

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD “SMC” BENCH, AHMEDABAD
[Coram: Pramod Kumar AM]**

ITA No.589/Ahd/2015
Assessment Year: 2010-11

Nilkanth Specific Family Trust,**Appellant**
*Prop. of Karan Paper Mills,
1074/B, 1075 to 1078, Kadi Kalol Road,
Chhatral, Dist. Mehsana.
[PAN: AAATN 1399 K]*

Vs.

Jt. Commissioner of Income Tax,**Respondent**
Mehsana Range, Mehsana.

ITA No.2414/Ahd/2016
Assessment Year: 2012-13

Nilkanth Specific Family Trust,**Appellant**
*Prop. of Karan Paper Mills,
1074/B, 1075 to 1078, Kadi Kalol Road,
Chhatral, Dist. Mehsana.
[PAN: AAATN 1399 K]*

Vs.

Income Tax Officer,**Respondent**
Ward – 2, Mehsana.

Appearances by

Himanshu Shah for the appellant
V.K. Singh for the respondent

Date of concluding the hearing: 20.06.2018
Date of pronouncing the order : 18.09.2018

O R D E R

1. By way of these appeals, the assessee appellant has challenged correctness of the orders dated 19.12.2014 & 16.08.2016, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment years 2010-11 & 2012-13 respectively.

2. First I take up ITA No.589/Ahd/2015 for the Assessment Year 2010-11. In this appeal, the grievances raised by the assessee appellant are as follows :-

“1) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in points of law and facts.

2) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.14,126/- u/s.14A of Income-tax Act.

3) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of depreciation claimed on factory building for Rs.85,127/-.

4) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Insurance expenses of Rs.94,000/-.

5) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.16,74,764/- against machinery & electric repairing expenses.

6) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.1,73,193/- out of vehicle expenses.

7) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of building maintenance expenses Rs.3,25,691/- as capital expenditure.

8) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.1,00,000/- out of office expenses.

9) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.41,778/- out of office expenses.

10) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in rejecting appellant's ground regarding charging of interest u/s.234D of Income-tax Act.”

3. When this appeal was called out for hearing, it has been noticed that the order dated 19.12.2014 passed by the learned CIT(A) is an ex-parte order and that the appellant could not attend the proceedings before the learned CIT(A). The impugned order is thus passed without the benefit of assistance by the assessee appellant and the assessee appellant is now in appeal before us.

4. Learned counsel for the assessee submits that, given an opportunity now, he undertakes to fully co-operate in expeditious disposal of the appeal on merits and thus he urges to remit the matter to the file of learned CIT(A) for adjudication *de novo*, after giving yet another opportunity of hearing to the assessee.

5. The learned Departmental Representative fairly agreed that he has no objection to the matter being remitted to the file of learned CIT(A) for adjudication *de novo*, after giving yet another reasonable opportunity of hearing to the assessee.

6. In this view of the matter and bearing in mind entirety of the case, we deem it fit and proper to remit the matter to the file of learned CIT(A) for fresh adjudication and the assessee appellant be given a reasonable opportunity of hearing, in accordance with law. We order so.

7. In the result, appeal is allowed for statistical purposes.

8. Now I take up ITA No.2414/Ahd/2016 for the Assessment Year 2012-13. In this appeal, the assessee appellant has raised the following grievances :

“1. In law and in facts and circumstances of the Appellant’s case, the learned CIT(A) has grossly erred in points of law and facts.

2. In law and in facts and circumstances of the appellant’s case, the learned CIT(A) has grossly erred in confirming disallowance of late payments towards employees contribution to PF and ESIC of Rs.94,769/-.

3. In law and in facts and circumstances of the appellant’s case, the learned CIT(A) has grossly erred in considering the loss as per computation of total income at Rs.16,39,721/-”

9. 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 regards 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.

10. In the result, appeal is dismissed.

11. In the result, ITA No.589/Ahd/2015 for Assessment Year 2010-11 is allowed for statistical purposes and ITA No.2414/Ahd/2016 for Assessment Year 2012-13 is dismissed. Pronounced in the open court today on the 18th September, 2018.

Sd/-
Pramod Kumar
(Accountant Member)

Dated: Ahmedabad, the 18th day of September, 2018.
*PBN/**

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

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