

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**  
**आयकरअपीलसं./ITA Nos.161 to 162/SRT/2021 & 163 to 164/SRT/2021**  
**(निर्धारणवर्ष / Assessment Years: (2017-18 to 2018-19)**  
**(Virtual Court Hearing)**

Puja Chemicals, 37-38, Jagdish Ind. Plot, Gabbar Mataji Temple Lane, Kadodara, Tal. Palsana, Surat-394327.	<b>Vs.</b>	The DCIT, Central Processing Centre (CPC), Bengaluru.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFFP5721Q</b>		
Veekay Prints Pvt. Ltd., 210, NR. Mahalaxmi Dyeing, Kadodara, Tal. Palsana, Surat-394327.	<b>Vs.</b>	The DCIT, Central Processing Centre (CPC), Bengaluru.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACV9663K</b>		
Vigilplus Seocurity Solutions Pvt. Ltd., 20/10, Dr. Shyama Prasad Mukharjee Nagar, Gujarat Gam Gruh Nirman Board, Nr. Valentine Multiplex, Rundh, Dumar Road, Surat-395007.	<b>Vs.</b>	The DCIT, Central Processing Centre (CPC), Bengaluru.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCV4464B</b>		
<b>Assessee by</b>	Shri Rasesh Shah, CA	
<b>Respondent by</b>	Shri Sita Ram Meena, Sr. DR	
<b>Date of Hearing</b>	17/02/2022	
<b>Date of Pronouncement</b>	25/02/2022	

**आदेश / ORDER**

**PER BENCH:**

Captioned four appeals filed by four assessees, pertaining to Assessment Years (AY) 2017-18 to 2018-19, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short “NFAC”), Delhi which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Shri Rasesh Shah, Learned Counsel for the assessee begins by pointing out that Ld. CIT(A), NFAC, has erred in confirming the action of the Assessing Officer (Central Processing Centre, Bengaluru) in making adjustment under section 143(1), the same adjustments do not fall within the ambit of section 143(1)(a)(i) to 143(1)(a)(vi) of the Income Tax Act. Therefore, Learned Counsel for the assessee submits that the adjustments so made by the Assessing Officer (Central Processing Centre, Bengaluru), should be deleted.

3. Without prejudice, the Learned Counsel submits that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into the account the order of the Hon'ble Supreme Court, in SLP filed by assessee against the judgment of Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company [366 ITR 170 (Guj.)]

4. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submits that issue is covered against the assessee by the judgment of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company (GSRTS) 366 ITR 170, therefore these appeals should be dismissed. Ld. DR also submits that against the intimation issued by the Central Processing Centre, Bengaluru under section 143(1), if the assessee does not reply within one month, than in that situation, the adjustments made by the Central Processing Centre, Bengaluru would be treated as a final adjustments and assessee has to pay the income tax on these adjustments. Further, vide letter dated 23.02.2021, the ld. DR for Revenue prayed to keep the order on hold till the reply of CPC, Bangalore received as he had sought information from CPC.

5. We have heard both the parties and perused the material available on record. We note that the issue involved in these four appeals are covered against the assessee, as the assessee has not deposited Employees Provident Fund (EPF) with the prescribed authority within stipulated time, therefore as per the judgment of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company (supra), the issue had already been decided by the Hon'ble Court against the assessee. However, we note that jurisdiction ITAT,

Ahmedabad in the case of M/s Unicorn Remedies Pvt. Ltd. in ITA Nos. 3058/AHD/2014 for AY.2011-12 and 2599/AHD/2016 for AY.2012-13, order dated 30.01.2019 wherein the similar issue has been remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the outcome of the judgment of the Hon'ble Supreme Court. The findings of the Tribunal are reproduced below:

*14. This issue is already against the appellant for late deposit of Employees Provident Fund with the authority by the judgment of Hon'ble Gujarat High Court in the matter of GSRTC 366 ITR 170 wherein it is held:*

*"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 43B. 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 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]*

*15. In the meanwhile, it is noticed that on this issue appeal is pending before the Hon'ble Supreme Court and recently Hon'ble Gujarat High Court in Tax Appeal No. 1186 of 2018 has held that two clear ways are possible to enable the appellant-assessee to get benefit of the judgment of the Supreme Court, in case the High Court Judgment is reversed by the Hon'ble Supreme Court and relevant part of the said order of the High Court is reproduced:*

*"This Appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Ahmedabad {"Tribunal" for short} dated 22nd March 2018. The issue pertains to Assessment Year 2013-14 and the sole question raised by the assessee in this appeal concerns deductibility of a sum of Rs.20,34,916/- which was the employees' contribution towards Provident Fund, ESI, etc. It appears that the assessee did deposit such amount of contribution towards PF & ESIC accounts, however, missed the deadline prescribed in the statutes for such purpose. On account of this, the Revenue C/TAXAP/1186/2018 ORDER did not permit deduction of such sum from the income of the assessee. Such disallowance thereupon became the subject matter of appeal before the Tribunal. The Tribunal dismissed the ground, relying upon the judgment of this Court in the case of Commissioner of Income-tax vs. Gujarat State Road Transport Corporation Limited, reported in 366ITR 170 [Gujarat].*

*Counsel for the appellant did not dispute that the issue on hands is squarely covered by this Court in the case of CIT v. GSRTC [Supra]. He, however, submitted that the appeal is pending against the judgment of the High Court before the Supreme Court and SLP has been granted. The amount involved is not very large and it would be extremely expensive for the assessee to carry this in appeal before the Supreme Court. He, therefore, suggested that the benefit of this judgment of the Supreme Court may be made available to the assessee; as and when rendered and in case, the judgment of the High Court is reversed. Two clear ways are possible to enable the appellant- assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed. One is to dismiss this C/TAXAP/1186/2018 ORDER appeal and allow the assessee to approach the Supreme Court; like some other assesses would have. The other way is to make some arrangement under which without filing the appeal, the assessee would also be able to claim the benefit of the judgment. Looking to the smallness of the disputed amount, we adopt the latter option by providing as under:*

*This appeal at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of CIT vs. GSRTC [Supra], it would be open for the appellant to revive this appeal by filing an application for such purpose within three months from the date of the judgment. Appeal stands disposed of accordingly."*

*16. At the outset, Id. A.R. requested that in view of the order passed by the Hon'ble Gujarat High Court as aforesaid therefore this matter may be restored to the file of the ld.CIT(A).*

*17. In view of the above and order passed by the Hon'ble Gujarat High Court, we set aside the matter to the file of the ld.CIT(A) to decide the matter after taking into account order of the Supreme Court as and when will be passed by the Hon'ble Supreme Court. Accordingly will decide the matter.*

*18. In the result, appeal is allowed for statistical purposes.*

6. From the above judgment of Co-ordinate Bench in the case of M/s Unicorn Remedies Pvt. Ltd. (supra), it is vivid that against the order of the Hon'ble Gujarat High Court, the SLP has been filed by the assessee which has not been adjudicated yet therefore we are of the view that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the judgment of the Hon'ble Supreme Court as and when will be passed by the Hon'ble Supreme Court.. Therefore, we allow these four appeals for statistical purposes. No useful purpose would seek in keeping the appeal on the request of ld. DR. As we are requesting the appeal to the file of ld. CIT(A).

7. In the result, appeals filed by the assessees (in ITA Nos. 161, 162, 163 & 164/SRT/2021) are allowed for statistical purposes.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced in the open court on 25/02/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

सूत /Surat

दिनांक/ Date: 25/02/2022

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat