

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “D” BENCH**

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

**ITA. No: 1898/AHD/2017  
(Assessment Year: 2014-15)**

<b>Agew Steel Manufacturers Pvt. Ltd. 506, Aniket Building, Nr. Municipal Market, C.G. Road, Ahmedabad-380009</b>	<b>V/S</b>	<b>The Income Tax Officer, Ward-1(1)(4), Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AABCA6055D**

**Appellant by : Shri Karan Shah, A.R.  
Respondent by : Shri Vinod Tanwani, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 09 -10-2019  
Date of Pronouncement : 10 -10-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 16.06.2017 pertaining to A.Y. 2014-15 and for confirming the disallowance of Rs. 18,69,737/- made by the A.O. on account of delayed payment of Employees Contribution to Provident Fund and ESIC.

2. The facts of the case are that the assessee company is engaged in the business of manufacturing of Iron and Steel doors, Window, Door Frames, Pressed Steel products and other Steel Fabrications.
3. On perusal of column No.20b of form No.3CD of the audit report It Is found that the assessee has not deposited the employees contribution towards provided fund and ESI within stipulated time. The details of which are as under-

Sr. No.	Nature of fund	Due date for payment	Actual date for payment	Amount
1.	Provided fund	20/05/2013	22/05/2013	Rs. 1,31,197/-
2.	-do-	20/06/2013	03/07/2013	Rs. 1, 39,386/-
3.	-do-	20/07/2013	23/07/2013	Rs. 1, 32,645/-
4.	-do-	20/08/2013	12/09/2013	Rs. 1, 43,234/-
5.	-do-	20/09/2013	05/10/2013	Rs. 1,3 7,396/-
6.	-do-	20/10/2013	06/11/2013	Rs. 1,28,762/-
7.	-do-	20/11/2013	28/12/2013	Rs. 1, 38,2047-
8.	-do-	20/12/2013	01/01/2014	Rs. 1,22,2607-
9.	-do-	20/01/2014	07/02/2014	Rs. 1,36,188/-
10.	-do-	20/02/2014	30/03/2014	Rs. 1,51,489/-
11.	-do-	20/03/2014	16/04/2014	Rs. 1,4 1,310/-
12.	-do-	20/04/2014	01/05/2014	Rs. 1,56,487/-
Total				Rs. 16,58,558/-

**ESI**

Sr. No.	Nature of fund	Due date for payment	Actual date for payment	Amount
1.	Employee's Contribution	21/05/2013	25/05/2013	Rs.18,063/-

2.	-do-	21/06/2013	03/07/2013	Rs. 1 9,405/-
3.	-do-	21/08/2013	07/09/2013	Rs. 1 9,885/-
4.	-do-	21/09/2013	04/10/2013	Rs. 1 9,325/-
5.	-do-	21/10/2013	31/10/2013	Rs. 1 8,329/-
6.	-do-	21/11/2013	28/11/2013	Rs. 1 9,380/-
7.	-do-	21/12/2013	01/01/2014	Rs. 16,776/-
8.	-do-	21/01/2014	30/01/2014	Rs. 18,669/-
9.	-do-	21/02/2014	03/03/2014	Rs.20,933/-
10.	-do-	21/03/2014	28/03/2014	Rs. 18,909/-
11.	-do-	21/04/2014	01/05/2014	Rs.2 1,505/-
Total				Rs.2,11,179/-

In view of the above, the assessee vide notice u/s 142(1) dated 21.07.2016 was requested to explain as to why the disallowance of Rs.18,69,737/- for the late payment of employees contribution of provided fund and ESI should not be made.

4. Thereafter assessee filed reply which was not tenable in the eyes of ld. A.O. and he made addition of Rs. 18,69,737/-.
5. Thereafter assessee preferred first statutory appeal before the ld. CIT(A) who confirmed the action of the A.O.
6. Now assessee has come before us by way of second appeal.
7. At the time of hearing ld. A.R. Shri Karan Shah fairly conceded that matter is against the assessee in view of the Hon'ble Gujarat High Court order in the

case of CIT vs. GSRTC and requested that he does not want to context the appeal. Since Id. A.R. has conceded himself that matter is against him and judgment of Hon'ble Gujarat High Court in the matter of CIT vs. GSRTC 366 ITR 170 wherein it is held as under:

*"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), assesses 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 - Assesses 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]*

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

Order pronounced in Open Court on	10- 10- 2019
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 10/10/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**