

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

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SMT.SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 574/Ahd/2020
Assessment Year : 2018-19

Nexion International Pvt. Ltd., [Previously known as Simpolo Emilceramica Pvt. Ltd.] 1102, 1104 & 1105, Shapath V, Opp. Karnavati Club, S.G. Highway, Ahmedabad - 380051 PAN : AAVCS 2567 C	Vs	The ACIT, CPC, Bangalore
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri A.C. Shah, AR
Revenue by :		Shri V.K. Singh, Sr DR

सुनवाई की तारीख/Date of Hearing : 05/07/2022
घोषणा की तारीख /Date of Pronouncement: 05/07/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-9, Ahmedabad ["CIT(A)" in short] dated 15.09.2020.

2. The solitary grievance of the assessee is that the learned CIT(A) has erred in confirming the addition of Rs.20,56,767/-, which was added by the Assessing Officer with the aid of Section 36(1)(va) of the Income-tax Act, 1961, for the late payment of Employees Contribution to PF/ESI.

3. At the time of hearing before us, the learned representatives of both sides fairly agree that the aforesaid issue is squarely covered against the assessee by the decision of Hon'ble jurisdictional High Court in the case of

CIT vs. Gujarat State Road Transport Corporation, 366 ITR 170 (Guj.)/ [2014] 41 taxmann.com 100 (Guj.), wherein it is categorically held that in the case of delayed deposit of employees' contribution to PF, the same will not be deductible in computing income under Section 28 of the Act. It is observed that in the case of Gujarat State Road Transport Corporation (supra), the Hon'ble jurisdictional High Court has decided a similar issue vide its judgment dated 26.12.2013; the relevant paragraphs of which i.e. paragraph No.7.12 to 8 are reproduced below:

"7.12 Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of Sarabhai Sons Ltd. (supra), by the learned counsel appearing on behalf of the assessee and his submission that if two views are possible and different High Courts have taken a particular view, this Court may not take a different view, is concerned, we are of the opinion that in the present case, and as discussed hereinabove, only one view is possible as canvassed on behalf of the revenue and as observed by under section hereinabove and we are not in agreement with the view taken by the Himachal Pradesh High Court; Karnataka High Court; Rajasthan High Court and Punjab and Haryana High Court in the cases referred to hereinabove, and therefore, the submission made on behalf of the assessee to follow the decisions of the different High Courts referred to hereinabove and/or not to take a contrary view cannot be accepted.

8.00 In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund) on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act."

As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Gujarat State Road Transport Corporation (supra), we respectfully follow the decision of Hon'ble jurisdictional High Court rendered in the said case and uphold the impugned order of the learned CIT(A) confirming the disallowance made by the Assessing Officer on account of belated payment of employees' contribution towards Provident Fund.

4. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 5th July, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 05/07/2022

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आदेश की प्रतिलिपि अग्रेषित/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 प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad