

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

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

**ITA No. 375/Ahd/2020  
Assessment Year 2017-18**

Torrent Pharmaceuticals Ltd., Torrent House, Off. Ashram Road, Ahmedabad PAN: AA ACT5456A (Appellant)	Vs	The Dy. CIT, Ahmedabad Circle- 4(1)(2), Ahmedabad (Respondent)
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**Assessee by: Shri Vartik Chokshi, A.R. &  
Shri Biren Shah, A.R.**  
**Revenue by: Shri Purshottam Kumar, Sr. D.R.**

Date of hearing : 11-05-2022  
Date of pronouncement : 27-07-2022

**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)-8, Ahmedabad in Appeal no. CIT(A)-8/10039/19-20 vide order dated 11/02/2020 passed for the assessment year 2017-18.

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

“1. On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition/disallowance in respect of the alleged late payment of Employees' contribution to E.S.I, amounting to Rs. 8, 86,752 in spite of the fact that the same was allowable under the provisions of section 36(1)(va) r.w.s. 43B of the IT. Act.

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

Total tax effect 3,06,887/-”

3. At the outset we note that the appeal is time-barred by 75 days. The Ld. Counsel for the assessee submitted that delay is caused due to the fact that the appeal has been filed during the Covid pandemic period and accordingly, the delay was caused by circumstances beyond the control of the assessee. We note that the assessee company received the order of Ld. CIT(Appeals) on 12-02-2020. However, in view of the nation-wide lockdown from 24<sup>th</sup> March 2020, the Apex Court in **Cognizance for Extension of Limitation, In re[2021] 127 taxmann.com 72 (SC)**, took *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country. Consequently, it was directed vide order dated 23-3-2020 that the period of limitation in filing petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15-3-2020 till further orders. The *suo motu* proceedings were, disposed of issuing the directions as to in computing the



*jurisdictional High Court in the case of GSRTC (supra) the sum of Rs.8,86,752/- being Employees Contribution to PF & ESIC admittedly deposited in the respective accounts beyond the prescribed due dates under the relevant Act is rightly treated as income of the appellant by the AO. Thus, this ground of appeal is decided against the appellant and appeal on this ground 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 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 ld. CIT(A).

6. On the issue whether disallowance on account of late deposit of ESI can be subject of matter of addition/adjustment under intimation issued u/s 143(1) of the Act since the issue is a debatable one wherein various Courts/

Tribunals have taken a divergent view in the matter, in our the view, the issue stands covered by the decision of Ahmedabad ITAT in the case of **Diversified Services v. ITO in ITA No. 55/Ahd/2022**, wherein ITAT held that since the jurisdictional Gujarat High Court has decided the issue against the assessee, the same can be subject matter of adjustments u/s 143(1) of the Act. Relevant extracts of the judgment is being reproduced for reference:

*“6. In view of the above discussion, we are of the considered view that in the instance of the facts the Ld. CIT(A) has not erred in facts and law in confirming the disallowance of late deposit of employees Provident fund contribution under section 36(1)(va) of the Act. The Supreme Court in the case of **ACIT v. Saurashtra Kutch Stock Exchange Ltd[2008] 173 Taxman 322 (SC)** has held that not following decision of the Supreme Court or the jurisdictional High Court would constitute a mistake apparent from record. Since, admittedly the jurisdictional High Court in case of **Gujarat State Road Transport Corporation supra** has directly ruled on this issue against the assessee and has held that employees' contribution to specified fund will not be allowed as deduction u/s.36(1)(va) if there is delay in deposit as per the due dates mentioned in the respective legislation, in our view, the Department is bound to follow the decision of the jurisdictional High Court. Perhaps, it would have been a different factual situation in case the jurisdictional High Court had decided the issue on late deposit of employee's Provident fund in favour of the assessee or there would have been no jurisdictional High Court decision on this issue, in which case, in our view, the issue could have been debatable. However so far as the present facts are concerned, in our considered view, Ld. CIT(A) has not erred in facts and law in coming to the conclusion that disallowance made by the CPC u/s 143(1) of the I.T. Act on account of appellant's failure to pay the employee's contribution of PF/ESI of Rs.8,85,284/- within the prescribed due dates as per section 36(1)(va) is strictly in accordance with law.”*

6.1 In view of the above, in our considered view Ld. CIT(Appeals) has not erred in facts and in law in confirming addition/ disallowance in respect of late payment of ESI amounting to Rs. 8,86,752/- in the instant set of facts. In the result, the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 27-07-2022

**Sd/-**  
**(P.M. JAGTAP)**  
**VICE PRESIDENT**  
**Ahmedabad : Dated 27/07/2022**

**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