

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ मनीष बोरड, लेखा सदस्य

के समक्ष

Before

DR. MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील संख्या: 92/कोल/2022

निर्धारण वर्ष: 2018-19

I.T.A. No.: 92/Kol/2022

Assessment Year: 2018-19

Ganesh Hotel Pvt. Ltd.....Appellant
[PAN: AABCG 2301 E]

Vs.

ACIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

Sh. Soumitra Choudhury, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : September 12th, 2022

Date of pronouncing the order : September 20th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2018-19 is directed against the

order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. “CIT(A)”] dated 17.12.2021 arising out of the assessment order framed u/s 143(1) of the Act dated 16.10.2019.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 17.12.2021 is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, that while issuing intimation u/s. 143(1) could not deny the adjustment claimed by the assessee as the same does not come within the ambit of 'an incorrect claim apparent from any information in the return', therefore, enhanced the gross total income made by the CPC was without jurisdiction which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. CIT(A) was wrong that while processing the return u/s. 143(1) of the I.T. Act, the A.O. was not adjusting amounting to Rs.329,314/- on account of Profit on sale of Motor Car shown as per books and it is adjusted with depreciable asset under head plant & machinery, therefore, this ground set aside to A.O. for verification which is completely arbitrary, unjustified and illegal.

4. For that the Ld. CIT(A) has no power to restore matter to file of A.O. for reconsideration and such action is beyond the powers conferred upon the Ld. CIT(A) while dealing with appeal, so action of the CIT(A) to this extent being not justified is set aside, covered by Apex Court

5. For that on the facts of the case, that while processing the return u/s. 143(1) of the I.T. Act, the A.O. (CPC) was wrong in not considering the facts that the payment was made towards contribution of PF & ESI of Rs.161,466/- before filing of the return u/s. 139(1) of the I.T. Act on 05.09.2018 allowable u/s. 36(l)(va)/43B covered by various Court's judgements, but confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

6. For that the amendment brought in by Finance Act, 2021 on this issue has been held to be prospective in nature in the case of Shri Harendra Nath Biswas (*supra*), therefore, Bench reiterate the same view that the amendment/explanation brought in by Finance Act, 2021 with effect from 01.04.2021 on this issue is prospective; and taking note that the relevant assessment year i.e. 2019-20 the *ibid* explanation brought in by Finance Act, 2021, cannot be used/applied to unsettle the settled position of law passed by the Hon'ble jurisdictional High Court in the case of Vijayshree Ltd. (*supra*), since there is no retrospective legislative over-ruling. Therefore, the finding of the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

7. For that in charging interest u/s. 234B at Rs.23,047/- & 234C at Rs.6,181/-, which is mechanically wrong and illegal.

8. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. From perusal of the grounds, I notice that in the proceedings u/s 143(1) of the Act addition in the income of the assessee was made on account of two adjustments:

i) Profit on sale of motor car at Rs. 3,29,314/-

ii) Disallowance of contribution towards PF & ESI at Rs. 1,61,466/-

3.1. The assessee has also challenged the said adjustments being bad in law as such addition cannot be made u/s 143(1)(a) of the Act.

3.2. Ld. Counsel for the assessee vehemently argued supporting the written submissions filed before ld. CIT(A) and a paper book containing 89 pages placed on record.

4. Per contra, ld. D/R vehemently argued supporting the orders of both the lower authorities.

5. I have heard rival contentions and perused the records placed before us.

6. As regards the first adjustment on disallowance of contribution towards PF & ESI at Rs. 1,61,466/- I notice that the alleged amount was deposited before the due date of filing return of income u/s 139(1) of the Act. Therefore, in light of the decision of the Coordinate Bench of this Tribunal in the case of *Lumino Industries Ltd. vs. ACIT, Circle-5(1), Kolkata* in I.T.A. Nos. 231 & 365/Kol/2021 for AY 2015-16 & AY 2017-18 order dated 17.11.2021 I find that this Tribunal has taken a consistent view that in such cases where there is a delay in deposit of PF & ESI as per the due dates prescribed under the relevant Acts covering PF & ESI but the assessee finally deposits the amount before the due date of filing return of income u/s 139(1) of the Act then such disallowances are uncalled for. I, therefore, respectfully following the decision of this Tribunal in the case of *Lumino Industries Ltd. (supra)* delete the alleged disallowance made towards contribution towards PF & ESI of Rs. 1,61,466/- and allow grounds nos. 5 & 6 raised by the assessee.

7. As regards the second issue of the adjustment of profit on sale of motor car at Rs. 3,29,314/-. I, on going through the computation of income and the depreciation chart as per the income tax notice that the assessee being a private limited company while computing the total income firstly disallowed the depreciation calculated as per the Companies Act at Rs. 7,75,453/- and then reduced the income by the depreciation as

per the Income Tax Act at Rs. 6,43,052/-. Profit on sale of motor car at Rs. 3,29,314/- was also reduced. It seems that the computer system while processing the return of the assessee was unable to catch the details mentioned in the depreciation chart and added the alleged amount treating the same to have not been offered to tax.

8. I, however, on perusal of the depreciation chart find that at serial no. 11 the assessee has shown the asset generator and car under the block of 15% opening Written Down Value is at Rs. 8,83,434/-, there is an addition of Rs. 4,94,000/- in the block and the sale consideration of car at Rs. 5,50,000/- is reduced and after charging depreciation of Rs. 1,74,115/- closing W.D.V. is at Rs. 7,03,319/-. Since the assessee has reduced the sale consideration of sale of car in the block itself and the block still exists at the close of the year, no separate income was required to be shown for the profit on sale of car. Ld. D/R failed to controvert this fact and only contention made by him is that the matter has already been restored to the file of ld. CIT(A).

9. I, however, find that ld. CIT(A) ought to have examined the facts of the case and should have decided the issue but since ld. CIT(A) failed to do so, I set aside the impugned order and delete the adjustment of income of profit on sale of motor car at Rs. 3,59,314/- and allow ground no. 3 raised by the assessee.

10. The remaining grounds are either academic or general in nature which need no adjudication.

11. Thus, the assessee gets relief on the merits of the case and addition of Rs. 3,59,314/- made for profit on sale of motor car and disallowance of PF & ESI at Rs. 1,61,466/- stands deleted.

12. In the result, the appeal of the assessee is allowed as per the terms indicated herein above.

Kolkata, the 20th September, 2022.

Sd/-
[Manish Borad]
Accountant Member

Dated: 20.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Ganesh Hotel Pvt. Ltd., 4, 4th Floor, Ganesh Chandra Avenue, Kolkata-700 013.**
- 2. ACIT, Circle-8(1), Kolkata.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata