

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 3401/Ahd/2016
Assessment Year 2013-14**

RMP Bearings Ltd. Ahmedabad PAN: AABCR0266K (Appellant)	Vs	The DCIT, Circle-3(1)(2), Ahmedabad (Respondent)
------------------------------------------------------------------	----	-----------------------------------------------------------

**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri P.M. Mehta, A.R.**

Date of hearing : 29-10-2018
Date of pronouncement : 30-11-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A)-9, Ahmedabad dated 24-10-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the assessee in this case is against the decision of Id. CIT(A) in confirming the disallowance made by the assessing officer u/s. 36(1)(va) of Rs. 41,60,052/- pertaining to employees contribution to the provident fund and Employees State Insurance Corporation.

3. The fact in brief of the case is that return of income declaring income of Rs. 3,29,39,454/- was filed on 29th Sep, 2013. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 4th Sep, 2014. During the course of assessment proceedings, the assessee was called upon to furnish detail of employees contrition to provident fund and employees state insurance corporation. The detail of the same is reproduced as under:-

Month	Amount Rs.	Due Date	Dt.of Payment
April, 2012	3,40,142	20/05/2012	17/07/2012
May, 2012	3,55,938	20/06/2012	17/07/2012
June, 2012	3,43,884	20/07/2012	21/08/2012
July, 2012	3,49,090	20/08/2012	19/11/2012
Aug. 2012	3,46,761	20/09/2012	19/11/2012
Sept. 2012	3,46,761	20/10/2012	28/12/2012
Oct.2012	3,51,201	20/11/2012	18/01/2013
Nov. 2012	3,40,247	20/12/2012	24/01/2013
Dec. 2012	3,53,476	20/01/2013	19/02/2013
Jan. 2013	3,49,482	20/02/2013	13/03/2013
Feb. 2013	3,26,485	20/03/2013	28/05/2013
March, 2013	3,56,585	20/04/2013	15/06/2013
Total	41,60,052		

4. After taking into consideration the detail filed by the assessee. assessing officer has asked the assessee to show cause why not the late payment of PF & ESIC collected from employees should not be disallowed and added back to the total income of the assessee which comes to Rs 41,60,052/-. The assessee explained vide letter dated 13-10-2015 that the aforesaid payments were paid well before the due date of filing of return of income for year 2013-14 and before the end of the year under consideration. It has also mentioned that finance act

2003 has deleted the second proviso and amended first proviso w.e.f assessment year 2004-05 wherein it has been stated that if payment of provident fund contribution has been made within the due date of filing of return of income, the same is allowable as deduction u/s. 43 of the act. The assessing officer has not accepted the explanation of the assessee in view of the specific provision of section 36(1)(va) r.w. section 2(24)(x) of the act the deduction for the employees contribution is allowable only if such sum is credited by the assessee to the employees account in the relevant fund or funds on or before the due date. Since the assessee has deposited the employees contribution beyond the time allowed, therefore, in view of the provision of section 36(1)(va) of the act the amount of Rs. 41,60,052/- being PF & ESIC added to the total income of the assessee. The Id. CIT(A) has sustained the disallowance made by the assessing officer. Relevant part of the decision of Id. CIT(A) is reproduced as under:-

"7.2 I have carefully considered rival contention, case law relied upon as well as observations made by the A.O. in the assessment order It can be observed from para-3 of the assessment order that the appellant has failed in depositing, employees contribution in respect of PF & ESI amounting to Rs.41,60,052/- as per the respective due date. The A.O has disallowed the said amount and added to the total income of the appellant as per the provisions of sec. 2(24)(x) r.w.s, 36(1)(va) of the Act. The provisions of section 43B are applicable in respect of employees contribution and in this context it is different from the provisions of sec.36(1)(va); The Hon'ble High Court of Gujarat in the case of CIT vs Gujarat State Road Transport Corporation 265 CTR 64 have held that when the employer has not credited the 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), the assessee shall not be entitled to deduction of such amount though he deposits the said sum before the due date prescribed u/s,43B, i.e. prior to filing of return u/s. 139(1) of the IT.Act. Since in this case, the employees contribution towards P.P. & ESIC was not deposited before due date as prescribed in Explanation to Section 36(1)(va), accordingly, addition of Rs.41,60,052/- is confirmed. This ground of appeal is dismissed."

5. During the course of appellate proceedings before us Id. counsel has referred the decision of hon'ble high court of Gujarat in the case of Salasar Laminates Ltd. vs. DCIT Appeal No. 1186 of 2018 dated 1st Oct, 2018. He has contended that vide the referred judgment the jurisdictional high court has dismissed the appeal of the assessee with the remarks that if the hon'ble Supreme Court reversed the judgment in case of CIT vs. GSRTC it would be open to assessee to revive the appeal the by filing an application for such

purpose within the three months from the date of the judgment. He has contended that his case should be decided after considering the referred judgment of hon'ble high Court. On the other hand, Id. departmental representative has vehemently contended that Id. CIT(A)'s decision is justified after taking into consideration the decision of the hon'ble jurisdictional high court in the case of CIT vs. GSRTC reported in 366 ITR 170.

6. We have heard both the sides and perused the material on record carefully. The assessee has not deposited the contribution received from the employees under the provident fund act and the ESI Act within the due dates as prescribed under the provident Fund Act and the ESI Act amounting to Rs. 41,60,052/-. We consider that Hon'ble jurisdictional High Court in the case of CIT vs. Gujarat State Road Transport Corporation 265 CTR 64 has held that when the employer has not credited the 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(i)(va) the assessee shall not be entitled to deduction. In view of the above facts and the judicial findings, we uphold the decision of Ld. CIT(A). Accordingly, the appeal of the assessee is dismissed.

During the course of appellate proceedings before us, the Id. counsel has referred the decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of Saladar Laminates Ltd. vs. DCIT Circle 4(1)(1) vide R/Tax Appeal No. 1186 of 2018 wherein the assessee has stated the appeal against the decision of Hon'ble Court of Gujarat in the case of the CIT vs. GSRTC is pending before the Hon'ble Supreme Court and the benefit of the judgment of the Supreme court may be made available to the assessee as and when rendered and in case judgment of the Hon'ble court in the case of GSRTC is reversed. The jurisdictional High court has dismissed the appeal of the assessee with the remark that if the Supreme Court reverses the judgment in the case of CIT vs. GSRTC, it would be open for the assessee to revive the appeal by filing an application for such purpose within three month from the date of the judgment. On the strength

of Honble Gujarat High Court decision rendered in the case of Saladar Laminates Ltd. vs. DCIT Circle 4(1)(1) vide R/Tax Appeal No. 1186 of 2018 Id. counsel for the assessee submitted that though Honble High Court has upheld the disallowances made u/s. 36(1)(iv) of the Income Tax Act in case if assessee failed to deposit the employee's contribution within the time limit provided in PF and ESIC Act but in the concluding paragraphs Honble High Court has given liberty to the assessee to file application within three months from the decision of Honble High Court rendered on the appeal of GSRTC if Honble Supreme Court reversed the order of Honble High Court. The Id. counsel for the assessee submitted that identical direction be given in the present case appeal. We have considered the above contention of the Id. counsel for the assessee, it is pertinent to observe that if judgment of the Honble Gujarat High Court relied upon by the Tribunal while deciding the appeal is being reversed by the Honble Supreme Court the same would be suffering an apparent error. An application as provided u/s. 254(2) can be filed by the assessee on such reversal within the time limit provided in the act and no separate directions are required to be issued. It is also observed that by giving directions similar to the directions given by the Honble High Court, the ITAT would be enhancing the time limit if any applicable in the present case u/s. 254(2) for which it has no such power, therefore, we do not find any force in the alternative contention of the Id. counsel for the assessee and the same is rejected.

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

Order pronounced in the open court on 30-11-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 30/11/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अटैचमेंट / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील[य अधकरण,
अहमदाबाद