

**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.	324/Del/2022	2019-20	Manifold E-Connect Limited, EF-R/8, 3 rd Floor, Inderpuri, New Delhi - 110012. PAN : AABCV7718C	ITO, New Delhi	--None--	Shri Sanjay Kumar Nargas, Sr. DR
2.	342/Del/2022	2018-19	Ankit Aggarwal, 503, FIE, Patparganj, Delhi-110092. PAN-ADQPA8599K	ACIT, Central Circle-18, Delhi	--None--	--do--
3.	343/Del/2022	2019-20	--do--	--do--	--None--	--do--
4.	351/Del/2022	2018-19	Om Innovation Call Services Pvt.Ltd., C-7, Community Centre, Janak Puri, Delhi-110058. PAN-AAACO7862P	CIT(A), Circle-19(1), NFAC, Delhi	Shri Anil Chopra, CA	--do--
5.	352/Del/2022	2019-20	--do--	--do--	--do--	--do--
6.	532/Del/2022	2019-20	Deepali Design & Exhibits Pvt.Ltd., GN-06, Shivaji Enclave, Rajouri Garden, New Delhi-110027 PAN : AABCD5680K	AO, Central Circle-17, Delhi	Shri Amit, AR	--do--
7.	652/Del/2022	2018-19	Rakesh Kumar Gupta, C-111, ANtriksh Apartment, Sector-14, Rohini, New Delhi- 110085. PAN-AAKPG4091R	AO, Ward-38(3), Delhi	Shri Suresh K.Gupta, CA	--do--
8.	654/Del/2022	2018-19	Acclaim Industries, 405, Savera Apartments, Sector-13, Rohini, New Delhi-110085. PAN-AAVFA8829L	ADIT, Circle-36(1), Delhi	--do--	--do--
9.	728/Del/2022	2019-20	Fabcare Garments & Textile machinery Pvt.Ltd, 81-A, GH-10, Sundar Apartment, Outer Ring Road, Paschim Vihar, New Delhi-110087. PAN : AAACF7934R	CPC Bangalore	-None-	--do--
10.	735/Del/2022	2018-19	S.S.R.Retail, Shop No.21, Sarojini Nagar Market, New Delhi-110023.	ADIT, CPC Bengaluru	Shri Yashu Goel, CA	--do--

			PAN : ABYFS1420R			
11.	736/Del/2022	2018-19	Stelatoes Shoes & Accessories Pvt.Ltd., A-42, Gate no.1, Mayapuri Industrial Area, Phase-2, New Delhi-110064. PAN : AAMCS4060R	DCIT, CPC Bengaluru	Shri Madhava Kapoor, Adv.	--do--
12.	737/Del/2022	2018-19	Jaguar Security Services Pvt.Ltd., C/o-B.K.Kapur & Co., Chartered Accountants, 17 Navyug Market, Ghaziabad, Uttar Pradesh-201001. PAN : AAACJ3711E	CPC Banglore	--do--	--do--
13.	738/Del/2022	2018-19	M.N. Automobile Pvt.Ltd., C/o-B.K.Kapur & Co., CAs, 17 Navyug Market, Ghaziabad, Uttar Pradesh-201001. PAN : AABCS8165N	CIT(A), NFAC, New Delhi	--do--	--do--
14.	754/Del/2022	2019-20	Canary Agro Chemicals Pvt.Ltd., 7, Shopping Centre, Karampura, New Delhi-110015. PAN : AAACDO498C	CIT(A), Circle-5(2), Delhi	Shri Ajay Kumar Aggarwal, AR.	--do--
15.	770/Del/2022	2018-19	Brij Polymers Pvt.Ltd., A-62, Saraswati Vihar, Pitampura, Delhi-110034. PAN : AAACB3029K	DCIT, CPC, Bengaluru	Shri Yashu Goel, Adv.	--do--
16.	771/Del/2022	2019-20	--do--	ACIT, CPC, Bengaluru	--do--	--do--
17.	772/Del/2022	2018-19	B.S. Enterprises, B-273, Mangolpuri Industrial Area, Delhi-110083. PAN : AAGFB9940G	DCIT, CPC, Bengaluru	--do--	--do--
18.	773/Del/2022	2017-18	VE Commercial Vehicles Ltd., 3 rd Floor, Select City Walk, A-3, District Centre, Saket, New Delhi-110017. PAN-AABCE9378F	DCIT, CPC, Bengaluru	Ms. Manisha Sharma, Adv.	--do--
19.	768/Del/2022	2018-19	--do--	ADIT, CPC, Bengaluru	--do--	--do--
20.	780/Del/2022	2019-20	A.K.Automatics, Hissar Road, Rohtak, Haryana-124001. PAN-AABFA4065A	DCIT, CPC, Bangalore	--None--	--do--
21.	818/Del/2022	2018-19	TRIO Security & Intelligence Pvt.Ltd., I-36, Lajpat Nagar-IST, New Delhi-110024. PAN : AAACB5352R	AO, Ward-25(4), Delhi	--None--	--do--

