

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 498/AHD/2020
निर्धारण वर्ष/Asstt. Years: 2018-19

Adani Hazira Port Pvt. Ltd., Adani House, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad. PAN: AAICA0970E	Vs.	D.C.I.T., CPC, Bangalore.
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(Applicant)		(Respondent)
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Assessee by :	Shri Vartik Chokshi, A.R
Revenue by :	Shri Jamesh Kurian, C.I.T, D.R with Shri Purushottam Kumar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **04/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **31/05/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), CPC, Bangalore, arising in the matter of assessment order passed under s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance of Rs.10,65,399/- being Employees contribution of Provident Fund made by the Assessing Officer on the ground that the aforesaid payment was made after the due date prescribed under relevant Act, even though the payment was made within the time prescribed under section 139(1) of the I.T. Act, 1961 for filling the return of income.*
2. *In law and in the facts and circumstances of the case, the learned CIT(A) erred in confirming disallowance made by the Assessing Officer as such adjustment is beyond the scope of section 143(1) of the I.T. Act. 1961.*
3. The only issue raised by the assessee is that the learned CIT-A erred in confirming the addition of Rs. 10,65,399/- on account late deposit of employee contribution towards PF and ESIC.
4. The assessee is a private company and filed return of income dated 28th March 2019 which was processed under section 143(1) by CPC Bengaluru dated 13th November 2019. In the intimation issued under section 143(1) by the CPC, the total income of the assessee by the amount of Rs. 10,65,399/- was enhanced on account of delay in the deposits of employees contribution towards PF and ESIC in the relevant account under the provision of section 36(1)(va) read with section 2(24)(x) of the Act. Aggrieved assessee preferred an appeal which was confirmed by the learned National Faceless Appeal Center (NFAC).
5. Being aggrieved by the order of the learned NFAC, the assessee in is appeal before us.
6. The Id. AR before us before us agreed to confirm the addition but prayed to provide the direction of moving the miscellaneous application for recalling the order if the issue involved is reversed by the Hon'ble Supreme Court as the same pending for adjudication.
7. On the contrary, the Id. DR before us vehemently supported the order of the authorities below.
8. We have heard the rival contentions of the both the parties and perused the materials available on record. At the outset, we note that the issue on hand is squarely covered against the assessee by the order of the Hon'ble Jurisdictional High Court of Gujarat in the case of

CIT vs. Gujarat State Road Transport Corporation India Limited reported in 366 ITR 170. However, at the time of hearing it was contended by the learned AR for the assessee that the above referred order of the Hon'ble Gujarat High Court has been challenged before the Hon'ble Supreme court and outcome of the same is pending. Thus the Id. AR sought for the liberty of recalling the order in the event if the Hon'ble Supreme court reverses the finding of the Hon'ble Gujarat High Court.

8.1 In our considered view, the issue is covered against the assessee at this stage and deserve to be dismissed. However, in the event if the Hon'ble Supreme court reversed the finding of the Hon'ble Gujarat High Court then it would be open for the assessee to revive this appeal within three month from the date of order of the Hon'ble Supreme Court by filing an application to this effect. In holding so, we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of DECO MICA LIMITED vs DCIT in R/Tax appeal No. 302 of 2021 order dated 7-1-2022 wherein it was held as under:

"We dismiss this appeal at this stage. However, in the event, if the Supreme Court reverses the judgment in the G.S.R.T.C (Supra), it would be open for the appellant herein to revive this appeal by filling an application for such purpose within three month from the date of the judgment. The appeal stands disposed of accordingly."

8.2 In view of the above and after considering the facts in totality, the ground of appeal of the assessee is hereby dismissed in accordance with above discussion.

9. In the result appeal of the assessee is hereby dismissed subject to direction.

Order pronounced in the Court on 31/05/2022 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated
Manish

31/05/2022