

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.130/SRT/2021

(निर्धारणवर्ष / Assessment Year: (2018-19)

(Virtual Court Hearing)

M/s Soul Clothing Pvt. Ltd., 601-B, A-Wing, International Trade Centre, Ring Road, Surat-395002	Vs.	Dy. Commissioner of Income-tax CPC, Bengaluru (Karnataka)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECM 2927 R		
(Appellant)		(Respondent)

Assessee by : Shri Manish R Malpani, CA

Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाई की तारीख/ **Date of Hearing** : 30/05/2022

घोषणा की तारीख/**Date of Pronouncement**: 20/06/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee pertaining to assessment year 2018-19, is directed against the order passed by the ld. National Faceless Appeal Centre (NFAC for short)/Commissioner of Income Tax (Appeals) dated 16.07.2021, which in turn arises out of an assessment order passed by the Deputy Commissioner of Income Tax, CPC, Bengaluru, u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 17.10.2019.

2. Grounds of appeal raised by the assessee are as follows:-

“1) That on the facts and in the circumstances of the case as well as in law, ld. CIT(A) has grossly erred in confirmation prima facie adjustment done by DCIT, CPC, Bengaluru by way of disallowance for late depositing of employee’s contribution of Provident Fund and ESI within due date prescribed under relevant Acts, of Rs.25,56,077/- while processing return of income u/s 143(1) read with Section 143(1)(a) of the Act.

2) The appellant craves leave to add, alter, delete or modify any grounds of appeal.”

3. At the outset, Learned Counsel for the assessee, Shri Manish Malpani, begins by pointing out that Ld. CIT(A)/NFAC, has erred in confirming the action of the Assessing Officer (Central Processing Centre, Bengaluru) in making adjustment u/s 143(1), the same adjustments do not fall within the ambit of section 143(1)(a)(i) to 143(1)(a)(vi) of the Act. Therefore, Ld. Counsel for the assessee submits that the adjustments so made by the Assessing Officer should be deleted.

4. Without prejudice, the Learned Counsel submits that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into the account the order of the Hon'ble Supreme Court, in SLP filed by assessee against the judgment of Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company [366 ITR 170 (Guj.)]

5. On the other hand, Ld. Senior Departmental Representative (ld. Sr.DR) for the Revenue submits that issue is covered against the assessee by the judgment of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company (GSRTS) 366 ITR 170, therefore this appeal should be dismissed. Ld. Sr.DR also submits that against the intimation issued by the Central Processing Centre, Bengaluru under section 143(1), if the assessee does not reply within one month, than in that situation, the adjustments made by the Central Processing Centre, Bengaluru would be treated as a final adjustments and assessee has to pay the income tax on these adjustments.

6. We have heard both the parties and perused the material available on record. We note that the issue involved in the present appeal of assessee is covered against the assessee, as the assessee has not deposited Employees Provident Fund (EPF) with the prescribed authority within stipulated time, therefore as per the judgment of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company (supra), the issue had already been decided by the Hon'ble jurisdictional High Court against the assessee. However, we note that co-ordinate Bench of ITAT, Ahmedabad in the case of M/s Unicorn Remedies Pvt. Ltd. in

ITA Nos. 3058/AHD/2014 for AY.2011-12 and 2599/AHD/2016 for AY.2012-13, order dated 30.01.2019 wherein the similar issue has been remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the outcome of the judgment of the Hon'ble Supreme Court. The findings of the Tribunal are reproduced below:

14. This issue is already against the appellant for late deposit of Employees Provident Fund with the authority by the judgment of Hon'ble Gujarat High Court in the matter of GSRTC 366 ITR 170 wherein it is held:

"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 - Assessee 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]

15. In the meanwhile, it is noticed that on this issue appeal is pending before the Hon'ble Supreme Court and recently Hon'ble Gujarat High Court in Tax Appeal No. 1186 of 2018 has held that two clear ways are possible to enable the appellant-assessee to get benefit of the judgment of the Supreme Court, in case the High Court Judgment is reversed by the Hon'ble Supreme Court and relevant part of the said order of the High Court is reproduced:

"This Appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Ahmedabad {"Tribunal" for short} dated 22nd March 2018. The issue pertains to Assessment Year 2013-14 and the sole question raised by the assessee in this appeal concerns deductibility of a sum of Rs.20,34,916/- which was the employees' contribution towards Provident Fund, ESI, etc. It appears that the assessee did deposit such amount of contribution towards PF & ESIC accounts, however, missed the deadline prescribed in the statutes for such purpose. On account of this, the Revenue C/TAXAP/1186/2018 ORDER did not permit deduction of such sum from the income of the assessee. Such disallowance thereupon became the subject matter of appeal before the Tribunal. The Tribunal dismissed the ground, relying upon the judgment of this Court in the case of Commissioner of Income-tax vs. Gujarat State Road Transport Corporation Limited, reported in 366ITR 170 [Gujarat].

Counsel for the appellant did not dispute that the issue on hands is squarely covered by this Court in the case of CIT v. GSRTC [Supra]. He, however, submitted that the appeal is pending against the judgment of the High Court before the Supreme Court and SLP has been granted. The amount involved is not very large and it would be extremely expensive for the assessee to carry this in appeal before the Supreme Court. He, therefore, suggested that the benefit of this judgment of the Supreme Court may be made available to the assessee; as and when rendered and in case, the judgment of the High Court is reversed. Two clear ways are possible to enable the appellant- assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed. One is to dismiss this C/TAXAP/1186/2018 ORDER appeal and allow the assessee to approach the Supreme Court; like some other assesses would have. The other way is to make some arrangement under which without filing the appeal, the assessee would also be able to claim the benefit of the judgment. Looking to the smallness of the disputed amount, we adopt the latter option by providing as under:

This appeal at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of CIT vs. GSRTC [Supra], it would be open for the appellant to revive this appeal by filing an application for such purpose within three months from the date of the judgment. Appeal stands disposed of accordingly."

16. At the outset, Id. A.R. requested that in view of the order passed by the Hon'ble Gujarat High Court as aforesaid therefore this matter may be restored to the file of the ld.CIT(A).

17. In view of the above and order passed by the Hon'ble Gujarat High Court, we set aside the matter to the file of the ld.CIT(A) to decide the matter after taking into account order of the Supreme Court as and when will be passed by the Hon'ble Supreme Court. Accordingly will decide the matter.

*18. In the result, appeal is **allowed for statistical purposes.***

7. From the above judgment of Co-ordinate Bench in the case of M/s Unicorn Remedies Pvt. Ltd. (supra), it is vivid that against the order of the Hon'ble jurisdictional High Court, the SLP has been filed by the assessee which has not been adjudicated yet therefore we are of the view that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the SLP filed by assessee (supra) before the Hon'ble Supreme Court as and when will be passed by the Hon'ble Supreme Court. Therefore, this appeal at this stage is dismissed. However, if the Hon'ble Supreme Court reverse the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. GSRTC (supra), it would

be open for the assessee to revive this appeal by filing an application for such purpose within three months from the date of the judgment.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 20/06/2022 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 20/06/2022
Dkp Outsourcing Sr.P.S./SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat