

**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.	1079/Del/2021	2018-19	Dayal Industries Pvt.Ltd., C/o-Sanjiv Sapra & Associates LLP Chartered Accountants, C-763, New Friends Colony, New Delhi – 110025 PAN : AABCD2004M	DCIT, CPC, Bangalore	Shri Sanjeev Sapra, CA	Shri Sanjay Kumar Nargas, Sr. DR
2.	1071/Del/2021	2018-19	Hari Om Anand & Son, H-256, Shastri Nagar, Meerut, Uttar Pradesh-250004. PAN-AACHH6068K	ACIT, Circle-I, Meerut	Shri S.K.Kalra, Adv.	--do--
3.	978/Del/2021	2019-20	Guljeet Singh Saroya, B 8/504, 5 th Floor, The Heartsong, Sector-108, Gurugaon, Haryana-122006 PAN-ADIPS9101M	Jurisdictional Assessing Officer, Gurgaon	Shri Hemant Jain, Advocate	--do--
4.	977/Del/2021	2018-19	--do--	--do--	--do--	--do--
5.	975/Del/2021	2019-20	Shivalic Power Control Pvt.Ltd., 3E-35, 1 st Floor, Faridabad-121001. PAN-AAICS4340J	N Sairaj, Asst.DIT, CPC, Bengaluru	None	--do--
6.	936/Del/2021	2019-20	Kapoor Industries Ltd., 29A-2/1, Desu Road, Mehrauli, New Delhi-110030 PAN : AAECK6613N	DCIT, CPC, Bengaluru	Shri R.K.Mehra, CA	--do--
7.	934/Del/2021	2018-19	Pasupati Spinning & Weaving Mills Ltd., 127-128, Tribhuvan Complex, Mathura Road, Ishwar Nagar, New Delhi- 110065. PAN-AAACP0164H	DCIT, CPC Bengaluru	Shri Vipin Jain, CA	--do--
8.	933/Del/2021	2017-18	--do--	--do--	--do--	--do--
9.	1215/Del/2021	2019-20	Sanjay Kumar Sahay, B-13, Oakwood Estate DLF City, Gurgaon, Haryana-122001. PAN : AARPS9847A	DCIT, CPC Bengaluru	-None-	--do--
10.	1214/Del/2021	2019-20	Advance Ventilation (P.) Ltd., 610, PP Tower, Netaji	DCIT, CPC Bengaluru	--None--	--do--

			Subhash Place, Pitampura, New Delhi- 110034. PAN : AAACA2149R			
11.	1212/Del/2021	2018-19	Idigital Electronics Pvt.Ltd., 307, Lajpat Rai market, Chandni Chowk, Delhi-110006. PAN : AADCI5664G	ITO, Ward-12(1), New Delhi	Shri Vikas Katyal, CA	--do--
12.	1153/Del/2021	2018-19	Jyoti Apparels, D-42, Okhla Industrial Area, Phase-I, New Delhi-110020. PAN : AAAFJ2588E	ITD, CPC Bengaluru	Shri Rajan Malik, CA	--do--
13.	1148/Del/2021	2018-19	Inder Pratap Singh HUF, 13/14, Windsor Mansion, Janpath, New Delhi-110001. PAN : AAAHI1320K	ACIT, CPC, Bengaluru	Shri Baldev Raj, CA	--do--
14.	1142/Del/2021	2018-19	Ramesh Verma Prop of Diamond Exports, M/s. Diamond Export, Near Bharat Gas Godwin, Babail Road, Panipat, Haryana- 132013. PAN : AAGPV8626H	ITD, CPC Bengaluru	Shri Nitin Kanwar, CA & Sh. Rajeev Kumar, Adv.	--do--
15.	1141/Del/2021	2019-20	Magic Wires Pvt.Ltd., M-7, Street No.1, Near Inderlok Metro Station, Shashtri Nagar, New Delhi- 110052. PAN : AAECM9074F	DCIT, Circle- 16(1), Delhi	Shri D.K.Panday, CA	--do--
16.	1081/Del/2021	2018-19	Jain Industrial Products, 47, 48, 69, 70, IDC, Hissar Road, Rohtak, Haryana-124001. PAN : AAAFJ5741R	DCIT, CPC, Bengaluru	Shri Lalit Mohan, CA	--do--
17.	1220/Del/2021	2017-18	Vipul Medcorp Insurance TPA Pvt.Ltd., 219, Ansal Chamber-II, 6 Bhikaji Kama Place, New Delhi-110066. PAN : AABCV8688F	Asst.DIT, CPC, New Delhi	Shri Sidharth Arora, CA	--do--
18.	1221/Del/2021	2019-20	--do--	--do--	--do--	--do--
19.	1230/Del/2021	2019-20	Asian Wire Forming & Springs, Plot No.30/4, Adjacent Whirlpool India Pvt.Ltd., Wearwel Cycle Compound, NIT, Faridabad-121001. PAN : AAECA3646F	ACIT, Circle-1, Faridabad	Shri Alok Kr. Gupta, CA	--do--
20.	1606/Del/2021	2019-20	Green World Publications (India)	DCIT (OSD), Ward-10.	Shri Alok Khare, CA	--do--

			Pvt.Ltd., Flat No.13, First Floor, ANsari Market in front of Ram Mandir, Daryaganj, Delhi-110002. PAN-AABCG4606N	Delhi		
21.	1690/Del/2021	2017-18	Shiv Pratap Singh Kunwar, 508, Begum Bagh, Chakbandi Road, Karoli Ki Kothi, Meerut, Uttar Pradesh- 250001. PAN : AFMPK3273Q	Assessing Officer, Ward- 1(2)(3), Aayakar Bhawan, Chainsali Ground, Meerut.	Shri Hemant Jain, Adv.	--do--
22.	1591/Del/2021	2019-20	Dinesh Sharma, House No.1865, Sector-9, Faridabad, Haryana-121006. PAN-AWTPS2592L	ADIT, CPC, Bangaluru	Shri Charitra Gupta, CA	--do--
23.	1431/Del/2021	2019-20	Varahamurti Flexirub Industries Pvt.Ltd., 6715/10, 1 st Floor, Pyare Lal Road, Gali No.1, Dev Nagar, New Delhi-110005. PAN : AABCV7214K	DCIT, CPC, Bengaluru	Shri Pragun Jindal, Adv.	--do--
24.	1429/Del/2021	2018-19	--do--	--do--	--do--	--do--
25.	1430/Del/2021	2018-19	Nipun Gupta, 6715/10, 1 st Floor, Pyare Lal Road, Gali No.1, Dev Nagar, New Delhi-110005. PAN : AIQPG4975N	DCIT, CPC, Bengaluru	--do--	--do--
26.	1359/Del/2021	2019-20	Park Medi World Pvt.Ltd., 12, Meera Enclave Near Keshopur Bus Depot, Outer Ring Road, New Delhi-110018. PAN-AAFCP8305H	Asst. DIT, CPC, Bangaluru	None	--do--
27.	1358/Del/2021	2019-20	Park Medicenters & Institutions Pvt.Ltd., 12, Meera Enclave Near Keshopur Bus Depot, Outer Ring Road, New Delhi- 110018. PAN : AAFCP4102Q	ADIT, CPC, Bangalore	None	--do--
28.	1244/Del/2021	2017-18	Kay Jay Frogings Pvt.Ltd.,E-2, Ludhiana (East), Ludhiana, Punjab-141010. PAN : AAACK0878P	CPC, Bangalore	Shri Rahul Chourasia, Adv	--do--
29.	1241/Del/2021	2019-20	Mehra Metal Components Pvt.Ltd., A-84, DDA Flats, Okhla Phase-II, New Delhi-110020	DCIT, CPC, Bangalore	--do--	--do--

			PAN : AAACM8494M			
30.	1240/Del/2021	2018-19	--do--	--do--	--do--	--do--
31.	1239/Del/2022	2018-19	Siora Surgicals Pvt.Ltd., WZ-1, Rampura, Phool Bagh, Delhi-110035. PAN : AAACS0806R	--do--	--do--	--do--
32.	1238/Del/2021	2019-20	Yeekay Engineers Pvt. Ltd. (now Amalgamated with Mehra Metals Components Pvt.Ltd.), Plot No.56, Sector-59 (HUDA), Ballabgarh, Faridabad, Haryana-121004. PAN-AAACY7183R	--do--	-None-	--do--
33.	1233/Del/2021	2018-19	Chatru Mal Garg, Plot No.98, Sector-25, Faridabad, Haryana-121005. PAN-ABZPG7929C	ACIT, Circle-1, Faridabad.	Shri Alok Gupta, CA	--do--
34.	1231/Del/2021	2019-20	Rishi Bansal, H.No. C-484, Chawla Colony, Ballabgarh, Haryana-121004. PAN-ADOPB8679F	ACIT, Circle-2(1), Faridabad.	Shri Alok Kr. Gupta, CA	--do--
35.	1719/Del/2021	2018-19	Kamal Sharma, T-6/5, DLF Phase-3, Gurgaon, Haryana-122001. PAN-AAUPS4917L	ITO, Ward-29(1), New Delhi	Shri Aayush Kumar, CA	--do--
36.	1705/Del/2021	2018-19	International Design & Engineering Solutions Pvt.Ltd., D-6, Pamposh Enclave, Greater Kailash-I, New Delhi-110048. PAN-AABCI6309Q	CIT, Circle-12(2), Delhi	Shri Anil Khanna, CA	--do--
37.	1693/Del/2021	2018-19	Kamlesh Kumar Singh, H.No.112, Near SHiv Deep School, Refinery Township Road, VPO, Dadlana, Panipal, Haryana-132140. PAN-AADCK5251H	ACIT, Circle, Panipat.	Shri Mukul Gupta, Adv.	--do--
38.	1691/Del/2021	2019-20	Anemo Prime (P) Ltd., Plot No.470, Place City-II, Sector-37, Gurugram, Haryana-122001. PAN-AAQCA5476R	ADIT, CPC, Bangaluru	Shri Rajeev Kr. Jain, CA	--do--
39.	2010/Del/2021	2019-20	Cosmo Ferrites Limited, 517, 5 th Floor, Jasola, Zakir Nagar SO, Delhi-110025.	Asst.DIT, CPC, Bangalore	Shri Anuj Kumar, CA	--do--

			PAN-AAACC0003E			
40.	1941/Del/2021	2019-20	Sheryl Strategic Solutions Pvt.Ltd., 418, Manhattan 09 Tower Mahagun Moderne, Sector-78, Gautam Budh Nagar, Noida, Uttar Pradesh-201301. PAN-AAACS5193A	ITO, Gaautam Budh Nagar	None	--do--
41.	1827/Del/2021	2019-20	K K Global Exports, H-9, Ground Floor, Lajpat Nagar-I, New Delhi-110024. PAN-AAOFK5323N	CIT(A), NFAC, Delhi	None	--do--
42.	1757/Del/2021	2018-19	BTW India Pvt.Ltd., A-14, Lawrence Road, Food Zone, New Delhi-110035. PAN-AADCB2202R	DCIT, CPC, New Delhi	Shri Bishnu Bhagwan Gupta, Adv.	--do--
43.	1751/Del/2021	2018-19	Supreme Housing Finance Ltd., 3 rd Floor, RD Chambers, 16/11, Arya Samaj Road, Karol Bagh, New Delhi-110088. PAN-AAVCS0096E	AO/CIT(A), NFAC	Shri Pankaj Dixit, CA	--do--
44.	1750/Del/2021	2019-20	Agnity Communications Pvt.Ltd., C 42, Sector-58, Noida, Uttar Pradesh-201301. PAN-AANCA4385N	ITO, Ward-2(1), New Delhi	Shri Salil Kapoor, Adv. & Shri Sumil Lalchandani, Adv.	--do--
45.	1720/Del/2021	2019-20	Kamal Sharma, T-6/5, DLF Phase-3, Gurgaon, Haryana-122001. PAN-AAUPS4917L	ITO, Ward-29(1), New Delhi	Shri Aayush Kumar, CA	--do--

Date of hearing:	17.05.2022
Date of Pronouncement:	17.05.2022

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.1079/Del/2021 [Assessment Year -2018-19]** as a lead case wherein the assessee has raised the following grounds:

1. *“That the Ld. CIT(A) vide his order u/s 250 of the Income Tax Act, 1961 (“Act”) dated 28/08/2021 erred on facts and in law in confirming the adjustment/disallowance made in intimation u/s 143(1) dated 16/10/2019 passed by CPC Bangalore of Rs.12,52,401 u/s 36(1)(va) of the Act on account of alleged delayed payment of ESI and EPF.*
2. *That disallowance of such nature of Rs.12,52,401 could not have been confirmed by Ld. CIT(A) keeping in view the limited powers as available for making adjustment u/s 143(1) of the Act.*
3. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming such adjustment/disallowance of Rs.12,52,401/-in view of the favourable and binding judgments of jurisdictional and other High Courts.*

4. *That issues which are debatable in nature cannot be subjected to adjustment/disallowance u/s 143(1) of the Act and from this angle also, the Ld. CIT(A) ought not to have confirmed the adjustment/disallowance of Rs.12,52,401/-.*
 5. *That having regard to the facts and the circumstances of the case, the Ld. CIT(A) ought to have quashed the intimation order passed u/s 143(1) by CPC, Bangalore as the jurisdiction was not validly assumed as per law.*
 6. *That without prejudice to Ground Nos. 1 to 5 above, such disallowance of Rs.12,52,401/-as made is very excessive.*
 7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred on facts and in law in confirming the action of CPC in charging interest u/s 234A at Rs.2,827 and u/s 234C at Rs.9,189. At any rate, without prejudice, such interest as charged is very excessive.*
 8. *That the Appellant reserves its right to add, amend/modify the 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 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 (EPD) 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. Apropos to **ITA No.1233/Del/2021** concerning **Assessment Year 2018-19** in the case of **Chatru Mal Garg** appearing at Serial No.33 captioned above, it was pointed out that the AO has attempted to make adjustment in respect of disallowance of expenditure towards belated payment of employee's contribution towards PF & ESI in the proceedings initiated u/s 154 of the Act. We express our agreement with the plea delved on behalf of the assessee that such disallowance being highly debatable in nature in the light of the decision of Hon'ble High Court, is not susceptible

to rectification u/s 154 of the Act at the threshold. Thus, the additions on accounts of belated employee's contribution is neither permissible under the normal provisions nor under section 154 of the Act insofar as this appeal is concerned.

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

Order pronounced in the open court on 17.05.2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Date:-17.05.2022

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI