

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘C’

**BEFORE SHRI RAJPAL YADAV,
HON’BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON’BLE ACCOUNTANT MEMBER**

ITA No.2834/Ahd/2017
निर्धारण वर्ष/ Asstt. Year: 2014-2015

C. Dotor India P.Ltd. Plot No.3607 to 3608, GIDC estate Phase-IV, Vatva Ahmedabad 382 445 PAN : AAACI 3673 A	vs.	DCIT, Cir.1(1)(2) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	None
Revenue by :	Shri L.P.Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/01/2020

घोषणा की तारीख /Date of Pronouncement: 06/01/2020

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

This is assessee’s appeal against the order of the Id.CIT(A)-1, Ahmedabad dated 28.9.2017 passed for the Asstt.Year 2014-15.

2. Registry has pointed out that appeal of the assessee is time barred by one day. This fact was intimated to the assessee in the acknowledgement-cum-receipt issued to it at the time of presentation of appeal. The assessee has neither filed an application for condonation of delay nor removed objection. Apart from the above, it is pertinent to observe that this appeal was listed on 16.9.2019, and application for adjournment was filed on behalf of the assessee. Hearing was adjourned to 1.11.2019. But thereafter no one

appeared on behalf of the assessee. Notice for today's hearing was served through registered post, but no-one has appeared.

3. With the assistance of the Id.DR, we have gone through the record carefully. As it emerges out from the record, grievance of the assessee is that the Id.CIT(A) has erred in confirming disallowance of Rs.6,66,880/-which was disallowed by the AO on the ground that contribution to PF and ESI received from the employees was not deposited with concerned accounts within time period provided in those Acts. The Id.CIT(A) has confirmed the disallowance by recording the following finding:

"2.3 I have carefully considered the assessment order and the submission filed by the appellant. The Assessing Officer has observed that appellant has failed to deposit employees contribution to Provident Fund before due date prescribed under relevant provisions of the said Acts hence he relied upon provisions of section 36(1)(va) r.w.s 2(24)(x) and decision of Hon'ble Gujarat High court in the case of State Road Transport Corporation and made disallowance of Rs 6,66,8807-. On the other hand, appellant has argued that appellant has paid the entire amount of employee's contribution to provident fund and ESIC before the due date for filling the return of income u/s. 139(1) of the I.T. Act.

On careful consideration of observation of Assessing Officer and contention of appellant, I observe that entire issue is covered against appellant by decision of Hon'ble Gujarat High court in case of State Road Transport Corporation (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), assessee shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 438 i.e., prior to filing of return under section 139(1) - Held, yes - Assessee 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 436 - 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].

Considering the above decision of Hon'ble Jurisdictional High court in the case of State Road Transport Corporation (366 ITR 170) addition made by Assessing Officer is upheld. It is pertinent to note that appellant has taken new plea before undersigned that due date for payment of Provident Fund is required to be computed from the payment of salary and not from the close of the month to which salary pertains. However, appellant has not raised this contention before Assessing Officer nor provided relating to such plea before Assessing Officer hence this argument of appellant /s not accepted. In the nutshell, the disallowance made by Assessing Officer for Rs.6,66,880/- is upheld in view of the decision of Hon'ble Jurisdictional High court in the case of State Road Transport Corporation (366 ITR 170). This Ground of appeal is dismissed.”

4. In the grounds of appeal, the assessee has cited 13 judgments from different High Courts as well as from the Hon’ble Supreme Court whereby SLPs of those judgments of Hon’ble High Courts have been dismissed. These very judgments have been cited by the assessee in its written submissions filed before the Id.CIT(A), and they have been duly noted by the Id.CIT(A). The Id.CIT(A) has considered all these aspects, and thereafter putting reliance upon the judgment of Hon’ble jurisdictional High Court in the case of State Road Transportation Corporation, 366 ITR 170, disallowed the claim of the assessee. A perusal of order of the CIT(A) would indicate that the issue is squarely covered against the assessee by decision of the Hon’ble jurisdictional High Court cited (supra), and probably for that may be reason, the assessee is not showing any interest in prosecuting its appeal. Considering the above

facts, we find no error in the order of the Id.CIT(A). Accordingly, the appeal is dismissed *ex parte qua* the assessee on merit.

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

Order pronounced in the Court on 6th January, 2020 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER