

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

(Hearing in Virtual Court)

<b>ITA No.309/SRT/2017 (AY 2017-18)</b>			
1	Karpara Project Engineering P. Ltd., 405, SNS Platina, Near Reliance Market, Behind J.H.Ambani School, Above Surat People's Bank, Vesu, Surat – 395007. PAN: AABCK 8206 AQ	Vs.	The Deputy Commissioner of Income Tax, Circle- 1(1)(2), Surat.
	Represented by Miss Chaitali Shah CA		Represented by Miss Anupma Singla Sr DR
<b>ITA No.45/SRT/2018 (AY 2014-15)</b>			
2	Sankalp Dyeing & Printing Mills Pvt. Ltd., Plot No.268, Road No.2, GIDC, Sachin, Surat. PAN: AAHCS 3980 P	Vs.	The Deputy Commissioner of Income Tax, Circle- 2(1)(2), Surat.
	Represented by Sh Manish Malpani CA		Represented by Miss Anupma Singla Sr DR
<b>ITA No.106/SRT/2021 (AY 2017-18)</b>			
3	The Udhna Udyognagar Sahakari Sangh Ltd., Central Road No.10, P.O.Box No.1224, Udhyognagar, Udhna, Surat – 394 210. PAN: AAAAT 2932 K	Vs.	The Assistant Commissioner of Income Tax, Circle-1(2), Surat.
	Represented by Sh. Rushi Parekh CA		Represented by Miss Anupma Singla Sr DR
<b>ITA No.149/SRT/2021 (AY 2017-18)</b>			
4	Riddhi Siddhi Prints Pvt Ltd., 75-1 AND 75-2, G.I.D.C., Pandesara, Surat – 394221. PAN: AACCR 7050 C	Vs.	The Assistant Commissioner of Income Tax, Circle-2(1) (2), Surat.
	Represented by Miss Richa Toshniwal CA		Represented by Miss Anupma Singla Sr DR
<b>ITA No.156/SRT/2021 (AY 2017-18)</b>			

5	Tamanna International Private Limited, Plot No.16 and 17, Fairdeal Textile Park, Mangrol, Mahuvej, Surat – 394125. PAN: AADCT 8875 G	Vs.	The Income Tax Officer, Circle-2(1)(4), Surat.
	Appellant/ Revenue		Respondent/ Assessee
	Represented by Miss Richa Toshniwal CA		Represented by Miss Anupma Singla Sr DR

Date of hearing	22/03/2022
Date of pronouncement	22 /03/2022

**Order under section 254(1) of Income Tax Act**

**PER BENCH;**

1. This set of five appeals are directed against the separate orders of Id. Commissioner of Income Tax(Appeal) and / or National Faceless Appeal Centre(NFAC), Delhi against different assessee's relates to the Assessment Years 2014-15 and 2017-18. In all appeals, all the Assessee's have raised certain common grounds of appeal, facts in all appeals are common except variation of figures of disallowance on account of delayed payments of Employees State Insurance (ESI) or Provident Fund (PF) contribution of employee, therefore, all the appeals were clubbed, heard and are adjudicated by consolidated order. For appreciation of facts, facts in ITA No.156/SRT/2021 in Tamanna Internationals Pvt. Ltd., is treated as lead case. The Assessee has raised the following grounds of appeal in ITA No.156/SRT/2021 for the A.Y. 2017-18 as under:

*"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.1,33,616/- on account of disallowance of employees contribution to P.F. and ESIC of Rs.1,33,616/- u/s.36(1)(va) r.w.s. 2(24)(x) of the Act.*

2. *It is therefore prayed that addition made by the assessing officer and confirmed by CIT(A) may please be deleted.*

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

2. Brief facts of the case are that the assessee is a Company, engaged in the business of processing of textile items, filed its return of income for assessment year (A.Y.) 2017-18 on 13.10.2017 declaring total income of Rs.Nil. The return was selected for scrutiny and a notice under section 143(2) of the Act, dated 13.08.2018 was issued to the assessee. The Assessing Officer(AO) assessed the total income at Rs.1,33,616/- and made the addition of Rs.1,33,616/- on account of disallowance under section 36(1)(va) of the Act in respect of employees contribution to Provident Fund which was deposited beyond the due date of prescribed under the relevant statutes. On appeal before the Id.CIT(A), the action of AO was upheld. The Id CIT(A) while confirming the disallowance under section 36(1)(va) also relied on the decision of Jurisdictional High Court in CIT Vs Gujarat State Roadway Transport Corporation (366 ITR 170 Guj). Further aggrieved, the assessee has filed present appeal before this Tribunal.

3. We have heard the submissions of the learned authorised representative (AR) of the assessee and the learned senior departmental representative (DR) for the revenue. The AR of the assessee fairly submits that issue of disallowance under section 36(1)(va) raised by the assessee is covered against assessee by the decision of Hon'ble Gujarat High Court in case of CIT vs. Gujarat State Road

Transport Corporation (GSRTC) [2014] 366 ITR 170 (Guj). The AR further submitted against the decision in GSRTC, the Special Leave Petition (SLP) filed by GSRTC has been admitted by the Hon'ble Supreme Court. Therefore, the appeal of the assessee either may be kept in abeyance or may be restore to the Ld.CIT(A) with the direction that in case the matter is decided in favour of the GSRTC, the similar relief may be allowed to the assessee.

4. The ld AR for the assessee submits that Hon'ble Gujarat High Court in the recent decision in Salasar Laminates Ltd. vs DCIT in Tax Appeal No.1186 of 2018 dated 01.10.2018 while considering the similar question noted that appeal against the decision of Gujarat High Court in CIT vs GSRTC is pending before Hon'ble Supreme Court and Special Leave has been granted. The Hon'ble High Court on the prayer of assessee in the said case held that as and when the decision is rendered by Apex Court and in case judgment of High Court is reversed and in case the said appeal is allowed, the assessee may approach the High Court to claim the benefit of the judgment. The ld. AR for the assessee submits that a direction may be given to the ld. CIT(A) or Assessing Officer in case the decision of GSRTC is reversed by Hon'ble Supreme Court, the assessee may be allowed similar relief.
5. The AR for the assessee further submits that on similar ground of appeal, this Bench vide order dated 24.07.2019 in ITA No.2207/AHD/2016 in Décor Home (India) Pvt. Ltd, Vs. ACIT, set-aside the matter to the ld.CIT(A) with the direction

to grant relief/ decide the appeal as per the outcome of Special Leave Petition of GSRTC by the Hon'ble Apex Court. Further similar direction was given by this bench in case of Puja Chemicals Vs DCIT (ITA No. 161 & 162/SRT/2021 dated 25/02/2022. The AR prayed that this appeal may also be decided with similar direction to Lower Authorities.

6. On the other hand, the DR for the Revenue submits that as on today, the issue is covered against the assessee by the decision of jurisdictional High Court in CIT vs. Gujarat State Road Transport Corporation (supra). The combination of this Bench in other cases have already dismissed the similar appeals of different assessee's.
7. We have considered the rival contentions of both the parties and have gone through the orders of the lower authorities. We find that as on today the issue is covered against the assessee by the decision of Hon'ble High Court in CIT Vd GSRTC (supra). Therefore, the assessee has no merit in its case. However, we noted that on similar issue our predecessor in Décor Home (India) Pvt. Ltd. vs ACIT (supra), passed the following order:

*“6. We have heard the rival submissions and perused the relevant material on record. We find that the issue is squarely covered against the assessee by the decision of Hon'ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC, wherein it was held that section 43B does not apply to employees contribution. Only section 2(24)(x) read with section 36(1)(va) is applicable and therefore, employees contribution is disallowed if not paid within due dates prescribed under relevant Provident Fund /ESI Act. We are, therefore, of the considered opinion that there is no mistake in the*

*orders of lower authorities in making disallowance in the light of the ratio laid down by the Hon'ble Gujarat High Court in the above case (supra). However, since the SLP has been admitted by the Hon'ble Supreme Court against the decision of Hon'ble High Court therefore, we set aside this matter to the file of the ld. CIT(A) with the direction that the matter be decide as per outcome of SLP, 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. Therefore, this ground of appeal is set-aside for statistical purpose.”*

8. We further find that Hon'ble Jurisdiction High Court in subsequent decision in Salsar Laminates Ltd. vs DCIT (supra), though dismiss that appeal. However it was directed that if the decision of GSRTC VS DCIT (supra) is reversed by Hon'ble Apex Court, the assessee is given opportunity to revive his appeal by filing application for seeking similar relief.
9. Considering the fact that the issue is squarely covered against the assessee as noted by above. However, instead of keeping the matter alive, the case was restore to Ld.CIT(A) to give effect to the order of the Tribunal in accordance with the decision of Hon'ble Supreme Court in SLP in Gujarat State Road Transport Corporation(supra), In the result, appeal of the assessee is allowed for statistical purpose.

**ITA No.309/SRT/2017 for the A.Y. 2017-18:**

10. The Assessee in ITA No.309/SRT/2017 has raised following grounds of appeal:

*“1. On the facts and circumstances of the case, the learned CIT(A) has grossly erred in confirming the addition of Rs.13,659/- on account of delayed payment of employees contribution of ESI by treating it as income u/s.2(24)(x) of the Act, which is erroneous and needs to be deleted.*

2. *On facts and circumstances of the case, the learned CIT(A) has grossly erred in confirming the addition of Rs.2,67,798/- on account of delayed payment of employees contribution of PF by treating it as income u/s.2(24)(x) of the Act, which is erroneous and needs to be deleted.*
3. *The appellant craves to add, amend, alter, substitute, modify any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”*

11. Considering the fact on identical grounds of appeal in ITA No.156/SRT/2021, we have restored the appeal to the file of Id.CIT(A), therefore, considering the principle of consistency the appeal for Assessee in this appeal also allowed with similar observation.

12. In the result, appeal of the assessee is allowed for statistical purpose.

**ITA No.45/SRT/2018 for the A.Y. 2014-15:**

13. The Assessee in ITA No.45/SRT/2018 has raised following grounds of appeal:

- “1) *That on the facts and circumstances of the case as well as law, Hon’ble CIT(A) has erred in upholding the disallowance of Rs.2,62,992/- u/s.36(1)(Va) of the Income Tax Act, 1961.*
- 2) *The appellant craves leave to add, alter, delete or modify any ground of appeal.”*

14. Considering the fact on identical grounds of appeal in ITA No.156/SRT/2021, we have restored the appeal to the file of Id.CIT(A), therefore, considering the principle of consistency the appeal for Assessee in this appeal also allowed with similar observation.

15. In the result, appeal of the assessee is allowed for statistical purpose.

**ITA No.106/SRT/2021 for the A.Y. 2017-18:**

16.The Assessee in ITA No.106/SRT/2021 has raised following grounds of appeal:

- “1. That the CIT(A) erred in confirming the disallowance of employees contribution of Rs.1,06,387/- deposited after due date u/s 36(1)(v).
2. That the disallowance made of Rs.1,06,387/- may kindly be deleted.
3. The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal.”

17.Considering the fact on identical grounds of appeal in ITA No.156/SRT/2021, we have restored the appeal to the file of Id.CIT(A), therefore, considering the principle of consistency the appeal for Assessee in this appeal also allowed with similar observation.

18.In the result, appeal of the assessee is allowed for statistical purpose.

**ITA No.149/SRT/2021 for the A.Y. 2017-18:**

19.The Assessee in ITA No.149/SRT/2021 has raised 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 confirming the action of assessing Officer in making addition of Rs.9,72,043/- on account of disallowance of employees contribution to P.F. and ESCI of Rs.9,72,043/- u/s.36(1)(va) r.w.s. 2(24)(x) of the Act.
2. It is therefore prayed that addition made by the assessing officer and confirmed by CIT(A) 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.”

20. Considering the fact on identical grounds of appeal in ITA No.156/SRT/2021, we have restored the appeal to the file of ld.CIT(A), therefore, considering the principle of consistency the appeal for Assessee in this appeal also allowed with similar observation.

21. In the result, appeal of the assessee is allowed for statistical purpose.

22. To sum up, in the result, five appeals of the assessees are allowed for statistical purpose.

Order announced on 22<sup>nd</sup> March, 2022 at the time of hearing in virtual hearing.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 22 /03/2022 /SGR\*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

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

By order

/ / TRUE COPY / /

Sr.Pvt. Secretary, ITAT, Surat