

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.206/Ahd/2021
Assessment Year :2018-19

Arham Pumps B-10 &B-12, Jagannath Industrial Estate Nr.Gujarat Bottling Rakhial, Ahmedabad. PAN : AAOFA 2797 E	Vs	DCIT, CPC Bangalore.
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(Applicant)	(Responent)
Assessee by :	Shri Parimalsinh Parmar, AR
Revenue by :	Shri Alpesh Parmar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/04/2022
घोषणा की तारीख /Date of Pronouncement: 27/04/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee against order dated 30.7.2021 passed by the National Faceless Appeal Centre ("NFAC" for short) relating to the assessment year 2018-19.

2. Brief facts of the case is that the assessee is a partnership firm. For the Asst.Year 2018-19, the assessee filed its return of income on 19.10.2018 declaring total income at Rs.26,03,941/-. The return of income was processed under section 143(1) of the Income Tax Act, 1961 ("the Act" for short) and on 19.10.2019 by the Centralized Processing Centre and determined total income at

Rs.28,16,680/- thereby making an addition of Rs.2,10,743/- on the returned income. Aggrieved against the intimation, the assessee filed an appeal before the CIT(A)-9, Ahmedabad on 7.12.2019 and the same was migrated to NFAC as per the CBDT notification. The ld.NFAC has given two opportunities to the assessee to hear the case by e-proceedings. As there was no response from the assessee, the appeal was decided based on the materials available on record. The only issue that is arising before ld.NFAC was the addition of Rs.2,10,743/- being the late payment of employees contribution of PF and ESI which were disallowed under section 36(1)(va) of the Act. The ld.NFAC has dealt the matter very elaborately and uphold the addition by following decision of jurisdictional High Court judgments in the case of Gujarat State Road Transport Corporation, 41 taxmann.com 100 (Guj) and Suzlon Energy ltd., (2020) 115 taxmann.com 340 (Guj). Consequently, levy of interest has also been upheld by the ld.NFAC.

3. Aggrieved against the appellate order, the assessee is before us with the following grounds of appeal.

- i) *In law and in facts and circumstances of the appellant's case, the ld.AO has grossly erred in points of law and facts.*
- ii) *In law and in facts and circumstances of the Appellant's case, the learned Assessing Officer has grossly erred in disallowing late payment of employees' contribution to PF and ESIC of Rs 2,10,743.*
- iii) *In law and in the facts and circumstances of the Appellant's case, the learned Assessing Officer has grossly erred in charging interest u/s 234C of Rs 17,812.*
- iv) *In law and in facts and circumstances of the Appellant's case, the learned Assessing Officer has grossly erred in raising demand of Rs 35,540.*

4. The ld.counsel for the assessee pleaded that ld.NFAC has grossly erred in deciding the debatable issue viz. disallowance made under section 36(1)(va) of the Act in 143(1)(a). Further, there are divergent views are being expressed by various High Courts on late

payment of PF & ESI. As against the decision in the case of Gujarat State Road Transport Corporation (supra), SLP filed by the assessee before the Hon'ble Apex Court is pending, therefore, the Id.NFAC is totally not correct in upholding the additions made in the assessment framed under section 143(1) of the Act, wherein debatable issue cannot be considered.

5. Per contra, the Id.DR appeared for the Revenue supported the order of the lower authorities and pleaded that jurisdictional High Court have repeatedly held that late payment of PF and ESIC contribution certainly requires disallowance under section 36(1)(va) of the Act and pleaded that the orders of the lower authorities be confirmed.

6. We have given our thoughtful consideration and perused material available on record. Admittedly, the assessee filed its return of income on 19.9.2018 and admitting total income of Rs.26,03,940/-. The same was processed under section 143(1) on 19.10.2019. The said intimation is in the form of calculation in tabulated columns running into seven pages. There are two main columns; one column description showed "as provided by Taxpayer in Return of Income" and another column showed "As computed under section 143(1)". There is no description in this intimation or explanation/note why such disallowance or addition made by the CPC in the 143(1) proceedings. For better understanding of the intimation proceedings, section 143(1) of the IT Act is reproduced as follows:

"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

- (a) *the total income or loss shall be computed after making the following adjustments, namely:—*
- (i) *any arithmetical error in the return;*
 - (ii) *an incorrect claim, if such incorrect claim is apparent from any information in the return;*
 - (iii) *disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
 - (iv) *disallowance of expenditure 82[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;*
 - (v) *disallowance of deduction claimed under 83[section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
 - (vi) *addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

*Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode: **(underline is ours)***

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

7. On going through the above section and proviso attached therein, the total income or loss shall be computed after making following adjustment mainly of any arithmetical error in the return. Incorrect claim, if such incorrect claim is apparent from any information in the return, etc. Thus, it is clear that a return can be processed u/s.143(1) by making adjustments on six types of adjustments only. The first proviso to section 143(1)(a) make it very clear that no such adjustment shall be made unless an intimation is

given to the assessee of such adjustment either in writing or in electronic mode. Apparently in the case of the assessee, no intimation had been given to the assessee for making any adjustment or disallowance either in writing or in electronic mode. Thus, the CPC center has not followed the first proviso to section 143(1)(a) of the Act. This position was not controverted by the ld.DR also. Assuming a moment, if such an intimation is given to the assessee as per first proviso, then the second proviso stipulates that if any response is received from the assessee, the same should be considered before making any adjustment or disallowance, and also in a case where NO response is received, then within thirty days of the issue of such intimation, department is free to make such adjustment.

8. On going through the above intimation made under section 143(1), CPC has not followed the above provisos by giving proper opportunity to the assessee to defend its case as per the first proviso to section 143(1)(a) . Further, the NFAC order is also silent about the intimation to the assessee. Therefore, we find that intimation issued under section 143(1) dated 19.10.2019 is against first proviso to section 143(1)(a), and therefore, the entire 143(1) proceedings is invalid in law.

9. We also observe that the ld.NAFC has not looked into this fundamental principle of “*audi alterm partem*”, which has not been provided to the assessee as per the 1st proviso of section 143(1) of the Act, but proceeded with the case on merits and also confirmed the addition made by the CPC. The ld.NAFC is thus erred in conducting the faceless appeal proceedings in a more mechanical manner without application of mind. We therefore hereby quash the

intimation issued by the CPC and allow the appeal filed by the assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 27th April, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 27/04/2022