

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

**BEFORE SHRI C.N. PRASAD, 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.	801/Del/2022	2019-20	Sandeep Kumar Agarwal C/o Akul Agarwal & Associates D2/20, Ground Floor, Sector-10, DLF, Faridabad, Haryana- 121006	Asstt. Director of Income Tax, Bengaluru	Sh. Akul Agarwal, Advocate	Sh. Abhishek Kumar, Sr.DR
2.	1200/Del/2022	2019-20	Rahul Sharma, Flat No.1001, 10 th Floor, Aagman Society, Secotr- 70, Faridabad	ITO , Ward - 2 (2), Faridabad	None	--do--
3.	1249/Del/2022	2019-20	IFFCO Kisan Sanchar Ltd.,C-1, IFFCO Sadan, Saket Place, District Centre, New Delhi	ACIT, Circle - 12 (1) New Delhi	None	--do--
4.	1210/Del/2022	2018-19	Swastic Auto Industries, 1279, MIE, Bahadurgarh, Bahadurgarh, Haryana	ITO, Ward-2, Rohtak	None	--do--
5.	1215/Del/2022	2018-19	Chahal Security & Services, Delhi Road, Near Bamal Hospital, Rohtak	ITO, Ward- 3 Rohtak	None	--do--
6.	1292/Del/2022	2019-20	MH Exports, Opp Lal Masjid, Moradabad	ITO, Ward -1 (1), Moradabad	Sh. Divyanshu Agarwal, Advocate	--do--
7.	1370/Del/2022	2018-19	Span Air Pvt. Ltd. 1 st Floor, Vijaya Building, 17 Barakhamba Road, New Delhi	ACIT, Circle-24(1), New Delhi	Sh. M. R. Sahu, CA	--do--
8.	1306/Del/2022	2019-20	Shiv Sai Vision LLP, GF- 16, Ozone Centre, Plot No.9, Sector-12, Faridabad	ITO Ward- 1 (3), Faridabad	Sh. D. C. Garg, CA Sh. Ankit Gupta, CA	--do--
9.	1305/Del/2022	2019-20	Blue Stamping & Forgings Ltd. Plot No.12, Sector- 25, Ballabhgarh, Haryana	ACIT, Circle-1 Faridabad	Sh. R. A. Gupta, CA	--do--
10.	1341/Del/2022	2018-19	Bhansali Cables and Conductors (P) Ltd., GB-17, Najafgarh Road, Shivaji Enclave, New Delhi -110027	ACIT Circle - 4 (2) New Delhi	None	--do--
11.	1381/Del/2022	2018-19	Pawan Kumar Sharma, E- 44, Raja Puri, Uttam Nagar, Delhi	ITO, Ward- 44 (1), Delhi	None	--do--
12.	763/Del/2022	2018-19	Onkar Infotech Private Limited, First Foor, Hansalaya, 15, Barakhambad Road, Connaught Place, New Delhi	JCIT, Special Range-7, Delhi	Sh. Suneer Kunsia, CA	--do--
13.	1109/Del/2022	2019-20	Pepsoco India Holdings P. Ltd, 1 st 5 th 6 th Floor, intellion Edge, Tower-A, Southern Periphery Road, Sector-72, Gurgaon	ACIT, Circle - 19 (1), New Delhi	Sh. Anmol Anand, Advocate Ms. Priya Tandon, Advocate	--do--
14.	1277/Del/2022	2019-20	Micro Rubber Industries P. Ltd., Delhi	ITO, Ward- 17 (2), New Delhi	None	--do--
15.	1276/Del/2022	2018-19	Micro Rubber Industries P. Ltd., C-8, Mayapuri Industrial Area, Phase-II, Delhi	ITO, Ward- 17 (2), New Delhi	None	--do--
16.	1265/Del/2022	2018-19	MH Exports, Opp. Lal Mandir, Moradabad	ITO, Ward-1 (1), Moradabad	Shri Divyanshu Agarwal,	--do--

					Advocate	
17.	1253/Del/2022	2019-20	Sungadh, Jawahar Market, GMD Road, Moradabad	ITO, Ward -2 (2) Moradabad	None	--do--
18.	1245/Del/2022	2017-18	Mira Exim Ltd, 523-524, World Trade Centre, Barakhamba Lane, New Delhi	ACIT Circle -16 (2) New Delhi	Sh. Ekansh Gupta, CA	

Date of hearing:	20.06.2022
Date of Pronouncement:	20.06.2022

ORDER

PER BENCH :

The present appeals are filed by the above captioned assesseees feeling aggrieved by the orders passed by respective appellate authorities for various assessment years mentioned hereinabove.

2. The common issue involved in all these cases relates to correctness disallowance of different amount u/s. 2(24) (x) r.w.s 36 (1) (va) towards employees contribution to PF/ ESIC.

3. It was contended by the Counsels in chorus that the assessee's captioned above have deposited the employees contribution to PF/ ESIC well before the prescribed date for filing the return of income u/s.139(1) although there may be some delinquency in abiding by the due date prescribed under the prescribed Act.

4. 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.”

5. 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 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.

6. 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.

7. Apropos to **ITA No.1109/Del/2022** concerning **Assessment Year 2019-20** in the case of Pepsoco India Holdings Private Limited appearing at Serial No.13 the impugned addition has been made while processing the return of income under Section 143(1) of the Act. The Co-ordinate Bench of the Tribunal in the case of *Kalpesh Synthetics (P.) Ltd. vs. DCIT (2022) 137 taxmann.com 475 (Mum. Trib)* observed that scope of *prima facie* disallowance under Section 143(1) is inherently very limited and only such disallowance can be made under this statutory provision as can be conclusively held to be inadmissible based on material on record. The claim of the assessee for allowability of employee's contribution to

PF/ESIC under Section 36(1)(va) r.w.s. 2(24)(x) of the Act is backed by binding judicial precedent of the Hon'ble Jurisdictional High Court and hence such adjustments under Section 143(1), at the minimum, cannot fall in this category. Hence on this score also, the adjustments towards employees contribution to PF/ESIC resulting in disallowance thereof is not permissible in law.

8. 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 assesseees.

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

Order pronounced in the open court on 20.06.2022.

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

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

Date:-20.06.2022

Neha, Sr. Private Secretary

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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