

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 663/Mum/2022
(A.Y: 2018-19)

Shri Pankaj Rameshchandra Shroff 301, Chitrakoot, Juhu Church Road, Vile Parle(W), Mumbai-400049	Vs.	ADIT, CPC Bengaluru Karnataka-560500.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPS7862E		
Appellant	..	Respondent

Appellant by :	Mr. Sameer Dalal.AR
Respondent by :	Ms. Shreekala Pardeshi.DR

Date of Hearing	25.07.2022
Date of Pronouncement	27.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the CIT(A)-National Faceless Appeal Centre (NFAC), Delhi passed u/s 154 and 250 of the Act. The assessee has raised the following grounds of appeal:

1.1. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Center, Delhi has erred in not interfering the action taken by CPC, I.T. Dept., Bengaluru and confirmed the Disallowance made Rs.22,00,880/- u/s.57 of the act.*

It is respectfully submitted that expenses are incurred by the assessee to earn income and duly claimed in the return of income, which should have considered and allowed against the business income. Assessee is being a partner in LP and earning taxable business income and for earning income, assessee has incurred certain expenses which are allowable as business expenditure.

2. The learned Appellant craves leave to add to, alter, delete or modify all or any of the above grounds at the time of hearing.

2. The brief facts of the case that the assessee is an individual and derives income from salary, remuneration from partnership firm(LLP) and income from other sources. The assessee has filed the return of income on 24.09.2018 for the A.Y 2018-19 disclosing a total income of Rs.53,37,320/- and the return of income was processed and the intimation u/s 143(1) of the Act dated 20.01.2019 was passed. Subsequently the A.O. has passed rectification order U/sec154 of the Act, whereas the assessee is a partner and received salary income from the partnership firm has claimed expenditure of Rs.22,00,880/- in relation to earning the remuneration. The A.O. in the

rectification proceedings has not allowed the claim of expenditure and determined the total income of Rs. 75,36,450/-.

3. Subsequently the assessee has made rectification application on 05-02-2020 against the disallowance of expenses claimed and was rejected by the CPC vide order dated 10.02.2020.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A) and filed the written submissions. Whereas, the CIT(A) has dismissed the assessee appeal and observed at page 3 Para 4 as under:

4. Decision: I have carefully considered the facts on record, intimation as well as rectification order, the written submissions of the appellant and other documents available on record.

4.1 Ground No. 1 relates to Violation of principle of natural justice: It is pertinent to note that an intimation under us 14sil) of the Act was passed by the CPC accepting the returned income, Thereafter, a rectification order was passed by the CPC for enhancing the income being a mistake, apparent from ITR. Against, this rectification order, the appellant filed a rectification application and no appeal was filed against the first rectification order. The

appellant is in appeal against the second rectification order, which was passed at the instance of the appellant's rectification application. Since the present appeal relates to rectification order on rectification application filed by the appellant, there is no need for giving any opportunity of being heard. Hence, the plea of the appellant on this ground is rejected. Thus, this ground of appeal is dismissed.

4.2 Ground No. 2 relates to disallowance of expenditure for earning salary income & interest from partnership firm. In the instant case, the appellant, being a partner in a firm received remuneration and interest from the firm. The appellant claimed that he had claimed expenditure against salary & interest income from partnership firm and declared net income under the head Bop.

Firstly, it is observed that the appellant filed three ITR-3 for AY 2018-19 all as Original Return u/s 139(1) of the Act with Ack No. 303839020240918, 300017610050220 and 305758130180220 on 24.09.2018, 05.02.2020 and 18.02.2020 respectively. The rectification order is with respect to IT filed with ack no. 303839020240918 on 05.02.2020. So I am considering this IT filed on 24.09,2018 and rectification order dated 10.02.2020 [CPC/1819/U3/1975861982] Perusal of IT filed for AY 2018-19 (Ack No. 303839020240918) on 24.09.2018 shows that the appellant had declared gross receipt from profession at Rs. 22,00,000/- and claimed business expenses of Rs. 11,00,000/- resulting into net profit of R\$. 11,00,000/-, which has been offered for taxation u/s 44ADA of the Act. The appellant also declared salary

income of Rs. 19,93,975/- from Shroff and Associates (Enggs) Pt Ltd under the head IFS. The appellant further declared gross rental receipts at Rs. 15,00,000/- and declared a loss of Rs. 8,68,762/- after claiming standard deduction and interest on borrowed fund. The appellant declared Rs. 44,01,760/- as salary from partnership firm in the Schedule BP of ITR and nil interest from firm, however, the total business income in the schedule BP was declared at Rs. 33,00,880/- instead of Rs. 55,01,760 (11,00,000 + 44,01,760). Further, the appellant did not claimed any expenditure from salary income from firm as evidenced from SI. No. 32 of Schedule BP, which resulted into nil expenditure at sl. 34 of schedule BP. All these facts show that the appellant did not claimed any expenditure against the salary income from partnership firm and therefore, the PC rejected the rectification application of the appellant being not an apparent mistake from ITR. In view of these facts, this ground is dismissed,

5. In the result, the appeal of the appellant is dismissed.

5. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal. At the time of hearing the Ld. AR of the assessee submitted that the CIT(A) has erred in confirming the action of the CPC in respect of disallowance of Rs. 22,00,880/- u/s 57 of the Act. Whereas the assessee has incurred the expenditure for earning the remuneration from

partnership firm and further the assessee was not provided with the opportunity to make submissions before disallowing the claim and prayed for an opportunity to substantiate the claim of expenditure with the material evidences and prayed for allowing the appeal. Contra, the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the CIT(A) erred in sustaining the disallowance of expenditure u/s 57 of the Act claimed in respect of earning the income from partnership firm(LLP). The Ld. AR's contentions are that the assessee is regularly filing the return of income and has claimed the exemption of share income of partnership firm. Whereas the CPC in the original order u/s 143(1) dated 20.01.2019 has accepted the return of income filed on 24.09.2018, subsequently, CPC has passed the rectification U/sec154 of the Act disallowing the claim of expenditure and passed the rectification order. The assessee has raised the grievance before the CPC that no opportunity was provided to the assessee before passing the order u/s

154 of the Act to explain the facts with the evidences. The Ld. AR made submissions on these aspects before the CIT(A) on 28.02.2022 referred at page 72 of the paper book.

7. The CIT(A) found that the assessee has challenged the petition u/sec 154 of the Act rejected by the CPC and whereas no appeal was filed by the assessee in the rectification order passed sumoto by the A.O.. Therefore the CIT(A) has considered the facts, where the assessee is against the appeal in respect of the second rectification and not on the first one which was passed sou- moto by the A.O and dismissed the appeal. The Ld.AR submitted that the assessee should be provided an opportunity to substantiate case before the CIT(A). We considering the principles of natural justice shall provide an opportunity to the assessee to file the appeal against the order u/sec154 of the Act passed sumoto by the Assessing officer along with condonation application before the CIT(A). Accordingly, we set aside the order of the CIT(A) and restore the disputed issues to the file of the CIT(A) to adjudicate a fresh on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in

disposal of appeal. Hence, the grounds of appeal filed by the assessee are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27.07.2022

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 27.07.2022
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

1.

आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai