

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**VIRTUAL COURT**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 131/Asr/2022**

Assessment Year: 2018-19

Sh. Parminder Singh  
Prop. Phagwara Gas Service  
8/4, Industrial Area  
Phagwara-144001, Punjab

[PAN: AFIPS 1330L]

**(Appellant)**

Vs. Income Tax Officer,  
Ward-3, Phagwara

**(Respondent)**

Appellant by : Sh. Gunjeet Singh Syal, Adv.

Respondent by: Sh. S. M. Surendranath, Sr. DR

**I.T.A. No. 107/Asr/2021**

Assessment Year: 2019-20

Satyam Cements  
Jammu and Kashmir

[PAN: ABGFS 9266B]

**(Appellant)**

Vs. Dy. Commissioner of Income  
Tax, Jammu

**(Respondent)**

Appellant by : None

Respondent by: Sh. S. M. Surendranath, Sr. DR

**I.T.A. No. 106/Asr/2022**  
Assessment Year: 2018-19

Savitri Wood Products  
P.O. Baghpur Village  
Bassi Maroof Sialan,  
Hoshiarpur, Punjab

[PAN: ABJFS 6476L]

**(Appellant)**

Vs. Income Tax Officer,  
Ward-4, Hoshiarpur

**(Respondent)**

Appellant by : Sh. P. N. Arora, Adv.  
Respondent by: Sh. S. M. Surendranath, Sr. DR

**I.T.A. No. 86/Asr/2022**  
Assessment Year: 2019-20

Sh. Adarsh Tickoo,  
House No. 21, IDCO  
Complex, Bari Brahmana,  
Jammu (J&K)-181133

[PAN: ABIPT 5783A]

**(Appellant)**

Vs. Deputy Commissioner of  
Income Tax, Circle-1, Aayakar  
Bhawan, Railhead Complex,  
Panama Chowk, Jammu

**(Respondent)**

Appellant by : Sh. Joginder Singh, CA  
Respondent by: Sh. S. M. Surendranath, Sr. DR

**I.T.A. No. 149/Asr/2022**  
Assessment Year: 2018-19

Softobiz Technologies  
Pvt. Ltd. C/o CA Salil  
Gupta, 62 Modern Colony,  
Jalandhar

[PAN: AALCS 6154K]

**(Appellant)**

Vs. Deputy Commissioner of  
Income Tax, Circle-2, Jalandhar

**(Respondent)**

Appellant by : Sh. K.C. Gupta, Adv.  
Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 08.08.2022  
Date of Pronouncement: 25.08.2022

**ORDER**

**Per Dr. M. L. Meena, A.M.:**

This bunch of appeal filed by different assesseees against the orders of the Id. CIT (Appeal), National Faceless Appeal Centre, (NFAC), Delhi, in respect of the Assessment Years: 2018-19 & 2019-20 on the common issue of claim of deduction of varying amount of employees' contribution to EPF & ESI which have been deposited prior to the due date of filing of return of income of income u/s 139(1) of the Act.

2. Since the common issue of claim of deduction of employees' contribution to EPF & ESI, on identical facts being involved, except varying amount of deduction claim and the short delay in filing of the 2 appeals and therefore, these appeals are adjudicated by this common order for the sake of brevity.

3. There has been delay of 113 days and 136 days in filing appeal in ITA Nos. 86/ASR/2022 and 149/ASR/2022 respectively, being explained as circumstances beyond the control of the assessee. The Ld. DR has no objection. Accordingly, the aforesaid delay in filing appeals is hereby condoned and the appeals are admitted for merits.

4. At the time of hearing, the counsel for the assesses and written submission explained that admittedly the appellants deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return. It was argued, the Ld. CIT(A) was not justified in sustaining the adjustment made by the A.O.-CPC, on account of belated payment of employees' contribution to EPF & ESI, although before the due date of filing the return of income U/s 139(1) of the Act, ignoring the decision of the coordinate bench in the case of "Jupiter Aqua Lines P. Ltd vs. DCIT in ITA No. 83/Chd/2021 dated 27.08.2021. It was also submitted

that the amendment to section 36(1)(va) and u/s 43B of the Act, by the Finance Act 2021 is applicable prospectively and the Notes on Clauses specifically states that the amendment being applicable in relation to assessment year 2021-22 and subsequent years. Accordingly, It is prayed that on the facts and circumstances of the cases, the assessee are entitled to deduction of employees' contribution to EPF & ESI of Rs.2,30,250/- as the same have been deposited prior to filing of return of income u/s 139(1).

