

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

ITA No.255/Hyd/2022		
Assessment Year: 2010-11		
Sri K.Sudhakar Chowdary HUF, Tirupati PAN:AADHK9123R (Appellant)	Vs.	Income Tax Officer Ward 1(2) Tirupati (Respondent)
Assessee by:	Shri E. Phalguna Kumar, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	14/09/2022	
Date of pronouncement:	16/09/2022	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 27.4.2022 of the learned CIT (A)-NFAC, Delhi, relating to A.Y.2010-11.

2. The grounds raised by the assessee are as under:

*“1.The Order of the Ld. Commissioner of Income Tax, (Appeals), NFAC, Delhi is erroneous and is not based on facts and circumstances of the case. Hence the Ge same is bad in law and the decision of Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi needs to be reversed.*

*2. The Ld. CIT (Appeals), NFAC, Delhi erred in upholding the order of Ld. AO by stating that there is in no mistake apparent on record.*

*3. The Ld. CIT (Appeals), NFAC, Delhi has erred in upholding the addition made on the basis of non-existent information.*

*4. The Ld. CIT (Appeals), Tirupati has erred in disregarding the judicial precedents and in upholding the Order of the Ld. Assessing Officer.*

*5. The appellant therefore prays the hon'ble Income Tax Appellate Tribunal to i) Rectify the mistake which is apparent on record vis-à-vis the assessment order.*

*ii) To delete the addition of Rs 40,95,794/- made by him on the basis of non-existent information.*

*iii) To delete the demand raised on the above addition.*

*The appellant craves leave to add, amend, alter, modify, substitute, abridge and/or rescind any or all of the above grounds with the kind permission of the Hon'ble Tribunal at any time either before or on the date of hearing."*

3. Facts of the case, in brief, are that the assessee is the Kartha of the HUF and is carrying on the business of trading in Petrol, Diesel and other Petroleum products. The HUF operates a retail outlet in Tirupati. It filed its return of income on 26.09.2010 electronically declaring income at Rs 6,09,221/-. The case of the assessee was selected for scrutiny and the Assessing Officer completed the assessment u/s 143(3) on 28.3.2013 wherein the Assessing Officer apart from other small additions made an addition of Rs.40,95,794/- being the difference between gross receipts as per Form 26AS and as declared in the return of income filed by the assessee. After receiving the assessment order, the assessee filed an application for rectification u/s 154 on 25.4.2013 stating that the credits added as income by the Assessing Officer do not pertain to the assessee. The assessee produced a certificate to this effect which was obtained from the deductor i.e., IOCL. It was submitted that the Form 26AS as drawn by the assessee from his system does not show any such credits. However, the Assessing Officer vide order dated 10.1.2014 passed order u/s 154 of the I.T. Act rejected the claim of the

assessee stating that full details on difference on the gross receipts of Rs.40,95,795/- were not furnished.

4. In appeal, the learned CIT (A) NFAC dismissed the appeal filed by the assessee by observing as under:

*“6 I have considered the grounds of appeal, statement of facts, order u/s.154 and submissions of the appellant. The rectification order dated 10.01.2014 has mention of only one letter dated 16.07.2013 filed by the appellant. Till that time, form 26AS was not modified. The said letter dated 16.07.2013 was duly received by the AO with his signature and office stamp. The appellant has claimed to have filed another letter dated 08.01.2014 along with rectified 26AS. However, there is no mention or discussion about the letter dated 08.01.2014 in the rectification order dated 10.01.2014. Further, there is no signature of the AO or office stamp on letter dated 08.01.2014 claimed to have been filed by the assessee which is a distinguishable feature when we compare the same with letter dated 16.07.2013. Therefore, the undersigned has no evidence that letter dated 08.01.2014 with rectified form 26AS was fled with the AO. In such circumstances, I do not find any fault in the rectification order dated 10.01.2014 wherein the AO has rejected the rectification application of the assessee with a specific mention that the assessee's request will be considered only after submission of full details of 'difference of gross receipts of Rs.40,95,794/' found in the assessee's 26AS viz. the name of the persons, PAN etc. to whom the gross receipts pertains. The AO is well within his authority to reject a rectification application if it does not contain full details of the reasonable cause under which the mistakes of reflecting higher receipts in Form 26AS against the PAN of the assessee had taken place. Moreover, the door for filing another. Rectification application with full details as required by the AO was always available with the appellant which has been indicated in the rectification order itself. Therefore, do not find any infirmity in the rectification order dated 10.01.2014 and all the grounds of appeal are hereby dismissed.”*

5. Aggrieved with such order of the learned CIT (A)-NFAC the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the Assessing Officer without considering the details furnished before him rejected the rectification application and the learned CIT (A) NFAC without considering the details filed before him dismissed the appeal filed by the assessee. He submitted that in the interest

of justice, the matter may be restored to the Assessing Officer or to the learned Cit (A) as the case may be for deciding the issue afresh in the light of the details already furnished and by giving an opportunity to reconcile the same.

7. The learned DR, on the other hand, while strongly supported the order of the learned CIT (A) fairly conceded that he has no objection, if the matter is restored to the file of the Assessing Officer with a direction to the assessee to reconcile the difference to the satisfaction of the Assessing Officer.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT (A)-NFAC and the paper book filed on behalf of the assessee. We find the AO made an addition of Rs.40,95,794/- on the ground that there is a difference in the gross receipts admitted by the assessee at Rs.20,26,253/- and the gross receipts from Indian Oil Corporation as per Form 26AS at Rs.61,22,047/- and the assessee expressed his inability to reconcile the difference in gross receipts. We find the assessee filed a rectification application u/s 154 stating that the credits added by the Assessing Officer do not pertain to the assessee. However, the Assessing Officer rejected the rectification application and in appeal, the learned CIT (A) dismissed the appeal filed by the assessee, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the Chief Divisional Retail Sales Manager of IOCL, Tirupati has issued form 26AS containing the details of payment and the addition made by the Assessing Officer on account of difference in Form 26AS and income declared by the assessee does not belong to the assessee. It is his submission that given an opportunity, the

assessee is in a position to reconcile the difference. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to reconcile the difference and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 16<sup>th</sup> September, 2022.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 16<sup>th</sup> September, 2022.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Shri K. Sudhakar Chowdary, HUF, Koorapati Farm, Vidya Nagar, Chandragiri Road, Tirupati
2	Income Tax Officer Ward 1(2) Aayakar Bhavan, KT Road, Tirupati
3	CIT (A)- NFAC, New Delhi
4	Pr. CIT-, Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*