



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥

IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE“B” BENCH, PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.663/PUN/2021

निर्धारण वर्ष / Assessment Year : 2018-2019

Vighnaharta Developers and Promoters

Near ZP School, Gahunje,

Post Dehu Road, Pune - 412101

PAN:AALFV8040J

..... अपीलार्थी / Appellant

बनाम / V/s.

Asst. Director of Income Tax,

CPC, Bengaluru.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Nikhil Pathak

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 26/09/2022

घोषणा की तारीख / Date of Pronouncement : 03/10/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal assailed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [for short “**NFAC**” / “**FAA**”] dt. 30/06/2021 passed u/s 250 of the Income-tax Act, 1961 [for short “**the Act**”], which climbed out of assessment order dt. 09/08/2019 passed u/s 143(1) by the Dy. Commissioner of Income Tax, CPC, Bengaluru [for short “**CPC**” / “**AO**”] for assessment year [for short “**AY**”] 2018-19.



2. The sole and substantive ground assailed in the present appeal seeks to correct erroneous reporting made under Form No 3CD pertaining to payment of service tax.

3. The grounds raised in the memo for adjudication are;

“1. The Learned Commissioner of Income Tax Appeal [Ld. CIT(A)] erred under circumstances and facts of the case and in law by confirming Learned Assessing Officer’s (Ld. AO) Assessment order of addition of Rs.6,90,496/-, which order is passed under section 143(1) of Income Tax Act, 1961 (the Act) on the basis of clerical error of Tax Auditor, when statutory dues of Service tax have been paid on 20-04-2018.

2. The Ld. CIT(A) and Ld. AO erred under circumstances and facts of the case and in law by disallowing Rs.6,90,496/- u/s 43B of the Act, the liability of Service Tax which has been paid by appellant before the due date applicable in appellant’s case for furnishing the return of income under section 139(1) of the Act and tax auditor has mentioned in form 3CD payment date 20-04-2018.

3. The Ld. CIT(A) and Ld. AO both erred under circumstances and facts of the case and in law by ignoring spirit of statute that dues of Govt other specific liabilities of assessee incurred during previous year should be paid before the due date applicable in assessee’s case for furnishing the return of income under section 139(1).

4. Relief prayed

a. Addition effected on the basis of ignoring the fact that the liability of Service Tax which has been paid by appellant before the due date applicable in appellant’s case for furnishing the return of income under section



139(1) be pleased to be deleted and set aside Ld. CIT(A)'s and Ld. AO's orders.

b. As alternative relief appellant prays to remand matter for proper hearing.

5. The appellant craves leave to add, alter, modify or amend the Grounds of appeal.”

4. Having set the grounds of appeal, succinctly stated the facts of the case are;

4.1 The assessee firm is engaged in the business of construction and builder developers etc., has filed its return of income [for short **“ITR”**] on 29/03/2019 for AY 2018-19 declaring taxable income at ₹6,90,946/- as against which the CPC determined the total income at ₹16,90,348/- on account of disallowance u/s 43B arising out of delayed payment of service tax.

4.2 Aggrieved by the said disallowance u/s 43B, the assessee carried the matter before FAA, wherein the Ld. CIT(A) finding no merit in the case has dismissed the first appeal, consequently the appellant has knocked the doors of Tribunal contending meritare grounds as laid at para 3 herein before.



5. During the course of physical hearing, the learned representative of the assessee [for short **"AR"**] at the outset referring to affidavit and application filed for condonation of delay in instituting the appeal, reiterated the contents thereof and prayed for condonation. In so far as the meritare grounds are concerned, the Ld. AR adverting to the challans of service tax payment laid at page 20-27 of the paper book submitted that, the appellant firm has discharged the liability of service tax on or before filing ITR u/s 139(1) of the Act, however due to erroneous reporting by the tax auditor in Form No 3CD the impugned disallowance was triggered in processing the ITR by CPC and same has been perfunctory confirmed by NAFAC, hence prayed for remanding the file back to the jurisdictional AO for verification, which the learned departmental representative [for short **"DR"**] candidly conceded in the light of records placed before.

6. After hearing to the rival contentions of both the parties and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records and duly



considered the facts of the case in the light of settled legal position, we find force in the submission of the Ld. AR and for the reasons, condoning the delay in the light of decision of Hon'ble Apex Court in **"Collector Land Acquisition Vs MST Katiji and Others"** reported at 167 ITR 5 (SC) and Hon'ble Bombay High Court in **"CIT Vs Velingkar Brothers"** reported at 289 ITR 382 (Bom), we restore the file back to the jurisdictional AO for verification of claim and to deal therewith in accordance with law as applicable for the impugned AY after according sufficient opportunity to the appellant for adducing sufficient evidence in support of its claim, thus we order accordingly.

7. Resultantly, the appeal of the appellant assessee is allowed for statistical purpose in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Monday 03rd day of October, 2022.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 03rd day of October, 2022.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

- 1.अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned Pr. CIT, Pune (MH-India)
4. The concerned CIT(A), Pune (MH-India)
5. DR, ITAT, Pune Bench 'B', Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,
वरिष्ठ निजी सचिव / Sr. Private Secretary