

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री चंद्र मोहन गर्ग, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2096/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2016-17)

M/s .G.V.N.Hospitals, 46, Singarathope Mainguard Gate, Tiruchirapalli-620 002.	Vs	The Assistant Commissioner of Income Tax, Circle-1(1) Trichy.
PAN: AAJFG 1212D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T. Vasudevan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. AR V Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of hearing	:	21.02.2022
घोषणा कीतारीख/Date of Pronouncement	:	23.02.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-1, Trichy dated 09.05.2019 and pertains to assessment year 2016-17.

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

"1. The orders of both the Assessing Officer and First Appellant Authority are erroneous and against the law.

2. The assessing officer failed to consider the material records submitted by appellant in connection with provision for

expenses which truly established the genuineness of the expenditure claimed by the appellant.

3. The fact that certain expenses which were not considered in tax audit report and later included in the income tax return by the appellant does not vitiate the genuineness of the expenditure claimed as the payment were routed only through banking channels.

4. The A.O has adopted the statement of profit and loss account as reported by the chartered Account vide section 44AB of the Act instead of the profit and loss account as per books of account maintained.

5. The Audit report u/s 44AB is only a audit report and not a certificate. It helps the A.O to assess the income. Hence the profit arrived as per report is not conclusive.

6. Section 145 is machinery section and the derivation of profit by applying the machinery section alone constitute profit and gains under section 28 of the Act.”

3. Brief facts of the case are that the assessee is a partnership firm, engaged in the business of running hospital, filed its return of income for the assessment year 2016-17 on 19.10.2016 admitting total income of Rs.2,86,33,480/-. During the course of assessment proceedings, the Assessing Officer noticed that there is a difference in net profit reported in ITR filed for relevant assessment year and net profit reported in tax audit report. As per return, net profit reported is Rs.2,85,23,422/-, whereas as per tax audit report in Form 3CD, net profit was shown at Rs.3,28,01,026/-. There is a difference of Rs.42,77,602/- in net profit shown in tax audit

report and ITR filed for the relevant assessment year. Therefore, the Assessing Officer called upon the assessee to explain and reconcile difference. In response, the assessee vide letter dated 11.12.2018 submitted that tax auditor has reported net profit as per unaudited financial statement, which has not considered year end provision towards salary expenses and employer contribution to EPF & ESI, provision for partners salary, provision for depreciation on lift and bank interest income, after reconciliation with Form 26AS and if you consider these year end expenses, net profit reported by the assessee in the return of income filed for the relevant assessment year is correct. However, the tax auditor has not considered correct financials while uploading data in Form 3CD. Therefore, the assessee submitted that difference in net profit as per two documents has been reconciled.

4. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to him, arguments of the assessee is that Tax Auditors Mr.Narayanaswamy and N.Krishnaswamy, who furnished audit report u/s.44AB of the Act, has not reported correct figures is

incorrect, because audit report has been filed on twice, one before the assessee filed its return of income on 27.10.2016 and the other subsequent to filing of return of income by the assessee. If the claim of the assessee is correct, then the tax auditor would have corrected mistake while filing subsequent tax audit report. Since figures reported by tax auditor in both audit reports is same, claim of the assessee that auditor has considered unaudited financials while uploading audit report is incorrect and cannot be accepted. Thus, rejected arguments of the assessee and made additions towards difference in net profit as shown in ITR and tax audit report filed for relevant assessment year and made addition of Rs.42,77,604/- to returned income.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated its arguments and filed a reconciliation statement explaining difference between income & expenditure shown in ITR filed for relevant assessment year and tax audit report issued in Form 3CD and argued that the auditor has committed an error in uploading

figures for which the assessee cannot be penalized. The learned CIT(A), after considering relevant facts and also taken note of various reasons given by the Assessing Officer came to the conclusion that contention of the appellant that the tax auditor has erred in uploading figure in Form 3CD lacks basis, more particularly, when the statutory auditor filed revised audit report, subsequent to filing of return, has reported same profit as that of original audit report. Therefore, the learned CIT(A) opined that there is no error in the findings of the Assessing Officer that revised audit report which has been filed after filing of return did not reflect claim of provisions made for expenses and thus, there is no case for the assessee to claim that difference has been reconciled, hence, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards difference in net profit. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned A.R for the assessee submitted that the learned CIT(A) has erred in not appreciating the fact that the assessee has reconciled difference between net profit shown in ITR and tax audit report in Form 3CD and has explained

reasons for difference before the Assessing Officer. The learned A.R further submitted that when the assessee has explained difference with necessary evidence, no additions can be made for mistake of the auditor, who committed error in reporting financial statement to the department. The learned AR for the assessee submitted that the assessee has made year end provisions for various expenses, including salary of staff, salary to partners, employer contribution to EPF & ESI and also corrected less depreciation claimed on lift, including unaccounted interest income on deposits as per Form 26AS. These expenses have not been considered by the auditor while uploading financial statement in Form 3CD. Therefore, for the mistake of the auditor, the assessee cannot be penalized, more particularly, when the assessee has explained reasons for difference in net profit shown in ITR filed for relevant assessment year and Form 3CD issued by the auditor. He further referring to the decision of the ITAT., Lucknow Bench in the case of M/s. Model Echoes Pvt .Ltd Vs DCIT in ITA No.657/Lkw/2017 vide order dated 10.01.2018, submitted that the Tribunal has apprised facts and held that for the mistake of auditor, the assessee cannot be penalized, when the assessee

has explained differences. He had also relied upon the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt.Ltd Vs. CIT (2002) 348 ITR 306 (SC) and submitted that for bonafide mistake of a human, which we all prone to errors, no one can be penalized.

7. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that claim of the assessee that tax auditor has considered unaudited financials for relevant assessment year, while uploading tax audit report in Form 3CD goes unproved, because if at all, claim of the assessee is correct, then tax auditor would have corrected mistake when he had filed tax audit report on second time after the assessee filed its return of income. Since, tax audit auditor has reported net profit which was reported earlier, even after filing revised tax audit report, then it can be very safely concluded that the assessee has under reported net profit, hence, there is no error in the reasons given by the Assessing Officer as well as learned CIT(A) to sustain additions made by the Assessing Officer and their orders should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts with regard to difference in net profit as reported in ITR filed for the relevant assessment year by the assessee and tax audit report filed by the auditor u/s.44AB of the Act, in Form 3CD. In fact, the assessee had admitted that there is difference in net profit as shown in two forms, but the assessee claims to have reconciled difference between net profit shown in Form 3CD and ITR filed for the relevant assessment year and argued that certain year end provision was not considered by the tax auditor, while uploading financial figures for the relevant assessment year in Form 3CD and same has been reconciled after finalization of accounts and reported to the income tax department in ITR form. We have gone through reasons given by the assessee to justify difference in net profit shown in ITR filed for the relevant assessment year and tax audit report issued in Form 3CD and we do not ourselves subscribe to the reason given by the assessee for simple reason that when the assessee has submitted its accounts to tax auditor for audit, then it is presumed that accounts for the year are finalized in all

respects. Further, the tax auditor has reported financial figures as per which there is no difference in income and major expenses. Further, the assessee claims to have made certain year end provisions which has been not considered by the tax auditor. However, on perusal of reasons given by the Assessing Officer, it is abundantly clear that even after filing revised tax audit report, tax auditor has reported very same net profit which was reported in earlier tax audit report filed on 17.10.2016, even before the assessee filed return of income on 27.10.2016. If at all, claim of the assessee is correct that auditor has not considered year end provisions while uploading Form 3CD, then tax auditor would have corrected said mistake, when he had filed second audit report on 27.10.2016, subsequent to return of income filed by the assessee on 19.10.2016. In this case, net profit shown in Form 3CD as per first audit report filed on 17.10.2016 and second audit report filed on 27.10.2016 is one and the same, whereas, there is difference in net profit shown by the assessee in ITR filed on 19.10.2016 and same is unreconciled, although the assessee claims to have reconciled difference by showing certain provisions, but said claim was not satisfactorily explained to the Assessing Officer as well as

learned CIT(A). Even before us, although the assessee has filed a chart explaining difference between income and expenditure shown in ITR as well as Form 3CD, but claim of the assessee goes unproved in absence of any evidences. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make additions towards difference in net profit shown in ITR filed for relevant assessment year and tax audit report issued in Form 3CD.

9. In respect of case laws cited by the assessee, we find that facts of the case before the ITAT., Lucknow bench in the case of M/s. Model Echoes Pvt Ltd Vs DCIT (supra), was altogether different, because in said case, it was only reporting of net profit before depreciation and after depreciation. The tax auditor has reported profit before taxes and after depreciation in column no. 40(C) to Form 3CD and has been subsequently clarified by stating that there is a typing error. Under those facts, the Tribunal came to the conclusion that there was an inadvertent error committed by the auditor, who wrongly mentioned net profit figure in tax audit report, however, there is no difference in either income or expenses reported by the assessee. In this

case, there is difference between expenses reported by the assessee and the assessee claims to have made certain provisions to reconcile difference in net profit. As we have already noted in earlier part of this order, claim of the assessee goes unproved in absence of any evidences. Hence, case laws relied upon by the assessee has no application to the facts of the present case.

10. Insofar as the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt.Ltd Vs. CIT (supra), we find that the Hon'ble Supreme Court had considered facts in light of penalty levied u/s.271(1)(c) of the Act, on the ground of furnishing inaccurate particulars of income, after considering relevant facts held that the assessee has claimed deduction for certain expenses towards provisions u/s.40A(3) of the Act, whereas the tax auditor correctly reported that said provision is not deductible. When the Assessing Officer has noticed discrepancy, the assessee has admitted the lapse and added provision made for expenses in the statement of total income. The Assessing Officer has initiated penalty proceedings and held that the assessee has furnished

inaccurate particulars of income. When the appeal reached to the Hon'ble Supreme Court, the Hon'ble Court, after considering fact that tax auditor has correctly quantified disallowance of expenses, came to the conclusion that this is all happened because of bonafide and inadvertent error while submitting return of income and such error can only be described as human error, which we all are prone to make for that it cannot be said that the assessee has furnished inaccurate particulars of income for levy of penalty u/s.271(1)(c) of the Act. In our considered view, facts of the case before the Hon'ble Supreme Court is altogether different and cannot be applied to the facts of this present case. In the present case, admittedly there is difference in net profit as shown in ITR and tax audit report and same has not been satisfactorily explained by the assessee. The Assessing Officer, after considering relevant facts has rightly made additions towards difference in net profit. The learned CIT(A) after considering relevant arguments of the assessee has rightly held that there is no error in the reasons given by the Assessing Officer to make additions towards difference in net profit. Hence, we are inclined to

uphold findings of the learned CIT(A) and dismiss appeal filed by the assessee.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 23rd February, 2022.

Sd/-
(चंद्र मोहन गर्ग)
(Chandra Mohan Garg)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 23rd February, 2022

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आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.