

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 217/Ahd/2021
(Assessment Year: 2019-20)

M/s. J & H Projects Pvt. Ltd. B-16, Mangal Estate Lions School Cross Road, GIDC Naroda, Ahmedabad	Vs.	CIT(A)-NFAC Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad
[PAN No.AADCJ0542Q]		
(Appellant)	..	(Respondent)

Assessee by :	None
Revenue by :	Shri R. R. Makwana, Sr. DR
Date of Hearing	11.05.2022
Date of Pronouncement	11.05.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.07.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi arising out of the order dated 17.12.2019 passed by the Asst. DIT(CPC), Bengaluru under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2019-20.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. This matter relates to disallowance of Rs. 17,28,197/- in respect of the employees' contribution to PF and ESIC which was paid late instead of with due date as per the statutory provision.

4. At the time of call, none appears on behalf of the assessee neither any written notes of submissions was filed before us. Further that it appears from the fact that employees' contribution has not been paid within the due date prescribed under the provision of law though, according to the assessee it was paid before filing of return for the year under consideration. We find the identical facts and circumstances of the case the ground of appeal has already been decided against the assessee by the Hon'ble Jurisdictional High Court in the case of CIT vs. GSRTC, reported in 366 ITR 170. While dealing with this particular aspect of the matter the Hon'ble Court was pleased to observe as follows:

“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]”

Respectfully relying upon the order passed by the Hon'ble Jurisdictional High Court, thus, on the identical facts we find it fit and

- 3 -

proper to dismiss this ground of appeal filed by the assessee. Hence, the appeal filed by the assessee is dismissed.

5. In the result, the appeal preferred by the assessee is dismissed.

This Order pronounced in Open Court on	11/05/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 11 /05/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad