

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA Nos.237/SRT/2021
(निर्धारणवर्ष / Assessment Year: (2018-19)
(Virtual Court Hearing)

Vyashkumar Indralal Mishra Dilu Falia, House of Shri R.C.Patel, Vaghdhara Road, Dadra & Nagar Haveli, Silvassa-396230 (UT)	Vs.	Income Tax Officer, Ward-9, Nr. Vaishali Char Rasta, NH- 8, GIDC, Vapi-396195
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AMLPM 3623 N		
(Appellant)		(Respondent)

आयकर अपीलसं./ITA No.238/SRT/2021
(निर्धारणवर्ष / Assessment Year: (2018-19)

M/s Saloni Engineering Works Plot No.-3715/15 A-1, 4 th Phase GIDC, Vapi-396195	Vs.	Income Tax Officer, Ward-8, 220, Income Tax Office, Nr. Vaishali Char Rasta, NH-8, GIDC, Vapi-396195
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: ABVFS4912 K		
(Appellant)		(Respondent)

Assessee by : Shri Lokesh Khadaria, CA.

Respondent by : Shri Shaurya Shaswat Shukla– Sr.DR

सुनवाई की तारीख/ Date of Hearing : 25/07/2022

घोषणा की तारीख/Date of Pronouncement : 29/07/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned two appeals filed by the two different assessee pertaining to the same assessment year i.e., 2018-19, are directed against the separate order passed by the learned National Faceless Appeal Centre (NFAC)/CIT(A), which in turn arise out of separate assessment orders passed by the Central Processing Centre, Bengaluru/Assessing Officer u/s 143(1) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 26.04.2019 and 22.10.2019 respectively.

2. At the outset, Ld. counsel for the assessee informs the Bench that appeal filed by assessee in ITA No.237/SRT/2021 is barred by limitation of 113 days as well as ITA No.238/SRT/2021 is time barred by 25 days. In both the appeals, assessee filed respective petitions of condonation of delay. The content of both the petition of condonation of delay are reproduced as follows (appeal-wise):-

ITANo.237/SRT/2021

“The appellant is assessed to income tax by Assessing Officer ward-7 Vapi. The appellant received the assessment order and demand notice dated 11/06/2021 for assessment year 2018-19. Being aggrieved by the said order he ought to have filed the appeal.

The delay in submission of the appeal has been caused by circumstances entirely beyond appellant’s controls entire nation was effected by Covid Pandemic. The appellant was not able to access his email communication where intimation under section 143(1) of the Act was delivered.

I would request your honour, kindly to condone the delay as per decision of the Apex Court in various application before honourable court i.e. miscellaneous application no.21 of 2022, miscellaneous application no 665 of 2021, suo moto writ petition(c)no. 3 of 2020 miscellaneous application no. 29 of 2022, miscellaneous application no. 665 of 2021 and suo moto writ petition (C) no.. 3 of 2020.”

ITANo.238/SRT/2021

“The appellant is assessed to income tax by Assessing Officer ward-8 Vapi. The appellant received the assessment order and demand notice dated 07/09/2021 for assessment year 2018-19. Being aggrieved by the said order he ought to have filed the appeal.

The delay in submission of the appeal has been caused by circumstances entirely beyond appellant’s controls entire nation was effected by Covid Pandemic. The appellant was not able to access his email communication where intimation under section 143(1) of the Act was delivered.

I would request your honour, kindly to condone the delay as per decision of the Apex Court in various application before honourable court i.e.

miscellaneous application no.21 of 2022, miscellaneous application no 665 of 2021, suo moto writ petition(c)no. 3 of 2020 miscellaneous application no. 29 of 2022, miscellaneous application no. 665 of 2021 and suo moto writ petition (C) no. 3 of 2020.”

3. On the other hand, Ld. Sr.DR for the Revenue submitted that if the delay pertain to pandemic period then it should be condoned, as per the direction of Hon'ble Supreme Court in M.A. No.665/2021 and MA No29/2022.

4. We note that the Hon'ble Supreme Court in the Miscellaneous Application No.21 of 2022 and Miscellaneous Application No.665 of 2021, in *suo motu* writ petition(c) has condoned the delay. We note that the delay pertain to pandemic of Covid-19 and therefore respectively following the judgment of the Hon'ble Supreme Court in the above Miscellaneous Applications the delay should be condoned. Hence, we condone the delay of both the appeals of assessee as these pertain to pandemic period and admit both the appeals for hearing.

5. Since the issue involved in both the appeals are common and identical therefore these two appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The disallowances made by the Assessing Officer u/s 36(1)(va) of the Act on account of late payment of employees provident fund contribution after due date of payment of Rs.7,87,135/- in ITA No.237/SRT/2021 and the amount of disallowance is to the tune of Rs.10,17,130/- in ITA No.238/SRT/2021.

6. At the outset, Ld. counsel for the assessee agreed that the common & identical issue in the instant appeals are squarely covered against the assessee by the order of the co-ordinate Bench of this Tribunal in ITA No.147 & 234/SRT/2021 in the case of Rekha R Shukla for A.Y 2018-19 and 2019-20 dated 31.03.2022, wherein the co-ordinate Bench held as follows:-

“12. Therefore, as per the above, judgment of the Hon'ble jurisdictional High Court in the case of Gujarat State Road Transport Corporation (GSRTC), the claim of the assessee is not allowable.

13. We note that Hon`ble Jurisdictional High Court of Gujarat in the case of *Salasar Laminates Ltd. Vs. Dy. CIT (Tax Appeal No. 1186 of 2018)*, has granted liberty to the assessee that if the Supreme Court reverse the judgment in the case of *GSRTC*, it would be open for the assessee to revive the appeal. The findings of the Hon`ble Court is reproduced below:

*“This Appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Ahmedabad (“Tribunal” for short) dated 22nd March 2018. The issue pertains to Assessment Year 2013-14 and the sole question raised by the assessee in this appeal concerns deductibility of a sum of Rs.20,34,916/- which was the employees’ contribution towards Provident Fund, ESI, etc. It appears that the assessee did deposit such amount of contribution towards PF & ESIC accounts, however, missed the deadline prescribed in the statutes for such purpose. On account of this, the Revenue did not permit deduction of such sum from the income of the assessee. Such disallowance thereupon became the subject matter of appeal before the Tribunal. The Tribunal dismissed the ground, relying upon the judgment of this Court in the case of *Commissioner of Income-tax vs. Gujarat State Road Transport Corporation Limited*, reported in 366 ITR 170 [Gujarat]. Counsel for the appellant did not dispute that the issue on hands is squarely covered by this Court in the case of *CIT v. GSRTC [Supra]*. He, however, submitted that the appeal is pending against the judgment of the High Court before the Supreme Court and SLP has been granted. The amount involved is not very large and it would be extremely expensive for the assessee to carry this in appeal before the Supreme Court. He, therefore, suggested that the benefit of this judgment of the Supreme Court may be made available to the assessee; as and when rendered and in case, the judgment of the High Court is reversed. Two clear ways are possible to enable the appellant assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed. One is to dismiss this appeal and allow the assessee to approach the Supreme Court; like some other assesses would have. The other way is to make some arrangement under which without filing the appeal, the assessee would also be able to claim the benefit of the judgment. Looking to the smallness of the disputed amount, we adopt the latter option by providing as under:*

*This appeal at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of *CIT vs. GSRTC [Supra]*, it would be open for the appellant to revive this appeal by filing an application for such purpose within three months from the date of the judgment.”*

14. Since against the order of the Hon'ble Gujarat High Court in the case of *Gujarat State Road Transport Corporation(supra)*, the Special Leave Petition (SLP) filed before the Hon`ble Supreme Court is pending, hence following the judgment of Hon`ble Jurisdictional High Court of Gujarat in the case of *Salasar Laminates Ltd (supra)* all these appeals is restored to the file of the ld CIT(A) with the direction to adjudicate the issue as per the outcome of the decision of the Hon`ble Supreme Court.

15. We also note that on identical facts, similar issues have been remitted back to the file of the ld. CIT(A) by the Co-ordinate Bench of ITAT Surat, in the

case of Puja Chemicals in ITA No.161 & 162/SRT/2021. The findings of the Tribunal is as follows:

"5. We have heard both the parties and perused the material available on record. We note that the issue involved in these four appeals are covered against the assessee, as the assessee has not deposited Employees Provident Fund (EPF) with the prescribed authority within stipulated time, therefore as per the judgment of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Company (supra), the issue had already been decided by the Hon'ble Court against the assessee. However, we note that jurisdiction ITAT, Ahmedabad in the case of M/s Unicorn Remedies Pvt. Ltd. in ITA Nos. 3058/AHD/2014 for AY.2011-12 and 2599/AHD/2016 for AY.2012-13, order dated 30.01.2019 wherein the similar issue has been remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the outcome of the judgment of the Hon'ble Supreme Court. The findings of the Tribunal are reproduced below:

"14. This issue is already against the appellant for late deposit of Employees Provident Fund with the authority by the judgment of Hon'ble Gujarat High Court in the matter of GSRTC 366 ITR 170 wherein it is held:

"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]

15. In the meanwhile, it is noticed that on this issue appeal is pending before the Hon'ble Supreme Court and recently Hon'ble Gujarat High Court in Tax Appeal No. 1186 of 2018 has held that two clear ways are possible to enable the appellant-assessee to get benefit of the judgment of the Supreme Court, in case the High Court Judgment is reversed by the Hon'ble Supreme Court and relevant part of the said order of the High Court is reproduced:

"This Appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Ahmedabad {"Tribunal" for short} dated 22nd March 2018. The issue pertains to Assessment Year 2013-14 and the sole question raised by the assessee in this appeal concerns deductibility of a sum of Rs.20,34,916/- which was the employees' contribution towards Provident Fund, ESI, etc. It appears that the assessee did deposit such amount of contribution towards PF & ESIC accounts, however, missed the deadline prescribed in the statutes for such

purpose. On account of this, the Revenue C/TAXAP/1186/2018 ORDER did not permit deduction of such sum from the income of the assessee. Such disallowance thereupon became the subject matter of appeal before the Tribunal. The Tribunal dismissed the ground, relying upon the judgment of this Court in the case of Commissioner of Income-tax vs. Gujarat State Road Transport Corporation Limited, reported in 366ITR 170 [Gujarat].

Counsel for the appellant did not dispute that the issue on hands is squarely covered by this Court in the case of CIT v. GSRTC [Supra]. He, however, submitted that the appeal is pending against the judgment of the High Court before the Supreme Court and SLP has been granted. The amount involved is not very large and it would be extremely expensive for the assessee to carry this in appeal before the Supreme Court. He, therefore, suggested that the benefit of this judgment of the Supreme Court may be made available to the assessee; as and when rendered and in case, the judgment of the High Court is reversed. Two clear ways are possible to enable the appellant- assessee to get benefit of the judgment of the Supreme Court, in case the High Court judgment is reversed. One is to dismiss this C/TAXAP/1186/2018 ORDER appeal and allow the assessee to approach the Supreme Court; like some other assesses would have. The other way is to make some arrangement under which without filing the appeal, the assessee would also be able to claim the benefit of the judgment. Looking to the smallness of the disputed amount, we adopt the latter option by providing as under: This appeal at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of CIT vs. GSRTC [Supra], it would be open for the appellant to revive this appeal by filing an application for such purpose within three months from the date of the judgment. Appeal stands disposed of accordingly."

16. At the outset, ld. A.R. requested that in view of the order passed by the Hon'ble Gujarat High Court as aforesaid therefore this matter may be restored to the file of the ld.CIT(A).

17. In view of the above and order passed by the Hon'ble Gujarat High Court, we set aside the matter to the file of the ld.CIT(A) to decide the matter after taking into account order of the Supreme Court as and when will be passed by the Hon'ble Supreme Court. Accordingly will decide the matter."

16. We note that Learned Counsel has argued a lot, stating that disallowance of employees PF and ESI is highly debatable issue which cannot be a subject matter of section 143(1)(a) of the Act, nevertheless, we have to follow the judgment of the Hon'ble jurisdictional High Court, in the case of Gujarat State Road Transport Corporation, which is a direct judgment on the issue of employees PF and ESI.

17. We note that Hon`ble Bombay High Court in the case of Thana Electricity Supply Ltd. 206 ITR 0727, held that the decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. The detailed findings of the Hon`ble Court is reproduced below:

“17. From the foregoing discussion, the following propositions emerge:

(a) The law declared by the Supreme Court being binding on all Courts in India, the decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extent beyond its territorial jurisdiction.

(c) The position in regard to binding nature of the decisions of a High Court on different Benches of the same Court, may be summed up as follows:

(i) A Single Judge of a High Court is bound by the decision of another Single Judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question [see Food Corporation of India vs. Yadav Engineer & Contractor AIR 1982 SC 1302].

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs with another Division Bench of the same High Court, it should refer the case to a larger Bench.

Where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By no amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or

Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution.”

18. *It is abundantly clear from the judgment of the Hon`ble Bombay High Court in the case of Thana Electricity Supply Ltd (Supra), that decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. Hence, decision of the Hon`ble Jurisdictional High Court of Gujarat in the case of Gujarat State Road Transport Corporation(supra), is binding on us.*

19. *In the case of **Union of India v. Raghbir Singh (1989) 178 ITR 548 (SC)**, the Hon`ble Supreme Court held that the doctrine of binding precedent has merit of promoting certainty and consistency in judicial decisions. As per the doctrine of precedent, all lower Courts, Tribunals and authorities exercising judicial or quasi-judicial functions are bound by the decisions of the High Court within whose territorial jurisdiction these Courts, Tribunals & authorities functions. In the case of **State of Orissa & Ors. vs M.D. Illyos, [2006] 1 SCC 275** the Hon`ble Supreme Court held that a decision is a precedent on its own facts and that for a judgment to be a precedent it must contain the three basic postulates: (i) A finding of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the individual effect of the above. In the case of **CIT v. Sun Engineering Works P. Ltd. [1992] 198 ITR 297 (SC)**, the Hon`ble Supreme Court held that it is neither desirable nor permissible to pick out a word or a sentence from the judgment, divorced from the context of the question under consideration and treat it to be the complete "law". The judgment must be read as a whole and observations from the judgment have to be considered in the light of the questions which were before the court.*

20. *From the above it is vivid that we have to follow the judgment of the Hon`ble Jurisdictional High Court of Gujarat in the case of Gujarat State Road Transport Corporation (supra). The mere fact, that further appeal (SLP) has been filed, before the Hon`ble Supreme Court against the judgment of Hon`ble Gujarat High Court, in no way, means that Gujarat High Court`s decision under consideration is not operational and effective. Unless and until the decision of Gujarat High Court is reversed by Hon`ble Supreme Court, the same has to be given due effect. Thus, judicial discipline demands that order of the Hon`ble Gujarat High Court should be followed by the Surat Income Tax Appellate Tribunal.*

21. *We have already noted that against the order of the Hon'ble Gujarat High Court, in the case of Gujarat State Road Transport Corporation (supra), the SLP has been filed by the assessee, which has not been adjudicated yet therefore we are of the view that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the judgment of the Hon'ble Supreme Court as and when will be passed by the Hon'ble Supreme Court. Therefore these appeals at this stage are dismissed. However, if the Supreme Court reverses the judgment in the case of the Hon`ble Gujarat High Court in the case of CIT vs.*

GSRTC [Supra], it would be open for the assesseees to revive these appeals by filing an application for such purpose within three months from the date of the judgment.

22. *In the result, all appeals filed by the assessee, are allowed for statistical purposes.”*

7. As the issue is squarely covered against the assessee by the decision of the Hon'ble jurisdictional High Court of Gujarat in the case of GSRTC (supra), however, the Co-ordinate Bench has taken the constant decision to remit the issue back to the file of the Id. CIT(A) to wait till the outcome of the SLP filed before the Hon'ble Supreme Court. Therefore, both the appeals at this stage are dismissed. However, if the Supreme Court reverses the judgment in the case of the Hon'ble Gujarat High Court in the case of CIT vs. GSRTC [Supra], it would be open for the assesseees to revive these appeals by filing an application for such purpose within three months from the date of the judgment.

8. In the combine result, both the appeals filed by the assessee are allowed for statistical purposes.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 29/07/2022 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 29/07/2022

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat