

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

**BEFORE SHRI PRAMOD M JAGTAP, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 282/Ahd/2020
(Assessment Year: 2018-19)

Atul Enterprises L-59,60, G.I.D.C., Estate, Odhav, Ahmedabad-382415	Vs.	DCIT CPC, Bangaluru
[PAN No.AADFA5354Q]		
(Appellant)	..	(Respondent)

Assessee by :	None
Revenue by :	Shri Abhimanyu Singh Yadav, Sr. DR
Date of Hearing	09.06.2022
Date of Pronouncement	10.06.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 24.02.2020 passed by the Commissioner of Income Tax (Appeals)-3, Ahmedabad arising out of the order dated 16.10.2019 passed by the DCIT(CPC), Bengaluru under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2018-19.

2. The grounds of appeal raised by the assessee are read as under:

- “1. The learned CIT(A) erred in law and on facts in making disallowance of Rs.692355/- u/s.36(1)(va) of the Act eventhough the same is allowable u/s. 43B of the Act on payment basis.
2. The learned CIT(A) ought to have seen that the appellant paid the said P.F., E.S.I. during the financial year itself/before the due date of filing of return and hence fully allowable.
3. The learned CIT(A) while passing the said order have not allowed opportunity of being heard eventhough the appellant had filed adjournment letter

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requesting to file written submissions along with case laws in the said matter dated Total tax effect.”

3. 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), 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 - 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 on the identical facts we find it fit and proper to dismiss this ground of appeal filed by the assessee. Hence, the appeal

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filed by the assessee is found to be devoid of any merit and thus, dismissed.

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

This Order pronounced in Open Court on	10/06/2022
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Sd/-
(PRAMOD M JAGTAP)
VICE PRESIDENT

Ahmedabad; Dated 10/06/2022
TANMAY, Sr. PS

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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