

**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. 257/Ahd/2020
(Assessment Year: 2016-17)

Adhaan Solution Pvt. Ltd. A-807, Dev Auram, Anandnagar Cross Roads, Prahlad Nagar, Ahmedabad	Vs.	DCIT Circle-1(1)(1), Ahmedabad
[PAN No.AAICA5878R]		
(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 20.01.2020 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad arising out of the order dated 23.11.2018 passed by the DCIT, Circle-1(1)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2016-17.

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

“1. Looking to the facts and circumstances of the case, the Learned CIT(Appeals) has erred in law and in facts in confirming the addition of Rs. 17,11,911/- made by the Assessing Officer under section 36(1)(va). The Learned CIT (Appeals) failed to appreciate that the employee’s contribution of PF/ESI is anyway deposited before the due date of filing return of Income for Asst. Year 2016-17. Accordingly, it is allowable as deduction under sub clause b of section 43B of the Income Tax Act.

2. *The Learned CIT(Appeals) has erred in law and in facts in confirming the addition of Rs.17,11,911/- made by the Assessing Officer under section 36(1)(va) by not considering/adjudicating the contention of the Appellant that, the due date for payment of PF/ESI as envisaged under the Scheme of PF/ESI is 15/21 days from the end of the month in which salary/wages are ACTUALLY PAID and not from the end of the month to which salary/wages pertains to. The Appellant placed reliance on various judicial pronouncements as mentioned in the order passed by the Learned CIT(Appeals).*

3. *The Appellant craves leave to add/amend/alter/delete/modify any of the grounds of appeal during the course of appeal or any time earlier to that.”*

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), 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]”

- 3 -

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 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
---	-------------------

Sd/-
(PRAMOD M JAGTAP)
VICE PRESIDENT

Ahmedabad; Dated 10/06/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/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.

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad