

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

Sr. Nos	ITA No(s)	Asst. Year(s)	Appeal(s) by Appellant vs. Respondent		Assessee By	Revenue By
			Appellant	Respondent		
1.	<b>771/Del/2021</b>	2019-20	Kamlesh Kumar Singh Engineers Pvt. Ltd, H. NO. 112, Near Shiv Deep Public School, Refinery Township Road, VPO Dadlana, Panipat PAN: <b>AADCK5251H</b>	CPC, Bengaluru	Shri Mukul, Adv	Ms. Anjula Jain, CIT DR
2.	<b>759/Del/2021</b>	2018-19	IMI Norgren Herion Pvt. Ltd, 506, Mercantile House, 15, Kasturba Gandhi Marg, Connaught Place, Delhi	CIT(A), National Faceless Appeal Centre, Delhi	Shri Anubhav Rastogi, Adv	Ms. Anjula Jain, CIT DR
3	<b>1397/Del/2021</b>	2019-20	J.J. enterprise, 23/24, Ansari Road, Daryaganj, Delhi	CIT(A), National Faceless Appeal Centre	Shri Piyush Agarwal, CA	Ms. Anjula Jain, CIT DR

**Date of Hearing** **12/09/2022**

**Date of pronouncement** **12/09/2022**

O R D E R

**PER ANUBHAV SHARMA, J. M.:**

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 there is a common issue in all the appeals with regard to disallowance of employee's contribution of PF/ESI on

account of delay in deposits as per the respective Acts. In regard to the ITA no. 759/Del/2021, it can be observed that there is also an issue of disallowance of payments made towards gratuity under Section 43B of the Act, which however is not adjudicated on merits by Ld CIT(A), therefore, the appeals are clubbed together for the sake of brevity and convenience and disposing the same by way of this consolidated order.

3. The grounds are similar grounds, but differently worded and with different amounts and assessment years have been raised in three appeals but however, the sum & substance and the issues involved in all the appeals are identical.

4. Learned ARs 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. They 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. It was 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. It was 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. 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. The issue is no more *res-integra* by various judgments of the Tribunal and stands settled in favour of the assessee by various judicial pronouncements by the Tribunal, as relied by Ld ARs. 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 01<sup>st</sup> 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 the Bench 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.

10. Further in regard to the **ground no 2 in ITA no. 759/Del/2021**, we are of considered view that similar will be the fate of disputed deposit of Gratuity. However, the LD CIT(A) has not decided the issue before it. Therefore, this issue in this appeal needs to be restored to the files of Ld. CIT(A) for adjudication in the light of aforesaid observations of the Bench.

11. In the result, appeal 771/Del/2021 and 1397/Del/ of the respective assesseees are allowed and the impugned additions are set aside.

Further, appeal ITA no. 759/Del/2021 stands allowed partly in regard to Ground no 1 and the Ground no 2 is restored to the files of CIT(A) for adjudication as directed above.

Order pronounced in the open court on 12/09/2022.

**-Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated: 12/09/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi