

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

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

**ITA No.309/Ahd/2021
Assessment Year: 2018-19**

Synpol Products Pvt. Ltd.,
77, Gujarat Vepari Mahamandal
Sahakari Audyogic Vasahat Limited,
Odhav,
Ahmedabad - 382415.
[PAN – AADCS 9255 P]
(Appellant)

vs. The DCIT, CPC,
Bangalore.

(Respondent)

Appellant by : None
Respondent by : Shri V.K. Singh, Sr. D.R.

Date of hearing : 05.07.2022
Date of pronouncement : 13.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 30.09.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2018-19.

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

- “1. *The Learned CIT(A) erred in law and on facts in making disallowance of Rs.5,53,830/- u/s. 36(1)(va) of the Act even though the same is allowable u/s 43B of the Act on payment basis.*
2. *The learned CIT(A) ought to have seen that the appellant paid the said EPF and ESI dues during the financial year itself/before due date of filing of return and hence fully allowable.*
3. *The learned CIT(A) ought to consider that there is no unjust enrichment in the hands of the appellant, and the delay was owing to genuine hardship faced, and hence there should be no disallowance.*

4. *The learned CIT(A) while passing the said order has not provided opportunity of being heard even though appellant had filed an adjournment request on 15th September 2021 requesting for an extension till 31 October 2021 to file written submissions along with case laws in the said matter. Hence the same is against the principles of natural justice.*
5. *The learned CIT(A) erred in law in disallowing the impugned sum even though amendment in section 36(1)(va) is prospective in nature, i.e. effective from 01.04.2021 and hence disallowance cannot be made in A.Y. 2018-19.”*

3. During the year under consideration, the assessee has filed its return of income at Rs.2,36,89,150/-. The DCIT, Centralised Processing Centre while processing the return for the assessment year 2018-19 assessed the income of the assessee at Rs.2,42,42,980/- by making additions of Rs.5,53,836/- under section 36(1)(va) on the ground that the assessee deposited employee's contribution of Provident Funds and ESI beyond the due date specified under PF/ESI Act although the same were deposited before the due date of filing tax return.

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 in case of CIT vs. Gujarat State Road Transport Corporation reported in (2014) 41 taxmann.com 100 (Guj) & Pr. CIT vs. M/s Suzlon Energy Limited, R/Tax Appeal No.860 of 2019 order dated 11.02.2020.

5. We have heard the Learned DR and perused all the relevant material available on record. The Hon'ble Jurisdictional High Court in case of Gujarat State Road Transport Corporation (Supra) 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. Appeal filed by the assessee is, therefore, dismissed,

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 13th day of July, 2022.

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

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 13th day of July, 2022

PBN/*

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