# IN THE INCOME TAX APPELLATE TRIBUNAL
# AHMEDABAD "C" BENCH

## (BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER & SHRI WASEEM AHMED, ACCOUNTANT MEMBER)

**ITA. No: 1585/AHD/2018**
**(Assessment Year: 2015-16)**

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| **Abeer Textile Pvt. Ltd. Arvind Mill Premises, Naroda Road, Ahmedabad-380025** | **V/S** | **The DCIT, Circle-1(1),(2), Ahmedabad** |
| **(Appellant)** | | **(Respondent)** |

**PAN: AAACH1065R**

**Appellant by : Shri Biren V. Shah**
**Respondent by : Shri Lalit P. Jain, Sr. D.R.**

**(आदेश)/**ORDER

Date of hearing : 30 -11-2018
Date of Pronouncement : 3 -11-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 27.04.2018 pertaining to A.Y. 2015-16 and confirming the disallowance of Employees Provident Fund of Rs. 5,50,939/- u/s. 36(1)(va).

2. This issue is already against the appellant for late deposit of Employees Provident Fund with the authority by the judgment of Hon'ble Gujarat High Court in the matter of GSRTC 366 ITR 170 wherein it is held:

> *"Section 43B, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed on actual payment (Employees contribution) - Whether where an employer has not credited sum received by it as employees' contribution to employees' account in relevant fund on or before due date as prescribed in Explanation to section 36(1)(va), assessee shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 43B i. e., prior to filing of return under section 139(1) - Held, yes - Assessee State transport corporation collected a sum being provident fund contribution from its employees - However, it had deposited lesser sum in provident fund account -Assessing Officer disallowed same under section 43B - However, Commissioner (Appeals) deleted disallowance on ground that employees contribution was deposited before filing return - Whether since assessee had not deposited said contribution in respective fund account on date as prescribed in Explanation to section 36(1)(va), disallowance made by Assessing Officer was just and proper - Held, yes [Para 8] [In favour of revenue]*

3. In the meanwhile, it is noticed that on this issue appeal is pending before the Hon'ble Supreme Court and recently Hon'ble Gujarat High Court in Tax Appeal No. 1186 of 2018 has held that two clear ways are possible to enable the appellant-assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed by the Hon'ble Supreme Court and relevant part of the said order of the High Court is reproduced:

> *"This Appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Ahmedabad {"Tribunal" for short} dated 22nd March 2018. The issue pertains to Assessment Year 2013-14 and the sole question raised by the assessee in this appeal concerns deductibility of a sum of Rs. 20,34,916/=*

*which was the employees' contribution towards Provident Fund, ESI, etc. It appears that the assessee did deposit such amount of contribution towards PF & ESIC accounts, however, missed the deadline prescribed in the statutes for such purpose. On account of this, the Revenue C/TAXAP/1186/2018 ORDER did not permit deduction of such sum from the income of the assessee. Such disallowance thereupon became the subject matter of appeal before the Tribunal. The Tribunal dismissed the ground, relying upon the judgment of this Court in the case of Commissioner of Income-tax vs. Gujarat State Road Transport Corporation Limited, reported in 366 ITR 170 [Gujarat].*

*Counsel for the appellant did not dispute that the issue on hands is squarely covered by this Court in the case of CIT v. GSRTC [Supra]. He, however, submitted that the appeal is pending against the judgment of the High Court before the Supreme Court and SLP has been granted. The amount involved is not very large and it would be extremely expensive for the assessee to carry this in appeal before the Supreme Court. He, therefore, suggested that the benefit of this judgment of the Supreme Court may be made available to the assessee; as and when rendered and in case, the judgment of the High Court is reversed.*

*Two clear ways are possible to enable the appellant- assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed. One is to dismiss this C/TAXAP/1186/2018 ORDER appeal and allow the assessee to approach the Supreme Court; like some other assesses would have. The other way is to make some arrangement under which without filing the appeal, the assessee would also be able to claim the benefit of the judgment. Looking to the smallness of the disputed amount, we adopt the latter option by providing as under :*

*This appeal at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of CIT vs. GSRTC [Supra], it would be open for the appellant to revive this appeal by filing an application for such purpose within three months from the date of the judgment.*

*Appeal stands disposed of accordingly."*

4. In view of the order passed by the Hon'ble Gujarat High Court, we set aside the matter to the file of the Assessing Officer to decide the matter after taking

into account order to be passed by the Hon'ble Supreme Court and thereafter will decide the matter.

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

| Order pronounced in Open Court on 30 - 11- 2018 |
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Sd/- Sd/-

**(WASEEM AHMED)** **(MAHAVIR PRASAD)**
**ACCOUNTANT MEMBER** **True Copy** **JUDICIAL MEMBER**

Ahmedabad: Dated 30/11/2018

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad