

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI O. P. MEENA, ACCOUNTANT MEMBER)**

**ITA. No: 438/AHD/2017
(Assessment Year: 2012-13)**

Guardwell Security Services Pvt. Ltd. 401-402, Golden Point Near Telephone bhavan Falsawadi Ring Road- 395002, Surat	V/S	Income Tax Officer, Ward- 1(1) (2), Surat
(Appellant)		(Respondent)

PAN: AAACG8790J

**Appellant by : Shri Mehul Shah, C.A.
Respondent by : Shri P.S. Choudhary Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 20 -06-2019
Date of Pronouncement : 15 -07-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-1, Surat dated 22.06.2016 pertaining to A.Y. 2012-13.

2. There is a delay of 120 days in filing of appeal in support of its contention. Assessee filed an affidavit and has given the reason therein, we are satisfied reasons stated in the affidavit and we condone the delay and proceed with the appeal.
3. Facts of the case are that The assessee company is engaged in providing security services (Security Guard Service), The return of income for A.Y, 2012-13 was filed on 20.09.2012 showing total income at Rs,12,80,150. The assessment u/s. 143(3) of the Act was completed on 16.02,2015 determining the total income at Rs,26,29,800/- after making the following additions/disallowances:-

- | | | |
|-------|--|-----------------|
| (i) | Disallowance on A/c of PF & ESI ,for
late payment | Rs. 12,79,641/- |
| (ii) | Disallowance out of travelling Exp. | Rs. 50,000/- |
| (iii) | Disallowance out of telephone Exp | Rs. 20,000/- |

The appellant has filed appeal against the disallowance made by AO for delayed payment of Employees' contribution towards PF & ESIC.

4. The appellant has raised the following grounds of appeal:-

"1 . On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in making disallowance of Rs 12,79,641/- on account late payment of PF&ESIC.

2. It is therefore prayed that the above addition made by assessing Officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

Ground No.2 and 3 are of general nature requiring no specification adjudication and treated as dismissed for statistical purpose.

5. Ground No.1: During the assessment proceedings, the AO has observed from verification of audit report u/s.44AB of the Act and other details submitted that employee's contribution "to PF, employers contribution to PF, ESIC payment and service tax were not paid in time and therefore the show cause notice dated 06.02.2015 was issued to the assessee to explain as to why the delayed payments of PF, ESIC and service tax should not be disallowed and added to the total income. The relevant portion of the show cause notice is reproduced as under:-

"During the assessment proceedings, the details submitted by you, P&L a/c & Balance Sheet were verified with the books of accounts produced. On verification of the P & L account, it is seen that you have claimed Provident Fund of Rs. 11,78,492/-, ESIC of Rs.2,54,048/- and service tax of Rs.8,83.05S/-, On verification of the Balance Sheet for the year under consideration it is seen that though the above expenditure claimed by you, but the some have not been paid by you and shown as current liabilities in the balance sheet. Moreover, the auditor, in his report, has also shown them payable u/s,43B of the Act. During the assessment proceedings also you were repeatedly asked to produce the evidences of the above payments but you have totally failed to furnish the same.

in view of the above, you are hereby given a final opportunity to produce the proofs of payments of the above liabilities/expenditure as have been paid in stipulated time as per the Income Tax Act, For this you are requested to offend the office of the undersigned on 13.02,20 1 5 with documentary proofs, proving your claim, if you failed to produce the evidentiary proof in this regard on

13.02.2015, the liability in respect of the above expenditures will be disallowed u/s. 43B of the I.T.. Act and the same will be added to your total income.

If may please be noted that this is a time barring assessment and you have already been given number of opportunities of being heard and therefore no adjournment will be granted in any case."

6. In response to show cause notice, the assessee has submitted its reply dated 11.02.2015 contending the argument's which is reproduced as under:-

"This is to reference of your letter No,F,No.ITO/Wd 1(1)(2)/DEIPL/2014-15, dated 06.02.2015 for amount of provident Fund of Rs.11,78,492 /- ESIC of Rs.2,54,046/- and service tax of Rs.8,83,055/- were payable in Balance Sheet. These amounts have been paid before Audit time. Challans of these payments have been submitted already to you. Ledger of EPF payable, ESIC payable, & Service Tax payable showing payment of these amount are attached herewith for your kind reference."

7. The A.O. has observed in page 4 & 5 of the assessment order that the assessee failed to deposit Rs.12,79,641/- (Rs.10,25,593 + Rs.2,54,048) received as Employee's contribution towards PF & ESI within the "due date" specified in the respective Act. The details of such delayed payments have been given in Table on page A & 5 in respect of PF of assessment order as under ;-

<i>Month</i>	<i>Date of receipt</i>	<i>Actual dale of payment</i>	<i>Amount (Rs.)</i>
<i>April-11</i>	<i>20.05.2011</i>	<i>27.05.2011</i>	<i>359283</i>
	<i>20.05.2011</i>	<i>28,05.2011</i>	<i>36287</i>
	<i>20.05.2011</i>	<i>30.05.2011</i>	<i>2852</i>
	<i>20.05.2011</i>	<i>30.05.2011</i>	<i>4726</i>
	<i>20.05.2011</i>	<i>30,05.2011</i>	<i>3663</i>
	<i>20.05.2011</i>	<i>02.06.2011 .</i>	<i>101878</i>
<i>May-11</i>	<i>20,06.201 1</i>	<i>09.07.2011</i>	<i>3386</i>
	<i>20,06,2011</i>	<i>09,07.2011</i>	<i>2125</i>
	<i>20,06,2011</i>	<i>18.07.2011</i>	<i>11191</i>

<i>Jun-11</i>	20.07.2011 20.07.2011 20.07.2011	29.07.2011 29.07.2011 29.07.2011	2852 13617 4693
<i>Jul-11</i>	20,08,2011 20,08.2011 20,08.2011	02.09.2011 29,08.2011 29.08.2011	12000 2887 2633
<i>Aug11</i>	20.09.2011 20.09.2011 20.09,2011	05,10.2011 05.10.2011 05,10.2011	13487 3782 2728
<i>Sept-1 1</i>	20.10,2011 20.10,2011 20.10.2011	03.11.2011 03.11.2011 03.11.2011	9815 3841 2710
<i>Oct-11</i>	20.11.2011 20.11.2011 20.11,201!	15.12,2011 15.12.2011 1 5.12.2011	13318 2330 3057
<i>Nov- 11</i>	20.12.2011 20,12,2011 20.12.2011	29.32,2011 29.12.2011 16.01.2012	1 2089 4777 2093
<i>Dec-1 1</i>	20.01.2012 20,01,2012 20,01.2012	10.02.2012 10.02,2012 10.02.2012	12011 6873 2955
<i>Jan-2012</i>	20.02,2012	11.06.2012	12957
	20.02.2012 20.02.2012 20.02.2012	04.04.2012 04.04.2012 04.04.2012	2999 3181 4119
	20.02.2012	11,06.2012	29577
<i>Feb-2012</i>	20.03,2012 20.03.2012 20.03.2012 20.03.2012	04.04.2012 04,04.2012 04,04.2012 04.04 .2012	4251 2680 3776 1 4633
<i>Mar-2012</i>	20.04.2012 20.042012 20.04.2012	04.07.2012 04,07.2012 04.07.2012	320-4 11520 753

	20.04.2012	04.05.2012	4,88,124
	Total		10,25,593

8. During the assessment proceedings, the ld, AR of the assessee has contended that the said amounts of employee's contribution to the PF & ESIC Fund had been deposited before the filing of the return before the due date and therefore the same would be allowable, However, the Ld, AO did not accept this contention of the assessee and after placing reliance on the decision of Jurisdictional High Court in the case of CIT Vs Gujarat State Road Transport Corp. (2074) 41 Tax mann.Com 700 Gujarat Dated 26.12.2013 disavowed the expense U/S. 36(1)(va) of the Act and treated the same as income of the assessee company u/s. 2(24)(x) of the Act and made addition of Rs. 12,79,641/- (Rs. 10,25,593 + Rs..2,54,048) towards Provident Fund & ESIC to the total income of the assessee company.
9. Thereafter, assessee preferred first statutory appeal before the ld. CIT(A) who confirmed the action of the A.O.
10. We have gone through the relevant record and impugned order, we set aside this matter to the file of the ld. CIT(A) with the direction that SLP is pending before the Hon'ble Supreme Court of India with regard to delayed payment of Employee's contribution to PF and ESIC is pending. As and when matter will be decided by the Hon'ble Apex Court. Accordingly, matter will be decided by the ld. CIT(A) as per provisions of law and direction of the Hon'ble Supreme Court of India.
11. In the result, appeal filed by the Assessee is set aside for statistical purpose.

12. The order is pronounced by listing the case on the Notice Board under Rule 34(4) of
Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(O. P. MEENA)
ACCOUNTANT MEMBER
Ahmedabad: Dated : 15/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

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

/ / **TRUE COPY** / /

Deputy/Asstt.Registrar
ITAT,Surat