

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “A” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM and Rajpal Yadav JM]**

IT(TP)A No. 1268/Ahd/2017  
Assessment Year: 2012-13

**Raajratna Metal Industries Limited** .....Appellant  
*C/o. Mehta Lodha &Co.,  
Chartered Accountants  
105, Sakar-I, Ashram Road  
Ahmedabad - 380009  
[PAN : AAACR 9980 M]*

**Vs.**

**Dy. Commissioner of Income-tax** .....Respondent  
*Circle 3(1)(2)  
Ahmedabad*

**Appearances by:**

***PD Shah*** for the Appellant  
***Saurabh Singh*** for the Respondent

Date of concluding the hearing : 15.03.2018  
Date of pronouncing the order : 05.04.2018

**O R D E R**

**Per Bench :**

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 3<sup>rd</sup> March, 2017 passed by the by the CIT(A)-9, Ahmedabad, in the matter of assessment under section 143(3) r.w.s. 144C of the Income-tax Act, 1961, for the assessment year 2012-13.
2. The solitary grievance of the assessee is that the learned CIT(A) has erred in confirming the disallowance of Rs.26,10,704/-, which was added by the Assessing Officer with the aid of Section 36(1)(va) r.w.s. 2(24)(x) of the Income-tax Act, 1961, for the late payment of Employees Contribution to PF/ESI.
3. Learned representatives fairly agree that the aforesaid issue is squarely covered against the assessee by Hon'ble jurisdictional High Court's judgment in the case of CIT vs. Gujarat State Road Transport Corporation, 366 ITR 170 (Guj.), wherein it is categorically held that in the case of delayed deposit of employees contribution to PF/ESI, the same will not be deductible in computing income under section 28 of the Act. The law so laid down by the Hon'ble jurisdictional High Court is binding on us. The mere fact that an appeal against the said decision is pending before the Hon'ble Supreme Court does not dilute binding nature of this judicial precedent. As regard dismissal of SLP in the case of Rajasthan State Beverages Corporation Ltd (supra), it is only elementary that when a SLP is dismissed by a non-

speaking order, it does not constitute a law declared by Hon'ble Supreme court, and as such, it is not binding under Article 141 of the Constitution of India. The authority, for this proposition, is contained in a series of judgments of Hon'ble Supreme Court, including, inter alia, in the cases of State of Manipur vs. Thingujam Brojen Meetai, (1996) 9 SCC 29; Om Prakash Gargi v. State of Punjab, (1996) 11 SCC 399 and Sun Export Corpn v. Collector of Customs, AIR 1997 SC 2658. We, therefore, see no legally sustainable merit in the case of the assessee and, respectfully following the judgment of Hon'ble jurisdictional High Court in the case of Gujarat State Road Transport Corporation (supra), dismiss the grievance of the assessee.

4. Learned counsel has, however, filed a detailed chart to justify his contention that a large number of payments so made are well within the permissible time limit, and yet these payments are disallowed on the ground that these payments are delayed payments. Since this aspect of the matter has not been raised before any of the authorities below, we deem it fit and proper to remit the matter to the file of the CIT(A) for limited verification of this plea. If the payments are indeed made in time, to that limited extent, disallowance will have to be deleted.

5. In the result, appeal of the assessee is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 5<sup>th</sup> April, 2018

Sd/-

Sd/-

**Rajpal Yadav**  
(Judicial Member)

**Pramod Kumar**  
(Accountant Member)

**Ahmedabad, the 5<sup>th</sup> day of April, 2018**

**\*\*bt**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *Commissioner*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

**TRUE COPY**

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*