

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 445/AHD/2020
निर्धारण वर्ष/Asstt. Year:2018-2019

Adani Power(Mundra) Ltd., Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad-382421. PAN: AANCA2426J	Vs.	D.C.I.T., CPC, Bangalore.
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(Applicant)		(Respondent)
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Assessee by :	Shri Biren Shah, A.R
Revenue by :	Shri V.K. Singh, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **25/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **15/06/2022**

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)-1, Ahmedabad, dated 05/08/2020 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 2018-2019.

2. The assessee has raised 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.45,39,180/- being Employees contribution to 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 filing 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 adjustments is beyond the scope of section 143(1) of the I.T Act, 1961.*
3. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

3. The only issue raised by the assessee is that the learned CIT-A erred in confirming the addition of Rs. 45,39,180/- on account of late deposit of employees contribution towards PF.

4. The assessee, a public company, is engaged in the business of power distribution. It was found by the AO that the assessee during the year deposited employees contribution towards PF of Rs. 45,39,180/- in relevant account after the due date as provided under respective Act. Therefore, the AO added the same to the total income of the assessee by invoking the provisions of section 36(1)(va) read with section 2(24)(x) of the Act. The impugned addition was subsequently confirmed by the learned CIT-A.

5. Being aggrieved by the order of the learned CIT-A, the assessee in is appeal before us.

6. The Id. AR before us did not dispute about the disallowance to be made on account of delayed deposit of employee's contribution towards PF. It was prayed by the learned AR that the judgment of Hon'ble Gujarat High Court in the case of CIT vs GSRTC reported in 366 ITR 170 has been challenged before the Hon'ble Supreme court and outcome of the same is pending. In the event, if the Hon'ble

Supreme court reverses the finding of the Hon'ble Gujarat High Court then it should be open for the assessee to revive this appeal within three month from the date of order of the Hon'ble Supreme Court.

7. On the contrary, the Id. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of 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 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.

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 as per the provisions of law. 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, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the Court on 15/06/2022 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

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

Ahmedabad; Dated 15/06/2022
Manish

(True Copy)