

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1157/Ahd/2018

(निर्धारण वर्ष / Assessment Year: 2015-16)

Max Vigil Securities Pvt. Ltd. 42, Astha Complex, Opp. R.T.O., Subhas Bridge, Ahmedabad- 380027	बनाम/ Vs.	ACIT Circle-2(1)(2), Navjivan Trust Building, B/h. Gujarat Vidyapith, Off Ashram Road, Ahmedabad- 380009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAF CM0 319 Q		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Afaq Saiyad, AR
प्रत्यर्थीकीओरसे / Respondent by:	Shri Mudit Nagpal, Sr. DR

सुनवाईकीतारीख/Date of Hearing	29/07/2019
घोषणाकीतारीख /Date of Pronouncement	07/08/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the Assessee for A.Y. 2015-16, arise from order of the CIT(A)-2, Ahmedabad dated 10.04.2018, 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 is filed against the decision of Ld. CIT(A) in confirming the addition of Rs. 2,32,54,401/- on account of delay in crediting of employees' contribution to Provident Fund and ESIC u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act made by the AO.

3. The fact in brief is that assessment u/s. 143(3) for the year under consideration was finalized on 05.05.2015. During the course of assessment the AO has noticed that

assessee has made late payment of employees' contribution to Provident Fund amounting to Rs. 2,25,53,564/- and ESIC amounting to Rs. 7,00,837/-. The AO has observed that as per the provision of Sec. 36(1)(va) r.w.s. 2(24)(x) the deduction from employees' contribution is allowable only if such sum is credited by employer to the employees' account in the relevant fund on or before the due date. The AO has issued show-cause notice to the assessee and stated that the assessee was agreed for the proposed disallowance. Therefore, after placing reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation (Tax Appeal No. 637 of 2013), the AO has disallowed the aforesaid amount aggregating to Rs. 2,32,54,401/- and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) after referring the decision of Hon'ble Gujarat High Court in the case of CIT vs. GSRTC as cited above has dismissed the appeal of the assessee.

5. We have heard the rival contention and perused the material on record. It is undisputed fact that assessee has not deposited the contribution received from the employees under the Provident Fund Act and the ESI Act within the due date as prescribed under the Provident Fund and the ESI Act amounting to Rs. 2,32,54,401/-. We consider that the Hon'ble jurisdictional High Court in the case of CIT vs. GSRTC 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 Sec. 36(1)(va) the assessee shall not be entitled to deduction. In view of the above facts and the judicial findings we upheld the decision of Ld. CIT(A). Therefore, the appeal of the assessee is dismissed.

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

This Order pronounced in Open Court on	07/08/2019
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad: Dated 07/08/2019

TANMAY

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।