22.	819/Del/2022	2018-19	--do--	AO, Ward-25(4), Delhi	--None--	--do--
23.	837/Del/2022	2018-19	Gaurav International, B-34, Mayapuri Industrial Area, Phase-I, Delhi-110064. PAN : AAAFG5920D	ADIT, CPC, Bangalore	Shri K V S R Krishna, CA	--do--
24.	847/Del/2022	2019-20	Kamal Dixit, 240, VPO-Bhainsra Wali, Ballabgarh, Faridabad, Haryana-121004. PAN-ASTPD3725G	CIT(A), NFAC, Delhi	--None--	--do--
25.	853/Del/2022	2019-20	Saroj Gautam, House No.326/G.F., Sector-9A, Gurgaon, Haryana-122001. PAN : AHYPG2373B	CIT(A), Gurgaon	Shri R.K.Gour, CA	--do--
26.	850/Del/2022	2019-20	Rishi Prakash, C/o-Umang Sahai Aggarwal, Adv., 505, Maitri Apartment, Opp. Metro Pillar 411, Sector-9, Rohini, Delhi-110085. PAN-ADZPS3716M	CIT(A), Rohtak	Shri U.S.Aggarwal, Adv.	--do--
27.	858/Del/2022	2019-20	Supple Tek Foods, M/s Supple Tek Foods, Kurak Road, Taraori Nilokheri, Karnal, Haryana- 132117. PAN : ACFFS6407G	DCIT, Karnal	Shri Nimish Nagpal, CA	--do--
28.	1290/Del/2021	2019-20	Chetan Bhandari, 4/20, W E A, Karol Bagh, New Delhi-110005. PAN : AADPB3548H	ITD, CPC, Bengaluru	Shri Bishnu Bhaswan Gupta, Adv.	Shri H.K. Chaudhary, CIT DR
29.	1457/Del/2021	2018-19	Krishan Pal Sharma, F-1601, GPL Eden Heights Tower-F, Darbar Pur Road, Sec- 70, Near Badshah Pur, Gurgaon-122001. PAN : ADLPS4970R	DCIT, CPC, New Delhi	--do--	--do--
30.	10/Del/2022	2018-19	Trans Metalite India Ltd., 4417/7, Ansari Road, Daryaganj, Delhi-110002. PAN-AAACT0351N	DCIT, CPC, Bangalore	Shri Bishnu Khandelwal, Adv.	--do--
31.	11/Del/2022	2019-20	--do--	--do--	--do--	--do--
32.	31/Del/2022	2018-19	Universal Engineering Corporation, Sabri Mill Compound, Ambala Road, Saharanpur, U.P.-247001. PAN-AAAFU2219D	CIT(A), New Delhi	--None--	Shri Sanjay Nargas, Sr.DR
33.	66/Del/2022	2018-19	Ahluwalia Contracts India Ltd., A-177,	ACIT, CC-31,	Shri Vishal Shekhar, CA	Shri H.K. Chaudhary,

			Okhla Industrial Area, Phase-I, Delhi-110020. PAN-AABCA4304K	New Delhi.		CIT DR
34.	70/Del/2022	2017-18	Shri Naresh Chandila, H.No.1375/1, Julahan Basti Nangal Raya, Delhi-110016. PAN-AIOPC1991N	CPC, Bengaluru/ ITO, Ward- 49(4), Delhi	--None--	Shri Sanjay Nargas, Sr.DR
35.	71/Del/2022	2019-20	Javi Systems India Pvt.Ltd., H.No.AI/45, Sushant Lok-2, Sector-55, Gurgaon, Haryana-122011. PAN-AABCJ7817L	ADIT, CPC, Bangalore	--None--	--do--
36.	72/Del/2022	2018-19	Overdrive Electronics Pvt.Ltd., C-121, Hosiery Complex, Phase-2, Gautam Budh Nagar, U.P-201305. PAN-AAECM3076D	DCIT, CPC, Bengaluru	Shri M.K. Aggarwal, AR	Shri H.K. Chaudhary, CIT DR
37.	86/Del/2022	2018-19	Kunstocom India Ltd., B-27, Defence Colony, Delhi-110024. PAN-AAACK0356L	DCIT, Circle-13(1), Delhi.	--None--	Shri Sanjay Nargas, Sr.DR
38.	95/Del/2022	2018-19	Cosmos Industries Ltd., 202, Thapar Arcade, 47, Kalu Sarai Hauz Khas, New Delhi- 110016. PAN-AAACC6682R	CIT Appeal, NFAC, Delhi	--None--	--do--
39.	107/Del/2022	2019-20	Virtuous India Pvt.Ltd., O-92, Bank Street, Munirika, South West Delhi, Delhi-110067. PAN-AADCV2741D	Asst.DIT, CPC, Bengaluru	Ms. Ananya Kapoor, Adv. & Shri Amarbir Singh, Adv.	Shri H.K. Chaudhary, CIT DR
40.	128/Del/2022	2018-19	Kaizen Metel Forming Pvt.Ltd., 40, Kirti Nagar, Delhi-110015. PAN-AACCK1286B	CPC, Bengaluru	--None--	Shri Sanjay Nargas, Sr.DR
41.	172/Del/2022	2019-20	Sunil Kumar, F-39, 1 st Floor, Raheja Square, Sector-2, Imt Manesar, Gurgaon, Haryana-122001. PAN-AMYPK5336R	CIT(A), NFAC, Delhi	Shri Manoj Garg, CA	Shri H.K. Chaudhary, CIT DR
42.	234/Del/2022	2015-16	Global Canesugar Services Pvt.Ltd., TDI Centre, Plot No.7, Jasola, Delhi. PAN-AAFCG2309A	DCIT, Circle-10(1), Delhi	--None--	Shri Sanjay Nargas, Sr.DR
43.	235/Del/2022	2018-19	Indigo Infra Projects Pvt.Ltd., WZ-13, D-2, 1 st Floor, Opposite A-2, Gurudwara Asaltpur, Janakpuri, Delhi-110058. PAN-AACCI8551P	CIT(A), Delhi	Shri Tarun Kandari, CA & Ms. Renu Suri, CA	Shri H.K. Chaudhary, CIT DR
44.	241/Del/2022	2018-19	Cosmos Systems, C-	DCIT,	--None--	Shri Sanjay

			128/2, Mohamadpur Bhikajicama Place, Delhi-110066. PAN-AAJFC3954E	CPC, Bangalore		Nargas, Sr.DR
45.	248/Del/2022	2019-20	Professional Catering Service P.Ltd., 3925 28 203, Padam Chambers, Padam Singh Road, Karol Bagh, Delhi-110005 PAN-AAACP7697P	DCIT, CPC, Bangalore	--None--	--do--
46.	250/Del/2022	2017-18	Superior Manpower Services Pvt.Ltd., DSM 609-610, 6 th Floor, DLF Towers, Shivaji Marg, Najafgarh, Moti Nagar, Delhi-110015 PAN-AAJCS6616E	CPC, Bengaluru	Ms. Ananya Kapoor, Adv. & Shri Amarbir Singh, Adv.	Shri H.K. Chaudhary, CIT DR
47.	251/Del/2022	2019-20	--do--	--do--	--do--	--do--
48.	256/Del/2022	2018-19	Everest Beverages & Food Industries, D-21, Industrial Estate, Partapur, Meerut, U.P.-250002. PAN-AAAFE2833M	DCIT, CPC	--None--	Shri Sanjay Nargas, Sr.DR
49.	307/Del/2022	2018-19	Krishan, K K Plaza, 3 rd Floor, Sheila Bye Pass Sonipat Road, Rohtak, Haryana-124001. PAN-APSPK5145H	ADIT, CPC, Bangalore	--None--	--do--
50.	308/Del/2022	2019-20	Ind Sanitation Solutions Pvt.Ltd., 43/44, Second Floor, Maa Gayatri Complex, Rohtak, Haryana-124001. PAN-AAECI2759K	ADCT, CPC, Bangalore	--None--	--do--
51.	312/Del/2022	2018-19	Rohde & Schwarz India Pvt.Ltd., A-27, 1 st Floor, Mohan Corporative Industrial Estate, Mohan Corporative, Mathura Road, New Delhi- 110044. PAN-AAACR3267P	DCIT, CPC, Bangalore	Shri Vishal Kalra, Adv. & Shri Ankit Sahni, Adv.	--do--
52.	320/Del/2022	2018-19	Harjit Singh Boparai, C Flat No.736, Sector-29, Noida, Gautam Budh Nagar, Uttar Pradesh-201301. PAN-AEZPB8775L	ACIT, CPC, Bangaluru	Shri Sumit Lalchandani, Adv. & Shri Abhinav Gaur, Adv.	--do--

Date of hearing:	19.05.2022
Date of Pronouncement:	19.05.2022

ORDER**PER BENCH :**

The present appeals are filed by the above mentioned assessee 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.324/Del/2022 [Assessment Year -2019-20]** as a lead case wherein the assessee has raised the following grounds:

1. *“That the Ld. CIT(A) has not afforded a proper opportunity of being heard in so far as the relying on certain judgments not confronted to the assessee before rejecting the contentions in the Written Submissions filed, thereby violating the principles of natural justice.*
2. *That the Intimation order by CPC u/s 143(1) dated 28/07/2020 is bad in law on the facts of the case and that Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the addition made in the Intimation.*

3. *That the CIT(A) has grossly erred in sustaining the addition of Rs. 6,75,861/- made in the Intimation order by CPC, u/s 143(1), of the ESI/PF of Employees Contribution paid before the due date of filing the return of income. That the addition so made in the Intimation needs to be deleted.*
4. *That the Ld. CIT(A) has erred in not appreciating that the CPC has no power to make such adjustment u/s 143(1) when no such disallowance has been reported by the Tax Auditor in Clause 20(b) of the Form 3CD. Hence the illegal disallowance made by CPC of Rs.6,75,861/- needs to be deleted.*
5. *That the assessee craves indulgence to add, amend, alter, modify or take additional grounds of appeal.”*

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 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. 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. Apropos to **ITA No.754/Del/2022** concerning **Assessment Year 2019-20** in the case of **Canary Agro Chemicals Pvt.Ltd.**, appearing at Serial No.14 captioned above, it was pointed out that the belated payment of employee's contribution towards PF & ESI in the proceedings having regard to the respective Acts, have already been disallowed by the assessee while computing the taxable income and thus such disallowance again made on account

of delay by the Revenue has resulted in double disallowance. It was further contended that this submission is without prejudice to the legal position enunciated by the Hon'ble High Court in the case of ***PCIT vs Pro Interactive Service (India) Pvt.Ltd.*** (*supra*).

11. 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.

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

Order pronounced in the open court on 19.05.2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI