, 2021 says that these amendments will take effect from 01.04.2021 and will accordingly apply to AY 2021-22 and subsequent Assessment Years. Thus the legislature itself has condoned the impugned default before 01.04.2021.*
3. **Latest Case Laws relied upon After amendment in Finance Act 2021(Covered Matter)**

Insta Exhibitions Private Limited vs ACIT ITA No 6941/DEL/2017 (and ITA no 4959/DEL/2016) wherein it was held that belated payments of ESI and PF cannot be treated as deemed income u/s 2(24). Further it was held that 'notes on clauses introducing Finance Bill holds that amendment is effective from A.Y 2021-22' and thus deleted the addition on this account.

Shashi Rajawat u/s ITO (ITAT Jaipur) (Pronounced on 12.10.2021)

Employee contribution towards ESI/PF though paid before due date of filing of return of Income Tax u/s 139(1) is hereby directed to be deleted. CIT (A) referred explanation to 36(1)(v)(a) and 43 B by Finance Act 2021 and referred the rationale of amendment as explained in memorandum, However, he has simply failed to consider the express wording as the ITAT memorandum which say "these amendments will take effect from 01.04.2021 and will accordingly apply to assessment year 2021-22 and subsequent assessment years.

Vansh Jain vs ITO (ITA No.1853/Del/2020) (Pronounced on 13.10.2021)

Since in the instant case the assessee admittedly has deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return, therefore, respectfully following the decisions cited (supra), I hold that the Ld. CIT(A) is not justified in sustaining the adjustment made by the A.O-CPC of Rs.3,26,330/- on account of belated payment of employees' contribution to

PF & ESI. I, therefore, set aside the order of the Ld. CIT(A) and direct the A.O. to delete the disallowance. The grounds raised by the assessee are accordingly allowed.

***Adama Solution Pvt. Ltd., New Delhi
ITA.No.1800/Del./2020 (Order pronounced on
13.10.2021)***

The amendment made in section 36(1)(va) is effective from 01.04.2021 and will, accordingly apply in relation to A.Y. 2021-2022 and subsequent assessment year. In view of this we allow the solitary ground of appeal raised by the assessee holding that the addition/ disallowance made by the learned assessing officer of late deposit of employees contribution to the provident fund and ESI, as it is deposited before the due date of the filing of the return of an income but beyond the due date prescribed Under the respective provident fund and ESI laws is not sustainable in law. In the result, appeal of the assessee is allowed."

Since in the instant case the assessee admittedly has deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return, therefore, respectfully following the decisions cited (supra), I hold that the Ld. CIT(A) is not justified in sustaining the adjustment made by the A.O-CPC."

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 prospectively 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.

10. We have proceeded to conclude the issue of allowability of expenses attributable to employee provident fund and employee state insurance scheme on the assurance that the employee's contributions towards PF & ESI have been deposited before the due date of filing of return of income. However, the Revenue shall be at liberty to seek restoration of the appeal where it is found as a matter of fact that the assessee has failed to deposit the employee's contribution before the due date of filing of return of income stipulated u/s 139(1) of the Act in accordance with law. In view of the above and respectfully following the decision of the Hon'ble Jurisdictional High Court of Delhi cited hereinabove, we allow the appeals filed by the captioned assessees.

11. Apropos to **ITA No.111/Del/2022** concerning **Assessment Year 2019-20** in the case of **Dayal Industries Pvt.Ltd.** appearing at Serial No.2 captioned above, it was pointed out on behalf of the assessee that the factual position in the instant case is materially different vis-à-vis other cases. It was pointed out that there was no delay whatsoever on the part of the assessee to deposit employee's contribution towards PF & ESI as stipulated under the respective

Acts. However, typographical error occurred in the Tax Audit Report for which the relevant facts were placed before the Ld.CIT(A) as well. The relevant facts have also placed on record before the Tribunal as well.

12. In the result, all captioned appeals of the respective assesseees are allowed.

Order pronounced in the open court on 18.05.2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Date:-18.05.2022

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI