

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos.157 & 158/Ahd/2020
Assessment Years: 2012-13 & 2013-14**

Rajeevan K. Nambisan,
SF/12, Samrudhi Complex,
Nr. Nuotan Vidhyalaya,
New Saama Road,
EME Post,
Sama 390 008.
[PAN – ABIPN 8474 A]
(Appellant)

vs. Income Tax Officer,
Ward 1 (2)(4), Vadodara.

(Respondent)

Appellant by : None
Respondent by : Shri Mukesh Kumar Sharma, Sr. D.R.

Date of hearing : 31.05.2022
Date of pronouncement : 15.06.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These are appeals filed by the assessee against the two different orders dated 09.12.2019 & 11.12.2019 passed by the CIT(A)-5, Vadodara for the Assessment Years 2012-13 & 2013-14 respectively.

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

ITA No.157/Ahd/2020 for A.Y. 2012-13

- “1. *The Learned Commissioner of Income Tax (Appeals) erred in rejecting the submission of the appellant and further erred in holding that in respect of Employees Contribution to PF & ESIC the disallowance was covered by the decision of the Hon'ble Gujarat High Court and rejecting the submission made before him regarding disallowance of Employees Contribution to PF and ESIC.*
2. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.40,89,967/- on account of late deposit of PF & ESIC*

which have been deposited before the due date of filing the return of income.

3. *It is prayed that the addition of Rs.40,89,967/- be deleted.”*

ITA No.158/Ahd/2020 for A.Y. 2013-14

- “1. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance in respect of Employees Contribution to PF & ESIC which was deposited late but before the due date of filing the return of income amounting to Rs.35,44,964/-.*
2. *It is prayed that the addition of Rs.35,44,964/- being late deposit of Employees Contribution to PF & ESIC may kindly be deleted.”*

3. In A.Y. 2012-13 the assessee filed return of income on 18.09.2012 declaring total income of Rs.13,28,540/- and in A.Y. 2013-14 the assessee filed return of income declaring total income of Rs.15,55,192/-. The assessee is engaged in the business of supplying Manpower to various companies. After considering the submissions of the assessee, the Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act on 09.03.2015 after making addition/disallowance of Rs.48,46,298 on account of employees' contribution to PF and ESIC under Section 43B in A.Y. 2012-13 and Rs.35,44,964/- in A.Y. 2013-14. The Ld. AR submitted that in respect of decision of the Hon'ble Gujarat High Court in GSRTC as well as Kalpana Enterprises vs. CIT, Tax Appeal No.1711 of 2009 and also in other several cases vide its order dated 26.12.2013 has given finding that the disallowance in delayed payment of employees' contribution to PF and ESIC are properly done by the Revenue. The Id. AR submitted that the issue is against the assessee.

4. Learned DR relied upon the assessment order and the order of the CIT(A) as well as the decision of the Hon'ble Gujarat High Court in identical issues.

5. We have heard the Learned DR and perused all the relevant material available on record. The Hon'ble Gujarat High Court has clearly set out that the late payment of employees' contribution to PF and ESIC before the statutory date of filing of income tax return cannot be equated with the due date under the specific statute of Employees' PF Act and Employees State Insurance Act as there are penalty to the

delayed payment under those statute. The issue is decided against the assessee by the jurisdictional High Court and hence it is covered against the assessee. Both the appeals, therefore, are dismissed,

6. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on this 15th day of June, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of June, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*