

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.2223/Ahd/2016	निर्धारण वर्ष/A.Y.:2012-13
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Karpara Project Engineering Pvt. Ltd. 405, SN S Platina, Near Reliance Market B/H J. H Ambani School Above Surat Peoples Co-operative Bank Surat 395007: PAN: AABCK 8206A	Vs.	Assistant Commissioner of Income Tax, Circle- 1(1)(2) Surat
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Revenue by	Shri Srinivas T. Bidari, CIT(D.R.)

सुनवाई की तारीख/ Date of hearing:	16.10.2018
उद्घोषणा की तारीख/Pronouncement on	16.10.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

- 1.** This appeal by the Assessee is directed against the order of learned of Commissioner of Income-tax (Appeals)-1 Surat (in short CIT(A)) dated 10.06.2016 for the assessment year 2012-13.

2. Ground no. 1 relates to confirming the disallowance of Rs.24,490 pertaining deals of delayed payments of ESI and Ground No. 2 relates to confirming the addition of Rs.12,62,027 being payments employers contribution to Provident fund paid beyond the due date prescribed under the relevant statutes and treating income as per provisions of section 2 (24) (x) of the Act.

3. The learned counsel for the assessee submitted that the CIT (A) has confirmed the disallowance following the judgement of Hon`ble High Court of Gujarat in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC. The appeal filed by GSRTC is presently pending for adjudication before the Hon`ble Supreme Court. The learned counsel for the assessee has relied on the recent decision of Hon`ble Rajasthan High Court in the case of Pr. CIT v. Rajasthan State Beverage Corporation Ltd. 84 taxmann.com 173 (Raj.) wherein

delayed payment of employees contribution to PF is allowed since the same is paid before the due date of filing of return of income. The SLP filed against this decision by the Department has been dismissed by the Hon`ble Supreme Court in Pr. CIT v. Rajasthan State Beverage Corporation Ltd. [2017] 84 taxmann.com 185 (SC).

4. *Au contraire*, the Id. DR, submits that the 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 ESI & PF, the same will not be deductible in computing income under section 28 of the Act.

5. We have heard the rival submissions and perused the relevant material on record. We find that the issue is squarely covered against the assessee by the decision of Hon`ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170

(Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC, wherein it was held that section 43B does not apply to employees contribution. Only section 2 (24) (x) read with section 36(1)(va) is applicable and therefore, employees contribution is disallowed if not paid within due dates prescribed under relevant Provident Fund /ESI Act. We are, therefore, of the considered opinion that there is no mistake in the orders of lower authorities in making disallowance in the light of the ratio laid down by the Hon'ble Gujarat High Court in the above case (supra). 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 the binding nature of this judicial precedent.

6. As regard dismissal of SLP in the case of Pr. CIT v. Rajasthan State Beverages Corporation Ltd [2017] 84 taxmann.com 185 (SC) (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 Hon'ble Supreme Court in the case of S. Shanmugavel Nadar vs. State of Tamilnadu [2003]; 263 ITR 658 (SC) held that "A summary dismissal by the Supreme Court without laying down any law is not a declaration of law as envisaged in article 141 of the Constitution of India. For declaration of law, there should be a speaking order. A decision which is not express and is not formulated on reasons nor on a consideration of the issue can not be deemed to be a law declared so as to have binding effect under Article 141 of the Constitution of India."

Following the above decision and in conformity with this principle, it was laid down in the case of CIT vs. KM Jagannathan 180 ITR 191 (Mad) that dismissal of special leave petition by the Supreme Court cannot be construed as affirmation of the decision against which special leave was sought. In the case of Hindustan Tea Trading Company Ltd. vs. CIT 263 ITR

289, 294 (Cal), it was reiterated that a decision becomes binding as a precedent only when the court decides a particular question of law or lays down the ratio through a conscious adjudication. Agreement with the finding of fact by the lower court without adverting to the ratio laid down in the finding does not create a precedent. 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 Corporation v. Collector of Customs, AIR 997 SC 2658. We, therefore, see no legally sustainable merit in the submissions of the assessee and, respectfully following the judgment of Hon'ble jurisdictional High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC

(supra). In the light of above discussion, the grounds of appeal of the assessee is being devoid of any merit, is therefore, dismissed.

7. In the result, the appeal of the assessee is dismissed.

8. Order pronounced on open court on 16.10.2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत Dated: 16.10.2018/opm

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1.अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त (अपील) The CIT(A)4. आयकरआयुक्त / Pr. CIT 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/D.R. (ITAT) 6. गार्डफाईल / Guard file ITAT.

By order

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Assistant Registrar, Surat