5. The Ld. Addl. CIT(DR) stands by the impugned orders.

6. In the latest decision, in I.T.A. No. 55/Asr/2022 M/s Royal Furnishes, Jammu, dated 11.08.2022, the tribunal has held as under:

*“8. We have heard both the sides and perused the material on record. Admittedly, the addition was made in the intimation u/s 143(1) of the act dated 01/05/2020 on account of delayed payments of Employees contribution to Provident Fund and ESI account, as per PF and ESI Act, although before the due date of filing of return of income u/s 139(1) of the Act.*

*9. In the case of ‘Vinko Auto Industries Ltd Vs. DCIT’, CPC, Bangalore in ITA No. 63 & 64/ASR/2021 dated 08/11/2021 the tribunal observed on a specific query as regards to the amendments made available on the statute vide the Finance Bill, 2021 i.e “Explanation 5” to Section 43B and “Explanation 2” to section 36(1)(va) of the Act qua the adjudication of the issue in hand, that as both of the said amendments were prospective in nature and that were effective from 01.04.2021. Therefore, the same would not be applicable to the present case of the assessee which pertained to a period prior to the aforesaid amendments.*

*10. Thus, the amendments were made available on the statute vide the Finance Act, 2021 i.e “Explanation 5” to Section 43B and “Explanation 2” to*

*Section 36(1)(va) were clarificatory in nature and would be applicable to the earlier years, as was claimed by the department, or, were applicable prospectively, as claimed by the assessee, had exhaustively been deliberated upon and answered in favour of the assessee by the tribunal.*

*11. The Id. CIT(A) has merely stated that the issue has been highly contentious and different High Courts have taken divergent views on the same issue, out of which some are in favour of the assessee and some are against the assessee. The Id. CIT(A) further observed that the judgments and orders relied upon by the assessee have been rendered before the clarificatory amendments made in the Finance Act, 2021 and the Finance Act, 2021 has put an end to this controversy.*

*12. Admittedly, there are plethora of judgments in favour of the Assessee's contention and of the Revenue. The controversy with regard to divergent views of different High Courts, has been settled by the Hon'ble Apex Court in the case of CIT Vs. M/s. Vegetables Products Ltd. (88 ITR 192) by laying the dictum that if two reasonable constructions of a taxing provision are possible that construction which favours the Assessee must be adopted. The Hon'ble jurisdictional High Court in the case of CIT Vs. M/s Hemla Embroidery Mills (P) Ltd. (366 ITR 167) (P&H HC) and in the case of CIT Vs. M/s Mark Auto Industries Ltd. (358 ITR 43) (P&H HC) clearly held that the assessee is entitled to claim deduction of employee's share of ESI & PF u/s.43B of the Act, if the same has been deposited prior to the filing of return of income u/s.139(1) of the Act. Admittedly, there are no contrary judgements of the jurisdictional High Court against the assessee on the aspect under consideration hence, first determination of the Ld. CIT(A) qua non-applicability of the provisions of Section 43B of the Act to the employee's share qua PF & ESI, is unsustainable.*

*13. On the basis of our aforesaid deliberations, we are of the considered view, that as the amendments made available to the statue vide the Finance Act, 2021 i.e "Explanation 5" to Section 43B and "Explanation 2" to Section 36(1)(va) are applicable w.e.f 01.04.2021 i.e. from A.Y 2021-22 onwards, therefore, the same would not have any bearing on the case of the assessee before us i.e for A.Y 2019-20. Accordingly, as per settled position of law as laid down as per the aforementioned judicial pronouncements, we, conclude, that since, the employee's contributions to PF and ESI of Rs. 6,39,490/- was deposited by the assessee before the "due date" of filing of its return of income for the year under consideration, and hence, in the instant case, the provisions of Sec. 43B of the*

*ITA No. 131/Asr/2022 & Ors  
Parminder Singh & Ors v. ITO & Ors  
Act are not applicable, and accordingly, the disallowance of Rs. 6,39,490/- on  
account of contribution of PF and ESI account not be approved.*

7. Respectfully following the coordinate bench decision, we hereby set aside the orders of the Id. CIT(A) and delete the additions made on account of late payment of employee's contribution to PF and ESI account.

8. In the result, the subject appeals of the assessee are allowed.

*Order pronounced in the open court on 25.08.2022.*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order