

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 465/Ahd/2020
Assessment Year 2017-18**

Adani Capital Pvt. Ltd. Ground Floor Adani House, Near Mithikali Six Road, Navrangpura, Ahmedabad-380009 PAN: AAOCA7636B (Appellant)	Vs	The ITO, Ward-1(1)(1) Ahmedabad (Respondent)
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**Assessee by: Shri Biren Shah, A.R.
Revenue by: Shri Purshottam Kumar, Sr. D.R.**

Date of hearing : 09-05-2022
Date of pronouncement : 22-07-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Ahmedabad in Appeal no. CIT(A)-1, Ahmedabad/10749/2019-20 vide order dated 25/08/2020 passed for the assessment year 2017-18.

2. The assessee has taken the following grounds of appeal:-

“1. On the facts and in the circumstances of the case of the appellant, the learned CIT(A) erred in confirming disallowance of Rs.9,10,125/- being Employees' contribution to Provident Fund made by the Assessing Officer on the ground that the aforesaid payment was made after the due date prescribed under relevant Act, even though the payment was made within the time prescribed under section 139(1) of the IT. Act, 1961 for filing the return of income.

2. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

Total tax effect (including surcharge and cess) Rs. 2,81,229/-”

3. The brief facts of the case are that original return of income was filed by the assessee on 28-10-2017 declaring total loss of ₹ (3,67,15,016/-). The assessee company is engaged in the business of finance such as providing loans etc. During the course of assessment, the AO noticed that the assessee had not deposited the PF contribution with the concerned authorities before the due date prescribed under the respective Act. The AO observed that the contribution received by the assessee from the employees was not paid within the time allowed by the PF/ESIC Act allowed by the said Act. The AO accordingly held that in view of the jurisdictional Gujarat High Court decision the case of **CIT v. Gujarat State Road Transport Corporation 223 Taxman 398 (Gujarat HC)**, the assessee is not eligible for deduction under section 36(1)(va) of the Act in case the assessee fails to deposit the employees contribution in respect of PF on or before the due date prescribed under the respective Act. In this case, since the assessee failed to deposit the employees contribution in respect of PF on or before the due date, the said

amount constitutes the income of the assessee as per the provisions of section 2(24)(x) of the Act, but the assessee is not eligible for deduction under section 36(1)(va) of the Act. Accordingly, the AO disallowed and added an amount of ₹ 9,10,125/-to the income of the assessee.

4. In appeal, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

“5.3 Decision: I have carefully considered the Assessment Order and submission filed by the Appellant. The Assessing Officer has observed that appellant has failed to deposit employees contribution to Provident Fund before due date prescribed under relevant provisions of the said Acts hence he relied upon provisions of section 36(1)(va) r.w.s 2(24)(x) and decision of Hon'ble Gujarat High court in the case of State Road Transport Corporation and made disallowance of Rs 9,10,1257-. On the other hand, appellant has argued that as employees contribution to Provident Fund is made before due date of filing of return of income and even before completion of financial year, disallowance cannot be made.

5.4 On careful consideration of observation of Assessing Officer and contention of appellant, I observe that entire issue is covered against appellant by decision of Hon'ble Gujarat High court in case of State Road Transport Corporation (366 ITR 170) wherein it is held as under:

"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]

Considering the above decision of Hon'ble Jurisdictional High court in the case of State Road Transport Corporation (366 ITR 170) addition made by Assessing Officer for Rs. 9,10,125/-is upheld. This Ground of appeal is dismissed.”

5. The assessee is in appeal before us against the aforesaid order of Ld. CIT(Appeals). We note that the issue is squarely covered against the assessee by the Jurisdictional High Court decision in case of **Gujarat State Road Transportation Corporation (2014) 41 taxman.com 100**, wherein it was held that where assessee did not deposit employees' contribution to employees' account in relevant fund before due date prescribed in Explanation to section 36(1)(va), no deduction would be admissible even though he deposits same before due date under section 43B of the Act. Again the Gujarat High Court in the case of **Pr. CIT v. Suzlon Energy Ltd. [2020] 115 taxmann.com 340 (Gujarat)** held that where assessee had not deposited employees' contributions towards PF and ESI amounting Rs. 15.20 lakhs within prescribed period in law and Assessing Officer by invoking provisions of section 36(1)(va) read with section 2(24)(x) made addition of aforesaid amount to income of assessee, impugned addition made to income of assessee was justified. Respectfully following the above

decisions of Jurisdictional High Gujarat High Court, we hold that there is no infirmity in the order passed by Id. CIT(A). We accordingly dismiss the appeal of the assessee.

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

Order pronounced in the open court on 22-07-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 22/07/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद