

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 117 & 321/Ahd/2018
(निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15)

Roquette Riddhi Siddhi Private Ltd., Mehta Lodha & Co., Chartered Accountants, 105, Sakar-1, Near Gandhigram, Railway Station, Off. Ashram Road, Ahmedabad - 380009	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Circle-3(1)(2), Pratyakshkar, Ambawadi, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCR2758G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Prakash D. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Saurabh Singh, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	20/06/2018
घोषणा की तारीख /Date of Pronouncement	05/07/2018

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed by the assessee against the respective orders of the CIT(A) arising in the assessment order passed by the Assessing Officer (AO) under s.

143(3) of the Income Tax Act, 1961 (the Act) concerning assessment years 2013-14 & 2014-15.

2. Assessee has filed belated appeal by 125 days. We consider it expedient to condone the delay and admit the appeal for hearing.

3. The solitary issue in the captioned appeals is against the denial of business deduction under s. 36(1)(va) on account of alleged late payment of employees' contribution to Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) amounting to Rs.12,01,833/- (AY 2013-14) and Rs.10,88,599/- (AY 2014-15).

4. The CIT(A) denied the relief claimed by the assessee in the first appeal.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6. We have examined the issue towards allowability of PF & ESIC under s.36(1)(va) of the Act. We notice at the outset that the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation 366 ITR 170 (Guj) is against the assessee on the first principles. The Hon'ble Gujarat High Court considered the question with respect to the disallowance of amount being employees' contribution to PF account/ESIC contribution, which admittedly, the assessee in that case did not deposit with the PF department/ ESIC department on

or before the due date under the PF Act and/or ESI Act. However, on perusal of the orders of the lower authorities, we simultaneously observe that the assessee has tried to demonstrate that employees' contribution to PF/ESIC has been made before the 'due date' as prescribed under the respective Act having regard to the month of disbursement of salary/wages and also the grace period available under the relevant Acts. It is thus broadly the case of the assessee that the relevant 'due date' for making payment of contribution has to be seen not with reference to the relevant months relatable to wages/salary but the month of its actual disbursement. Coupled with this, grace period available under the respective Act is also required to be taken into account. In this regard, we observe that the co-ordinate bench of Tribunal in *Kanoi Paper & Industries Ltd. vs. ACIT 75 TTJ 448* has observed that the relevant due date in such a case is to be seen with reference to the month of the actual disbursement of wages/salaries. We also are of the view that grace period available under the respective Acts should be taken into account while computing the delay, if any.

7. Hence, we consider it expedient to restore the issue back to the file of the AO for factual verification and re-determination of the issue in the light of the observations made by the co-ordinate bench in the case of *Kanoi Paper & Industries Ltd. (supra)*. The AO shall thus re-compute the amount of disallowance under s.36(1)(va) of the Act, if any, on the above basis, in accordance with law. The assessee shall be entitled to relief under s. 36(1)(va) of the Act where it is found that the deposits have been made towards PF/ESIC within the due date from the close of

month of actual disbursement of salary/wages in the light of interpretation rendered in case of Kanoi Paper & Industries Ltd. (supra).

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 05/07/2018

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 05/07/2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।