

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA Nos. 139 to 140/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2018-19 to 2019-20)

(Virtual Court Hearing)

Dharmendra Hirubhai Patel, Motawada Street, At & Post. Hazira, Tal: Choryasi, Surat-394270.	Vs.	The DCIT, CPC, Bengaluru.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMHPP 6575 A		

आयकर अपील सं./ITA No. 186/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2017-18)

(Virtual Court Hearing)

Krishna Darshan Jewels LLP, 99, Opp. Gayatri mandir, Vastadevi Road, Katargam, Surat-395004.	Vs.	The DCIT, CPC, Bengaluru.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAPFK 9204 K		

आयकर अपील सं./ITA No. 196/SRT/2021

(निर्धारणवर्ष / Assessment Years: (2017-18)

(Virtual Court Hearing)

Sameer Enterprises, Plot No. CM 69-70, Padmavati Palace, Office No. 206, Via Road, GIDC, Vapi-396195.	Vs.	The ITO, Ward-7, Vapi.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACSFS 4940 H		

आयकर अपील सं./ITA No. 207/SRT/2021

(निर्धारणवर्ष / Assessment Year: (2017-18)

(Virtual Court Hearing)

Shashwat Manufacturing, H-31, Gangotri Tower, Kesarba Market, Gotalawadi, Surat-395003.	Vs.	The DCIT, CPC, Bengaluru.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADEFS 2326 L		

आयकर अपील सं./ITA No. 208/SRT/2021
(निर्धारणवर्ष / Assessment Year: (2017-18)
(Virtual Court Hearing)

Shashwat Stones Pvt. Ltd., (Now merged into Ankit Gems Pvt. Ltd.) Plot No.315, B/h Patel Faliya, Nr. H. Vinod Kumar & Co., Gotalawadi, Katargam, Surat-395004.	Vs.	The DCIT, CPC, Bengaluru.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJCS 1910 P		
Assessee by	Shri Deven K. Kapadia, CA & Shri Lokesh Khadaria, CA	
Respondent by	Shri S.B.G. Mahapatra, Sr. DR	
Date of Hearing	14/06/2022	
Date of Pronouncement	27/06/2022	

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned six appeals filed by the different assessees pertaining to assessment years (AYs) 2017-18 to 2019-20, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals) [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), Delhi which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(1) of the Income Tax, Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the issues involved in these appeals are common and identical, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. At the outset, Learned Counsels for the assessee, Shri Deven K. Kapadia - CA, invited our attention to the order dated 31.03.2022, passed by Division Bench of this Tribunal in ITA Nos.147 & 234/SRT/2021 for AYs.2018-19 to

2019-20 in the case of Rekha R. Shukla, whereby the issue relating to late payment of PF & ESIC has been discussed and remitted the issue back to the file of the Id. CIT(A) for fresh adjudication as per the decision of SLP filed in the case of State Road Transport Corporation (GSRTC) 41 taxmann.com 100 (Guj). The Learned Counsel for the assessee submitted that the present appeals are squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

4. The Ld. DR for the Revenue relied on the judgement of Hon`ble jurisdictional High Court of Gujarat in the case of State Road Transport Corporation (GSRTC) 41 taxmann.com 100 (Guj) wherein it has been held that when the assessee did not deposit employees' contribution to employees' account in relevant fund within due date prescribed in explanation to Section 36(1)(va) of the Act, no deduction would be admissible, even though the assessee deposits same before due date of filing return of income under section 139(1) of the Act.

5. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of Rekha R. Shukla (supra) vide order dated 31.03.2022. In this order, the Tribunal has *inter alia* observed as follows:

“18. It is abundantly clear from the judgment of the Hon`ble Bombay High Court in the case of Thana Electricity Supply Ltd (Supra), that decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. Hence, decision of the Hon`ble Jurisdictional High Court of Gujarat in the case of Gujarat State Road Transport Corporation(supra), is binding on us.

*19. In the case of **Union of India v. Raghbir Singh (1989) 178 ITR 548 (SC)**, the **Hon`ble Supreme Court** held that the doctrine of binding precedent has merit of promoting certainty and consistency in judicial decisions. As per the doctrine of precedent, all lower Courts, Tribunals and authorities exercising judicial or quasi-judicial functions are bound by the decisions of the High Court within whose territorial jurisdiction these Courts, Tribunals & authorities functions. In the case of **State of Orissa & Ors. v, M.D. Illyos, [2006] 1 SCC 275** the **Hon`ble Supreme Court** held that a decision is a precedent on its own facts*

and that for a judgment to be a precedent it must contain the three basic postulates: (i) A finding of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the individual effect of the above. In the case of **CIT v. Sun Engineering Works P. Ltd. [1992] 198 ITR 297 (SC)**, the Hon`ble Supreme Court held that it is neither desirable nor permissible to pick out a word or a sentence from the judgment, divorced from the context of the question under consideration and treat it to be the complete "law". The judgment must be read as a whole and observations from the judgment have to be considered in the light of the questions which were before the court.

20. From the above it is vivid that we have to follow the judgment of the Hon`ble Jurisdictional High Court of Gujarat in the case of Gujarat State Road Transport Corporation (supra). The mere fact, that further appeal (SLP) has been filed, before the Hon`ble Supreme Court against the judgment of Hon`ble Gujarat High Court, in no way, means that Gujarat High Court's decision under consideration is not operational and effective. Unless and until the decision of Gujarat High Court is reversed by Hon`ble Supreme Court, the same has to be given due effect. Thus, judicial discipline demands that order of the Hon`ble Gujarat High Court should be followed by the Surat Income Tax Appellate Tribunal.

“21. We have already noted that against the order of the Hon'ble Gujarat High Court, in the case of Gujarat State Road Transport Corporation (supra), 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 judgment of the Hon'ble Supreme Court as and when will be passed by the Hon'ble Supreme Court. Therefore these appeals at this stage are dismissed. However, if the Supreme Court reverses the judgment in the case of the Hon`ble Gujarat High Court in the case of CIT vs. GSRTC [Supra], it would be open for the assessee to revive these appeals by filing an application for such purpose within three months from the date of the judgment.

22. In the result, all appeals filed by the assessee, are allowed for statistical purposes.”

6. As the issue is squarely covered against the assessee by the decision of the Hon'ble jurisdictional High Court of Gujarat in the case of GSRTC (supra), however, the Co-ordinate Bench has taken the constant decision to remit the issue

back to the file of the Id. CIT(A) to wait till the outcome of the SLP filed before the Hon'ble Supreme Court. Therefore, these appeals at this stage are dismissed. However, if the Hon'ble Supreme Court reverses the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. GSRTC [Supra], it would be open for the assessee to revive these appeals by filing an application for such purpose within three months from the date of the judgment.

7. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 27/06/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 27/06/2022

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