

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 214/Ahd/2021  
Assessment Year : 2018-19

Income Tax Officer, Ward-1(2)(1), Vadodara	Vs	Samsherbhai Dadubhai Chauhan, Flat No.1, Chauhan Compound, Dadunagar, Tarsali, Vadodara, Gujarat-390009 PAN : AERPC 8318 L
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Parin Shah, AR
Revenue by :		Shri Dileep Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 28/09/2022  
घोषणा की तारीख /Date of Pronouncement: 28/09/2022

**आदेश/O R D E R**

**PER P.M. JAGTAP, VICE-PRESIDENT :**

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["CIT(A)" in short] dated 06.07.2021 and the grounds raised by the Revenue therein read as under:-

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of the amount of Rs.2,64,40,660/- made u/s 2(24)(x) r.w.s. 36(1)(va) of the Act, on account of delay in depositing the amount of Employees contribution towards PF/ESIC after the due date prescribed under the relevant Act.*

*2. On the facts and circumstances and in law whether the ld. CIT(A) erred in deleting addition on account of deposit of employees contribution towards PF of Rs.2,51,72,712/- and ESI of Rs.12,62,948/- before the due date of filing the return of income invoking applicability of Section 43B of the Act. "*

2. The solitary grievance raised by the Revenue by way of this appeal is that the learned CIT(A) has erred in deleting the addition of Rs.2,64,40,660/-, which was added by the Assessing Officer with the aid of Section 36(1)(va) of the Income-tax Act, 1961 [“the Act” in short], for the late payment of Employees’ Contribution to PF/ESI.

3. We have heard the parties and perused the relevant material available on record. It is observed that the solitary issue involved in this appeal is squarely covered in favour of the Revenue and against the assessee by the decision of Hon’ble jurisdictional High Court in the case of CIT vs. Gujarat State Road Transport Corporation, 366 ITR 170 (Guj.)/ [2014] 41 taxmann.com 100 (Guj.), wherein it is categorically held that in the case of delayed deposit of employees’ contribution to PF/ESI, the same will not be deductible in computing income under Section 28 of the Act. It is observed that in the case of Gujarat State Road Transport Corporation (supra), the Hon’ble jurisdictional High Court has decided a similar issue vide its judgment dated 26.12.2013; the relevant paragraphs of which i.e. paragraph No.7.12 to 8 are reproduced below:

*“7.12 Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of Sarabhai Sons Ltd. (supra), by the learned counsel appearing on behalf of the assessee and his submission that if two views are possible and different High Courts have taken a particular view, this Court may not take a different view, is concerned, we are of the opinion that in the present case, and as discussed hereinabove, only one view is possible as canvassed on behalf of the revenue and as observed by under section hereinabove and we are not in agreement with the view taken by the Himachal Pradesh High Court; Karnataka High Court; Rajasthan High Court and Punjab and Haryana High Court in the cases referred to hereinabove, and therefore, the submission made on behalf of the assessee to follow the decisions of the different High Courts referred to hereinabove and/or not to take a contrary view cannot be accepted.*

8.00 *In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund) on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act."*

As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Gujarat State Road Transport Corporation (supra), we, respectfully following the decision of Hon'ble jurisdictional High Court rendered in the said case, set aside the impugned order of the learned CIT(A) deleting the disallowance made by the Assessing Officer under Section 36(1)(va) of the Act on account of belated payment of employees' contribution towards Provident Fund/ESI and confirm the order of the Assessing Officer.

4. In the result, appeal of the Revenue is allowed.

Order pronounced in the open Court on 28<sup>th</sup> September, 2022 at Ahmedabad.

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

Ahmedabad, Dated 28/09/2022

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Sd/-

**(P.M. JAGTAP)**  
**VICE-PRESIDENT**

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad