

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

**BEFORE SHRI CHANDRA MOHAN GARG, 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	Respondent		
1.	1957/Del/2022	2019-20	Innovision Ltd., 1425-A, Sector-B, Pocket-1, Vasant Kunj, New Delhi. PAN : AAKCS4802P	ITO, Ward- 12(1), New Delhi.	Shri Lalit Mohan, CA	Ms. Kajal Singh, Sr.D.R.
2.	2039/Del/2022	2019-20	Mohinder Nath Behl, IA-9C, Ashok Vihar, Phase-1, Delhi PAN: ACKPB6630P	ITO, Ward- 49(1), Delhi.	None	Ms. Kajal Singh, Sr.D.R.
3.	1927/Del/2022	2018-19	G.K. Fashion P. Ltd., 2151/3B, New Patel Nagar, New Delhi PAN: AAACG3381R	DCIT, Circle- 10(1), New Delhi.	None	Ms. Kajal Singh, Sr.D.R.
4.	1928/Del/2022	2019-20	G.K. Fashion P. Ltd., 2151/3B, New Patel Nagar, New Delhi PAN: AAACG3381R	DCIT, Circle- 10(1), New Delhi.	None	Ms. Kajal Singh, Sr.D.R.
5	1934/Del/2022	2018-19	Saran Motors P. Ltd., 40-42, Janpath, New Delhi PAN: AAACS2753H	ACIT, Circle- 22(2), New Delhi.	Shri D.K. Gupta, CA	Ms. Kajal Singh, Sr.D.R.
6	1935/Del/2022	2019-20	Saran Motors P. Ltd., 40-42, Janpath, New Delhi PAN: AAACS2753H	ACIT, Circle- 23(2), New Delhi.	Shri D.K. Gupta, CA	Ms. Kajal Singh, Sr.D.R.
7	1948/Del/2022	2019-20	Hawa Singh, F-228/A, Mian Lane, Lado Sarai, Mehrauli, Delhi. PAN: AVPPS1958R	ITO, Ward- 62(1), Delhi.	Shri Hawa Singh, CA Shri Mukul Gupta, CA	Ms. Kajal Singh, Sr.D.R.
8	1936/Del/2022	2018-19	Shroff Eye Centre, A-9, Kailash Colony, New Delhi PAN: AABFS6789D	ACIT, Circle- 61(1), New Delhi	Shri D.K. Gupta, CA	Ms. Kajal Singh, Sr.D.R.
9	187/Del/2022	2019-20	M/s. SUEZ Private Limited, A-1/132, LGF, Safdarjung Enclave, New Delhi.	Assistant Director of Income Tax, CPC Bangalore, DCIT, CC-31, Delhi Jhandewala Ext.	Shri Baldev Raj, CA	Ms. Kajal Singh, Sr.D.R.
10	1818/Del/2022	2020-21	Kee Pharma Limited,	ITO, Ward-	Shri Aman	Ms. Kajal

			A-8, 3 rd Floor, Naraina Industrial Area, Phase-II, New Delhi.	14(3), Delhi	Garg, CA	Singh, Sr.D.R.
11	1809/Del/2022	2017-18	M/s. L.R. Sharma & Co., V-17, LGF, Green Park Extension, Hauz Khas, New Delhi.	Deputy Commission of Income Tax, Circle- 62(1), Delhi.	Shri Rupender Shah, CA	Ms. Kajal Singh, Sr.D.R.
12	1805/Del/2022	2018-19	Lall Construction Co, AA-105, Shalimar Bagh, New Delhi.	Deputy Commission of Income Tax, CPC, Circle-34(1), Delhi.	None	Ms. Kajal Singh, Sr.D.R.
13	2079/Del/2022	2018-19	Surya Design and Display, A-32 Naraina Industrial Area, Phase- I, New Delhi.	ITO, Ward- 50(4), Delhi.	Shri Tanpreet Kohli, CA	Ms. Kajal Singh, Sr.D.R.
14	972/Del/2022	2017-18	Innovision Ltd., 1425, Sector-B, Pkt-1, Vasant Kunj, New Delhi.	ITO, Ward- 12(3), Delhi.	Shri Lalit Mohan, CA	Ms. Kajal Singh, Sr.D.R.

Date of hearing:	21.09.2022
Date of Pronouncement:	21.09.2022

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.1957/Del/2022 [Assessment Year 2019-20]** as a lead case wherein the assessee has raised the following grounds:

1. *That the Assessment Order of the Learned Commissioner of Income -Tax(Appeals) is bad in law and on the facts of the case.*
2. *The Learned Commissioner of Income-Tax (Appeals) has erred in making disallowance of Rs. 4,75,46,240/=-cm account of late payment of employees contribution under ESI and EPF which were paid much before the filing of Income Tax Return u/s 139 and tax audit report u/s 43B.*

The Learned Commissioner of Income-Tax (Appeals) erred by relying on that the amendment provisions of section 36(1) and 43B through Finance Act 2021 that the Employee's Contribution of ESI and EPF can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant welfare funds and this position of law is and has always been the case and the clarifications brought about by the amendment clearly apply retrospectively.

This amendment shall be applied for the AY 2022-23 prospectively.

The Learned Commissioner of Income-Tax (Appeals) passed the order without going through the facts and explanations filed by the Appellant. The Learned Commissioner of Income-Tax (Appeals) is without properly appreciating the fact and that he further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time.”

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

Order pronounced in the open court on 21.09.2022.

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- .09.2022
prabhat