

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 138 & 142/SRT/2021 (AY 2018-19 & 2019-20)
(Hearing in Virtual Court)

Bhuvaneshsingh L Dalawat, 603, Shivam-A, Siddhivinayak Residency, Sachui GIDC, Sachin, Surat-394230. PAN : APIPD 5846 G	Vs.	I.T.O. Ward 1(2)(1), Surat.
Appellant		Respondent

ITA No. 143 & 144/SRT/2021 (AY 2018-19 & 2019-20)

Radheshyam Upadhyay, B-13, Flat No. 478, Raj Abhishek City Home, Sachin-Palsana Road, Sachin, Pardi, Surat. PAN : ABAPU 8091 N	Vs.	I.T.O. Ward 1(2)(6), Surat.
Appellant		Respondent

Assessee by	Shri Unmesh Dalal, CA
Revenue by	Shri J.K. Chandnani, Sr.DR
Date of hearing	06/06/2022
Date of pronouncement	20/07/2022

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This group of four (4) appeals by the assessee(s) are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-Surat/ National Faceless Appeal Centre (NFAC) dated 27/07/2021 and 03/08/2021 for the Assessment years (AY) 2018-19 and 2019-20 respectively. In all

the appeals the assessee(s) have raised certain common grounds of appeals, certain facts are common in all these appeals. Therefore, with the consent of parties, all these appeals are clubbed and heard together and are decided by this consolidated order to avoid the conflicting decision. For appreciation of fact, the facts in case of Bhuvaneshsingh L Dalawat in ITA No. 142/Srt/2021 for the A.Y. 2019-20 is treated as a lead case. The assessee in his appeal has raised following grounds of appeal:

- "1 On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming addition made by the Assessing Officer passed u/s 154 on 11/08/2020.*
- 2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) has erred in confirming addition towards late payment of PF of Rs. 3058789, ESI of Rs. 1097173 and welfare fund of Rs. 433230/- paid late as per the relevant Act but paid before due date of filing return.*
- 3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition on ground that the provision amended by Finance Act, 2021 are retrospective in operation and hence disallowance was confirmed under the plea that the said amendment is clarificatory, curative and retrospective in nature.*
- 4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) has erred in not considering latest decision Shishir Kumar Das Vs Dy.CIT by Hyderabad Tribunal which following decision of Hon'ble Supreme Court in case of Alom Extrusions Ltd and in case of Abcaus 3532 (2021) (07) ITAT which held that section 36/43B are prospective in nature as amended by the Finance Act, 2021.*
- 5. The appellant reserves right to add, alter, vary any or all grounds of appeal."*

2. The assessee has also raised following additional ground of appeal vide application dated 21.03.2022, which reads as under:

“1 On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) has erred in not appreciating that the payment towards professional tax deducted from salary of Rs. 4,33,230/- does not relate to welfare fund and therefore is not hit by vigours of Section 36(1)(va).”

3. Brief facts of the case are that assessee is a company engaged in the business of supplying of manpower to various industries. The assessee filed his return of income for assessment year 2019-20 on 16/10/2019 declaring income of Rs.40,84,330/-. The Central Processing Center (CPC) Bangalore/ Assessing Officer while processing return of income on 14.05.2020 made disallowance on account of deduction towards employees' contribution of ESIC and PF as the same was deposited beyond the due date prescribed under the relevant Act. The assessee filed application under section 154 for rectification of such order passed by CPC Bangalore and the same was dismissed vide order dated 11.08.2020. Aggrieved by the order of assessing officer dated 11.08.2020, the assessee filed appeal before Ld. CIT(A). The appeal of the assessee was transferred to National faceless Appeal Center (NFAC), Delhi. The NFAC/ Id. CIT(A), confirmed the action of Assessing Officer dated 11.08.2010, vide his order dated 27.07.2021. Further, aggrieved, the assessee has filed the present appeal before this Tribunal.
4. At the outset of hearing, the Id. Authorised Representative (AR) of the assessee submits that at present the grounds of appeal raised by the

assessee is against the assessee by the decision of Jurisdictional High Court in CIT Vs Gujarat State Road Transport Corporation (GSRTC) [2014] 366 ITR 170 (Gujarat). However, GSRTC has filed Special Leave Petition (SLP) before Hon'ble Supreme Court, which had been admitted for hearing. The Id AR for the assessee submits that Hon'ble Gujarat High Court in the recent decision in Salasar Laminates Ltd. vs DCIT in Tax Appeal No.1186 of 2018 dated 01.10.2018 while considering the similar question of law against the similar disallowances noted that appeal against the decision of Gujarat High Court in CIT vs GSRTC (supra) is pending before Hon'ble Supreme Court and Special Leave has been granted. The Hon'ble High Court on the prayer of assessee in the said case held that as and when the decision is rendered by Apex Court and in case judgment of High Court is reversed and in the said appeal, the assessee may approach the High Court to claim the benefit of the judgment. The Id. AR for the assessee submits that a direction may be given to the Id. CIT(A) or Assessing Officer that in case the decision of GSRTC is reversed by Hon'ble Supreme Court, the assessee may be allowed similar relief.

5. The AR for the assessee further submits that on similar ground of appeal, this bench by following the order of Gujarat High Court in Salasar Laminates Ltd. vs DCIT (supra) has set set-aside the matter to the Id. CIT(A) with the direction to grant relief/ decide the appeal as per the

outcome of Special Leave Petition of GSRTC by the Hon'ble Apex Court. Further similar direction was given by this bench in case of Puja Chemicals Vs DCIT (ITA No. 161 & 162/SRT/2021 dated 25/02/2022). The AR for the assessee prayed that this appeal may also be decided with similar direction to Lower Authorities.

6. On the additional grounds of appeal the Ld. A.R of the assessee submits that the additional grounds of appeal may be admitted as facts required for adjudication of additional grounds of appeal is available on record. And that no new facts are required to be brought on record.
7. On the other hand, the, Sr. DR for the revenue submits that the issues raised in the grounds of appeal as on today, is against the assessee and this fact is admitted by the Id. AR of the assessee. Thus, the appeal may be dismissed. In the alternative submission, the Id. Sr. DR for the Revenue submits that in case the matter is restored to the Assessing Officer/CIT(A), the Bench may note that as on today, the issue is against the assessee. On the additional grounds of appeal the Id DR for the revenue submits that no such relief was claimed by the assessee before lower authorities.
8. We have considered the rival contentions of both the parties and have gone through the orders of the lower authorities. We find that as on today the issue is covered against the assessee by the decision of Hon'ble High Court in CIT Vs GSRTC (supra). Therefore, the assessee has no merit in its case.

However, we noted that on similar issue our predecessor in Decor Home (India) Pvt. Ltd. Vs. ACIT, Circle-1(1)(2), Surat dated 24.07.2019, passed the following order:

“6. We have heard the rival submissions and perused the relevant material on record. We find that the issue is squarely covered against the assessee by the decision of Hon’ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC, wherein it was held that section 43B does not apply to employees contribution. Only section 2(24)(x) read with section 36(1)(va) is applicable and therefore, employees contribution is disallowed if not paid within due dates prescribed under relevant Provident Fund /ESI Act. We are, therefore, of the considered opinion that there is no mistake in the orders of lower authorities in making disallowance in the light of the ratio laid down by the Hon’ble Gujarat High Court in the above case (supra). However, since the SLP has been admitted by the Hon’ble Supreme Court against the decision of Hon’ble High Court therefore, we set aside this matter to the file of the ld. CIT(A) with the direction that the matter be decide as per outcome of SLP, as and when matter will be decided by the Hon’ble Apex Court. Accordingly, matter will be decided by the ld. CIT(A) as per provisions of law and direction of the Hon’ble Supreme Court of India. Therefore, this ground of appeal is set-aside for statistical purpose.”

9. We further find that Hon'ble Jurisdiction High Court in subsequent decision in Salasar Laminates Ltd. vs DCIT (supra), though dismiss that appeal. However it was directed that if the decision of GSRTC VS DCIT (supra) is

reversed by Hon'ble Apex Court, the assessee is given opportunity to revive his appeal by filing application for seeking similar relief. Considering the fact that the issue is squarely covered against the assessee as noted above. However, instead of keeping the matter alive, the case was restore to Ld. CIT(A) to give effect to the order of the Tribunal in accordance with the decision of Hon'ble Supreme Court in SLP of Gujarat State Road Transport Corporation(supra).

10. So far as the additional grounds of appeal is concerned, which relates to the disallowance of professional tax deducted from the salaries of the employee is concerned, we find that the assessee has raised additional ground of appeal for the first time before the Tribunal, facts related with the disallowances are emanates from the record of the lower authorities being part of computation of total income, therefore, we admit this ground of appeal and restore the same to the files of Id CIT(A) to decide it on merit. The Id CIT(A) will be at liberty to seek the remand report if so desired and pass the order in accordance with law. In the result, all the grounds appeal raised by the assessee is allowed for statistical purpose.
11. In the result, assessee's appeal is allowed for statistical purpose.
12. Now we take the assessee's appeal in ITA Nos. 138/Srt/2021 for the A.Y. 2018-19, 143 & 144/Srt/2021 for the A.Y. 2018-19 and 2019-20. We find that in all these appeals, the assessee(s) has raised similar grounds of

appeal as raised in grounds as raised in ITA No. 142/Srt/2021 for the A.Y. 2019-20, which we have allowed for statistical purpose. Considering the fact that we have set aside the appeal of the assessee and restored the matter back to the file of Id. CIT(A) to give effect to the order of the Tribunal in accordance with the decision of Hon'ble Supreme Court in SLP of Gujarat State Road Transport Corporation(supra). Therefore, following the principal of consistency these three appeals are also restore to the file of Id CIT(A) with similar directions.

13. In the result, all the appeals of the assessee are allowed for statistical purpose.

Order pronounced in open court on 20/07/2022 and the result was also placed on the notice Board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 20/07/2022

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

*Ranjan
Copy to:
1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Assistant Registrar/Sr.P.S, ITAT, Surat