

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 4276/Mum/2019  
(Assessment Years: 2015-16)**

Sumeet Mehra, 5-C, Prem Kutir, 177, Marine Drive Backbay Reclamation, Mumbai-400 020.	<b>बनाम/ Vs.</b>	DCIT 1(3)(1) Room No. 547, Aayakar Bhavan, M.K. Road, Mumbai – 400 007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGJPM7660D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Govind Prasad, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Rajesh Kumar , (CIT-DR)

सुनवाई की तारीख / Date of Hearing	15/03/2021
घोषणा की तारीख/Date of Pronouncement	22/03/2021

**आदेश / ORDER**

**PER SHRI PAVANKUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Ld. Commissioner of Income Tax (Appeals)-3 (for short ‘the CIT(A)’), Mumbai passed u/sec.143(3) and 250 of the Income Tax Act,1961 (for short ‘the Act’).

The assessee has raised the following ground of appeal:

1. The learned CIT(A) has erred in law and on the facts of the case in concurring with the view taken by Ld. AO of not reducing the salary income by Rs. 28,66,662/- and not allowing addition of withholding tax of Rs. 31,707/-.
2. The Brief facts of the case are that the assessee is a salaried employee and derives income from salary, Income from business & Profession and Income from Other Sources. The assessee has filed the return of income electronically on 30.03.2017 with total income of Rs. 2,46,82,660/-. The return of income was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s. 143(2) & 142(1) of the Act are issued. In compliance to the notice, the ld. Authorized Representative (AR) of the assessee appeared from time to time and submitted the details and clarifications. The Assessing Officer (AO) on perusal of the income tax return found that the assessee has disclosed the income from salary of Rs. 2,47,97,416/- and Income from Other Sources of Rs. 60,248/- and

claimed deduction under chapter VIA and disclosed the total income of Rs. 2,46,82,660/-. In the assessment proceedings, the ld. AR of the assessee submitted that the assessee at the time of filing of return has disclosed Director's remuneration from Singapore Companies in US Dollar (USD) and the tax deduction was claimed in USD. Whereas the salary certificate discloses the Director's remuneration and withholding tax in Singapore Dollar. The assessee inadvertently declared directors' remuneration of USD 93256.44 and withholding tax USD 8984.42 from M/s Sparkle Clean Holdings instead of USD 47456.08 and withholding tax USD 9491.00 as per certificate issued to the assessee in Singapore Dollar. The assessee has requested the A.O. to reduce Directors remuneration by Rs 28,66,662/- and increase with holding tax by Rs31,707/- . The AO on verifying these facts found that the claim cannot be accepted as the assessee cannot change and reduced income offered in the return of income without filing the Revised return of income and relied on the Apex Court decision in the case of Goetze (India) Ltd. Vs. CIT and the assessed the

total income of Rs. 2,46,82,660/- and passed the order u/s. 143(3) of the Act.

3. Aggrieved by the order of AO, the assessee has filed the appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O and observed that the action of the A.O. cannot be interfered and upheld the same and dismissed the assessee's appeal. Aggrieved by the order of CIT(A), the assessee has filed the appeal before the Hon'ble Tribunal.

4. At the time of hearing, the ld. AR of the assessee submitted that the assessee has inadvertently included the higher income in the return of income filed and withholding tax. Whereas the actual director remuneration is Rs.29,70,314/- as against Rs. 58,36,976/- and withholding tax also changes. The mistake is genuine and has to be reduced to assess the correct income and prayed for allowing the appeal.

5. Contra, the Ld.DR relied on the order of CIT(A) and has raised objections that the assessee

without filing the revised return of income and explaining the detailed reasons cannot claim the relief. Further he explained that the appeal should not be admitted and dismissed.

6. We have heard the rival submissions and perused the material available on record. The sole crux of the disputed issue is that the assessee is an employee and filed the return of income with higher income. Whereas, the salary certificate in respect of director remuneration issued by M/s Sparkle Clean Holdings is Rs. 29,70,314/- instead of Rs58,36,976/- disclosed in the income tax return and similarly there is difference in withholding tax. The contentions of the Ld.AR that that the assessee should not be made to pay the tax on higher salary but only actual salary has to be taxed. The ld AR also submitted that the mistake on the part of the employee is not a wanton act but due to oversight the correct income could not be considered in the return of income filed. We found the submissions of the Ld.AR are realistic. The assessee should not be deprived of his legitimate claim and tax has to be levied on the income actually generated. We

considering the overall facts, circumstances and judicial decisions are inclined to grant one more opportunity to the assessee to substantiate the claim. Accordingly, the disputed issue is restored to the file of the AO for limited purpose and the A.O shall examine and pass the order. We allow the grounds of appeal of the assessee for statistical purpose.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

The order pronounced on 22.03.2021, in the open court.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER  
Mumbai, Dated 22/03/2021

Sd/-  
(PAVAN KUMAR GADALE )  
JUDICIAL MEMBER

SK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai