

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No.1128/AHD/2017: Assessment Year: 2013-14

M/s. Shree Khodiyar Fabricators and Technologies Pvt. Ltd. 13/B, Darpan Row House B/h Nutan Row House , Palanpur Jakat Naka , Surat 395009 PAN:AAMCS5796E	Vs.	Income Tax Officer, Ward-2, Surat
Appellant		Respondent

Assessee by	None
Revenue by	Shri Prasoon Kabra, Sr. D.R.
Date of hearing	15.05.2019
Date of pronouncement	15.05.2019

ORDER

PER O. P. MEENA, AM

1. This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-2, Surat [in short CIT (A)] dated 13.02.2017 pertaining to assessment year 2013-14.
2. The assessee has filed an adjournment application and same was rejected as the issue in appeal is covered against the assessee by the decision of Hon`ble Jurisdictional High Court of Gujarat.
3. The sole ground of appeal relates to confirming the disallowance of Rs.19,48,965/- pertaining payments of PF/ESI paid beyond the due date prescribed under the relevant statutes.

4. The ld. CIT (A) has confirmed the disallowance of EPF/ESIC on the ground that that same were paid beyond during date prescribed under the respective statutes. In doing so the CIT (A) has placed reliance on 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.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. None appeared for the assessee.

6. The ld. Sr. D.R. 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 PF, the same will not be deductible in computing income under section 28 of the Act.

7. 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. In view of above discussion, this grounds of appeal is therefore, dismissed.

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

9. Order pronounced in the open court on 15.05.2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 15 May, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat