

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

Sr. Nos	ITA No(s)	Asst. Year(s)			Assessee By	Revenue By
			Appellant	Respondent		
1.	1462/Del/2022	2020-21	Seema Aggarwal, B2/58, 2 nd Floor, Ashok Vihar, Phase-2, Delhi PAN: AAJPA1159K	DCIT, Circle-461), New Delhi	Shri Ashok Khandelwal, CA	Shri Abhishek Kumar, Sr. DR
2.	1390/Del/2022	2019-20	Ajit Singh, CA MR Sahu & Associates, House No. 651, 1 st Floor, Sector- 10A, Nr. Union Bank of India, Gurgaon PAN: DUXPS2279R	ITO, Ward-1(1), Gurgaon	Shri M. R. Sahu, CA	Shri Abhishek Kumar, Sr. DR
3& 4	1284/Del/2021 1285/Del/2021	2018-19 2019-20	Narender Singh Gahlaut, Flat No. 04, RZF 1/382, Gali No. 2, Part-1, Mahavir Enclave, Delhi PAN: ADLPG1507C	ITD, CPC, Bengaluru	Shri Hemant Jain, Adv	Shri Abhishek Kumar, Sr. DR
5.	1557/Del/2022	2018-19	Sandeep Tondon, A-110, Saraswati Vihar, Pitampura, New Delhi PAN: ABUPT0103G	ACIT, Circle-43(1), Delhi	None	Shri Abhishek Kumar, Sr. DR
6.	1715/Del/2020	2019-20	Sona Fashions Inc, H9B1, Mohan Co- operative Estate, New Delhi PAN: AACFS7353L	ADIT, CPC, Bangalore	Shri Satyen Sethi, Adv	Shri Abhishek Kumar, Sr. DR
7.	1564/Del/2022	2018-19	Team Infrastructures Private Limited, T457, 3 rd Floor, Palam Corporate Plaza, Palam Vihar, Gurgaon PAN: AACCT5657P	DCIT, Circle-3(1), Gurgaon	Shri Sandeep Kumar, CA	Shri Abhishek Kumar, Sr. DR
8&9	1553/Del/2022 1554/Del/2022	2018-19 2019-20	Ram Raji Sharma, C/o. Kunal Aggarwal & Associates, 612, Sixth Floor, Spaze Boulevard, Sohna Road, Sector-47, Gurgaon PAN: AMRPS9953P	ITO, Ward-3(1), Gurgaon	None	Shri Abhishek Kumar, Sr. DR
10.	1549/Del/2022	2018-19	Ishman International, W-71, Greater Kailash Part-2, New Delhi	DCIT, Circle-28(1), New Delhi	None	

			PAN: AAFI7620L			
11.	1535/Del/2022	2019-20	Geniehr Solutions Pvt. Ltd, Shop No. 20 WA-107/1211, Shakarpur, East Delhi, Delhi PAN: AAFCG9829H	ITO, Ward-10(1), New Delhi	Ms. Divya, Adv	Shri Abhishek Kumar, Sr. DR
12.	1539/Del/2022	2019-20	Narender Pal Singh, A-18/3, DLF City Phase-1, Gurgaon, Haryana PAN: AATPS7490P	ACIT, Circle-34(1), Delhi	None	Shri Abhishek Kumar, Sr. DR
13.	1497/Del/2022	2018-19	Aztek Private Limited, 30B/1, NEA Old Rajinder Nagar, New Delhi PAN: AADCA2832J	ACIT, Circle-3(2), Delhi	Shri Baldev Raj, CA	Shri Abhishek Kumar, Sr. DR
14.	1470/Del/2022	2019-20	Max Maintenance Ltd, C-5/99, Third Floor, New Kondli, Mayur Vihar, Phase-III, New Delhi PAN: AAJC8958M	ITO, Ward-16(3), Delhi	Shri Rajiv Saxena, Adv Shri Shyam Sunder, Adv	Shri Abhishek Kumar, Sr. DR
15.	1552/Del/2022	2020-21	Flying Fabrication, The Tax Chamber Advocates & Legal Advisors, D-177, Defence Colony, LGF, New Delhi PAN: AADFF9825H	ITO, Ward-4, Gurgaon	Ms. Swati Talwar, Adv	Shri Abhishek Kumar, Sr. DR
16.	1595/Del/2022	2020-21	Anju Arora, B-141, Naraina Vihar, New Delhi PAN: AAEP8685M	ITO, Ward-51(1), New Delhi	None	Shri Abhishek Kumar, Sr. DR
17.	1577/Del/2022	2019-20	Vikas Joshi, B-156, New Ashok Nagar, New Delhi PAN: ACPJ6246C	ITO, Ward-5(2)(5), Gautam Budh Nagar	None	Shri Abhishek Kumar, Sr. DR
18.	1574/Del/2022	2019-20	Ess Kay Fabrications, Plot No. 519, Sector-37, Gurgaon PAN: AAFFE3257B	ITO, Circle-1(1), Gurgaon	Shri Sandeep Kumar, CA	Shri Abhishek Kumar, Sr. DR
19.	1565/Del/2022	2018-19	Parijat Industries (India) Pvt. Ltd, M-77, M Block Market, Greater Kailash-2, New Delhi PAN: AABCT9862B	ACIT, Central Circle-19(1), New Delhi	Shri Gourav, CA	Shri Abhishek Kumar, Sr. DR

Date of hearing:	26/07/2022
Date of Pronouncement:	29/07/2022

ORDER

PER BENCH :

1. The present appeals are filed by the above mentioned assessees against 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.1462/Del/2022 [Assessment Year 2020-21]** as a lead case wherein the assessee has raised the following grounds:

- "1. Action of the CIT (A) in confirming the action of A. O. in making an addition of Rs. 4,64,615/- u/s 36(l)(va) of the I.T. Act 1961 for delayed deposit of employees contribution of EPF and ESI but paid before the due date of filing of return is unjust, illegal, arbitrary and against the facts and circumstances of the case.*
- 2. Action of the CIT (A) in confirming the action of A. O. in making an addition of Rs. 2,396/- u/s 37 of the I.T. Act 1961 for Interest on delayed deposit of TDS is unjust, illegal, arbitrary and against the facts and circumstances of the case."*

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, 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.

5. 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.

6. Heard and perused the record. As with regard to the grounds arising out of one question of law, on behalf of the assessee it was submitted that the Id. Tax Authorities below have failed to take into consideration the judgments of Hon'ble High courts and also of Jurisdictional Delhi High Court and Co-ordinate Benches of the Tribunal where it is held that the explanation to Clause (va) of Section 36(1) of the Act makes it clear that the amount actually paid by the assessee on or before the due date applicable for submitting of return of income u/s 139 of the Act to the revenue in respect of the previous year can be claimed by the assessee for deduction out of their gross income.

7. On the other hand Ld. DR submitted that the Ld. Tax Authorities below have appropriately gone by the provisions of the relevant Sections which were not ambiguous and he submitted that he stands by the order of Ld. Tax Authorities Below.

8. Giving thoughtful consideration to the matter on record and the contentions as raised it can be observed that, admittedly the assessee has deposited the impugned contributions to the PF/ ESI though after due date as prescribed under the relevant provisions of PF / ESI Act but within the time allowed u/s 43B i.e. up to the due date u/s 139(1) for filing of income.

9. Regarding the amendments made through Finance Act, 2021, it is specifically mentioned by the legislature that the amendments are effective from 01.04.2021. Further the Memorandum explaining the Provisions in the Finance Bill, 2021 clearly prescribes thus:

"These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years."

10. Thus, the legislature itself has categorically stated that the amendments shall apply to the assessment year 2021-22 and subsequent assessment years. Therefore these amendments are not applicable to the assessment years preceding the assessment-year 2021-22 i.e. not applicable upto assessment year 2020-21. This has also been held so in decisions of ITAT Benches including following:

- (a) ITAT Kolkata in Harendra Nath Biswas Vs. DCIT, ITA No. 186/Kol/2021 for A.Y. 2019-20, order dated 16.07.2021
- (b) ITAT Hyderabad in Salzgitter Hydraulics Private Limited Vs. ITO, ITA No. 644/Hyd/2020 for A.Y. 2019-20, order dated 15.06.2021

(c) `ITAT Jodhpur in Akbar Mohammad Vs. ACIT, CPC, Bangalore
ITA No. 108 &109 / Jodh / 2021 for A.Y. 2018-19 and 2019-
20, order dated 31.01.2022

11. The Co-ordinate Bench at Delhi in ITA No. ITA No.5570/Del/2017,
M/s. Express Roadway V. ACIT Circle – 8(2) New Delhi, has discussed the
relevant law as below :

*"We find that Hon'ble Delhi High Court in the case of CIT vs.AIMIL
Limited (2010) 321 ITR 508 (Del) held has under:*

*"17. We may only add that if the employees" contribution is
not deposited by the due date prescribed under the relevant
Acts and is deposited late, the employer not only pays
interest on delayed payment but can incur penalties also, for
which specific provisions are made in the Provident Fund Act
as well as the ESI Act. Therefore, the Act permits the
employer to make the deposit with some delays, subject to
the aforesaid consequences. Insofar as the Income Tax Act is
concerned, the assessee can get the benefit if the actual
payment is made before the return is filed, as per the
principle laid down by the Supreme Court in Vinay Cement
(supra).1*

*18. We, thus, answer the question in favour of the assessee
and against the Revenue. As a consequence, the appeals filed
by the assessee stand allowed and those filed by the
Revenue are dismissed."*

12. We further find that Hon'ble Delhi High Court in the case of SPL
Industries vs. CIT (2011) 9 Taxmann.com 195 (Delhi) held as under:

*"7. It is apt to note that the Division Bench has taken note of the
submission advanced by the revenue that the distinction between
employers" contribution on the one hand and the employees"
contribution on the other. On the foundation that when employees"
contribution was recovered from their salaries / wages that is the
trust money in the hands of the assessee and, therefore, recourse
of law providing for treating the same as income that the assessee*

received as the employees" contribution would only enable the assessee to claim deduction only on actual payment made by due date specified under the provisions of the Act. The Bench while dealing with the same has opined thus: "11. Before we delve into this discussion, we may take note of some more provisions of the Act. Section 2(24) of the Act enumerates different components of income. It, inter alia, stipulates that income includes any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees" State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees. It is clear from the above that as soon as employees contribution towards provident fund or ESI is received by the assessee by way of deduction or otherwise from the salary / wages of the employees, it will be treated as 'income' at the hands of the assessee. It clearly follows therefrom that if the assessee does not deposit this contribution with provident fund/ESI authorities, it will be taxed as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of Section 36(1)(va) of the Act. Section 43B(b), however, stipulates that such deduction would be permissible only on actual payment. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees" contribution is concerned. It is in this backdrop we have to determine as to at what point of time this payment is to be actually made."

8. Upon perusal of the aforesaid, we are of the considered opinion that the decisions rendered in P.M. Electronics Ltd.(supra) and AIMIL Limited (supra) have correctly laid down the law and there is no justification or reason to differ with the same. In the result, we do not perceive any merit in this appeal and accordingly the same stands dismissed."

13. In the light of aforesaid, this Bench is of the considered view that the interpretation given by the Tax Authorities Below with regard to application of provision the section 36 (1) (va) of the Act is not correct.

The grounds of appeal deserve to be sustained. The impugned order, to the extent of grounds raised in appeal, is set aside.

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

Order pronounced in the open court on 29/07/2022.

-Sd/-

(ANUBHAV SHARMA)
ACCOUNTANT MEMBER

-Sd/-

(ANIL CHATURVEDI)
JUDICIAL MEMBER

Date: 29/07/2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI