

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

BEFORE
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2361/Mum/2021
(Assessment Year 2017-18)

Suresh Bachubhai Shah 102, EMP-41, Evershine Thakur Village Kandivali (East) Mumabi-400 101	Vs.	DCIT(CPC) Bengaluru
PAN/GIR No. : ATKPS5161K		
Appellant	..	Respondent

Appellant by :	Shri. Dharmesh Shah and Shri. Dhaval Shah. AR
Respondent by :	Shri. Hoshang. B. Irani. DR

Date of Hearing	07.07.2022
Date of Pronouncement	11.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed u/s 143(1) r.w.s154 and 250 of Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“Whether, on the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is correct in confirming the processing order u/s. 143(1) r.w.s 154 of the Income Tax Act, passed by the CPC in gross violation of law and principles of natural justice.

Whether, on the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is correct in confirming the addition of Rs. 9,00,000/- in salary income on the basis of excess salary shown in Form 26AS by employer without becoming due and making payment of such excess salary.

Whether, on the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is correct in confirming the addition of Rs. 9,00,000/- in salary income on the basis of excess salary shown in Form 26AS by employer without depositing TDS thereon.

Whether, on the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is correct in shifting the tax liability on salary on the employee rather than being responsibility of employer u/s. 192 of Income Tax Act, for computation of tax and payment thereof.

Whether, on the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is correct in not deciding the grounds of appeal relating to deduction claimed u/s. 80TTA of Rs.10,000/- of chapter VIA on savings bank interest earned and offered.

The appellant craves leave to add, alter, amend or modify the aforesaid grounds of appeal.

The Appellant craves leave to submit at the time of hearing such further facts, information, clarification, documents etc. as may be necessary for the purpose of deciding the issues in the appeal.”

2. The brief facts of the case are that, the assessee is an individual and filed the return of income on 26th October, 2017 for the A.Y.2017-18 disclosing a total income of Rs.1,87,73,950/-, which includes income from salary of Rs.17,98,800/- 'income from House Property of Rs.21,88,480/-, Loss' from Business of Profession for Rs.24,03,029/-, 'Income from Capital Gain 1,71,89,899/- and Income from Other Sources of Rs.1,59,800/-. The Assessing Officer (CPC) has made an addition of salary of Rs.9,00,000/- on the basis of Form No 26As from M/s Sim Diam Private Limited for the months of October, November and December, 2016 without TDS. Whereas, the assessee was under employment till September 2016 and received salary till such period. The assessee has filed the rectification application U/sec154 of the Act against the intimation U/sec143(1) of the Act. The contentions of the assessee are that no salary was received for that period and CPC has not provide opportunity to the assessee to substantiate with the evidences. Finally the CPC has passed order u/s 154 dated 26.06.2019 determining the total income of Rs.1,96,83,950/-

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, findings of the assessing officer and the submissions of the assessee. The assessee has mentioned that the assessee has not received the salary for the period of October, 2016 to December, 2016 and supported with the information. Finally the CIT(A) has confirmed the addition and dismissed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

4. At the time of hearing, the Ld.AR of the assessee submitted that the CIT(A) has erred in not considering the facts and evidences to substantiate that no salary was received for the period. Further the assessee has filed the material information supporting the claim, where as the assessee has left the employment from 15th October, 2016. The Ld. AR contentions are that the assessee has a good case on merits prayed for an opportunity to substantiate before the Lower Authorities and supported the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The Ld.AR contentions are that the CIT(A) has erred in sustaining the addition of salary for October 2016, November 2016 & December 2016 which was neither accrued or received in the financial year 2016-17. The Ld. AR substantiated the submissions with the Ledger account of assessee's salary paid in F.Y.2016-17 and the letter of the employer, bank account statements and other vital details in the paper book. The Ld. AR prayed that these evidences play a vital role in the decision making of the case and prayed for an opportunity to substantiate before the lower authorities. We considering the facts, circumstances, provisions of law and to meet the ends of justice shall provide one more opportunity to the assessee to substantiate with the evidences. Accordingly, we restore the entire disputed issues to the file of the A.O. to verify and examine the material information and decide on merits. Further, the assessee should be provided the adequate opportunity of hearing and shall cooperate in submitting the information. Hence the order of the CIT(A) is set-aside and restore the disputed issue to the file of the Assessing Officer and allow the

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grounds of appeal of the assessee for statistical purpose.

6. In the result, the appeal filed by the assessee treated as allowed for statistical purposes.

Order pronounced in the open court on 11.07.2022

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dated 11.07.2022

PK, Sps

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

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.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai