

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri K.Narasimha Chary, Judicial Member**

ITA No.327/Hyd/2022		
Assessment Year: 2020-21		
Om Shiv Shakti Iron Industries Private Limited 19-2-226, Bahadurpura Hyderabad-500 062  PAN : AACCK3181F	Vs.	DCIT, Circle-5(1) I.T.Towers, A.C.Guards Masab Tank Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:		Shri H.Srinivasulu, Advocate
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		11.10.2022
Date of pronouncement:		12.10.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 08.06.2022 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC), Delhi relating to AY 2020-21.

2. Although a number of grounds have been raised by the assessee however, these all relate to the order of the ld.CIT(A) in dismissing the appeal filed by the assessee against the dismissal of rectification application u/s. 154 passed by the AO.

3. Facts of the case, in brief, are that the assessee is a private limited company and is engaged in the business of manufacturing of Ingots, billets, blooms and slabs etc. It filed its original return of income on 03.11.2020 declaring nil income after adjusting carry forward loss of Rs.72,49,256/-. Subsequently, the assessee filed the revision return u/s. 139(5) on 21.11.2020 returning nil

income. The return was processed u/s. 143(1) by CPC on 23.12.2021 by adding contingent liability of Rs.2,05,01,600/-, which was not claimed by the assessee as expenditure in the P&L account. The assessee filed a rectification petition u/s. 154 of the I.T.Act on 03.01.2022 requesting for reprocessing of the return submitted in response to intimation u/s. 143(1). However, the rectification application was also dismissed by the CPC.

4. The assessee preferred an appeal before the Id.CIT(A) wherein it was stated that due to a typographical mistake committed by the staff of the auditor while filling in Form No.3CD an amount of Rs.2,04,97,276/- was shown under column 21(d)(B)(g) as "Amount of any liability of a contingent nature". However, this amount should be nil, since it was an inadvertent mistake committed by the staff member of the auditor while filing the Tax Audit Report and the hard copy signed by the auditor does not contain the sum of Rs.2,04,97,276/-. Therefore, it is not an item of adjustment stipulated in section 143(1)(a). It was submitted that while processing the I.T return, the same amount has been added to the taxable income by the CPC which is a mistake which should have been rectified.

5. However, the Id.CIT(A), NFAC was not satisfied with the arguments advanced by the assessee. According to him, the mere fact that the assessee has not displayed the said amount of Rs.2,04,97,276/- on the debit side of the P&L account under any of the head of expenses expressly provided in the P&L account does not automatically mean that assessee has not clubbed it with some other head of expenses which has been debited to P&L account. According to him, accounting is a complex process. Any kind of expenses can always be made part of some head of expenses and subsequently on a superficial/face value study of such a P&L account, it can always be claimed that such expense was never debited to the P&L account. According to the CIT(A),

NFAC, the auditor, who is an expert in auditing the various expenses debited to P&L account and their allowability under the I.T.Act has specifically chosen to report in column 21 of the audit report, which is actually meant for providing details of amounts debited to the P&L account, being in the nature of capital, personal and advertisement expenditure etc. He has further reported in sub-column 21(g) that out of the various expenses debited to P&L account, the contingent liability of Rs.2,04,97,276/- has also been debited by the assessee in the P & L account which is required to be disallowed as the same is contingent in nature and not an ascertained liability. He further noted that in the intimation u/s. 143(1) as well as order u/s. 154 has only picked up this amount of Rs.2,04,97,276/- from the auditors report in Form 3CD.The ITR was processed by the computerized system of the Department and any such anomaly which exists between the Auditors report in form 3CD vis-à-vis details declared suo-moto by the assessee in the ITR filed is detected by the CPC and the corrective action is taken by making suitable enhancement or reduction to the returned taxable total income. In view of the above, he dismissed the appeal filed by the assessee.

6. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

7. The ld.counsel for the assessee, at the outset, reiterated the submissions as made before the ld.CIT(A) stating that it is an inadvertent error committed by the staff of the auditor. He submitted that the assessee has never debited any amount of Rs.2,04,97,276/- on the debit side of the P&L account as contingent liability. The hard copy of the auditors report also does not show any such expenditure. Referring to page no.17 of the written submissions, he drew the attention of the Bench to the

communication received from the CPC proposing adjustment u/s. 143(1)(a) of the I.T.Act dated 20.12.2021 wherein the reasons proposing adjustment u/s. 143(1)(a) was given as under:-

*“Adjustment u/s. 143(1)(a)(iv): Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return in schedule BP.”*

8. Referring to page 18 of the written submissions, he drew the attention of the Bench to the date of receipt of such communication which is on 21.12.2021 at 5.00 pm. Referring to page no.161 of the paper book, he submitted that the CPC, Bengaluru passed the intimation u/s. 143(1) raising the demand on 23.12.2021. Referring to the provisions of section 143(1)(a), he drew the attention of the Bench to the second proviso according to which the response received from the assessee, if any, shall be considered before making any adjustment, and in a case no response is received within 30 days of the issue of such intimation, such adjustment shall be made. In other words, an addition, if any, can be made only after 30 days from the date of intimation communicated to the assessee proposing the adjustment. He submitted that in the instant case the adjustment has been made within two days from the date of receipt of such intimation and therefore, such adjustment being not in accordance with law, the order passed by the CPC making the adjustment should be held as void ab intio. In his alternate contention, he submitted that he has no objection, if the matter is restored to the file of the AO with a direction to verify the record and pass appropriate order as per law.

9. The ld. DR on the other hand while strongly supporting the order of the CPC rejecting the order passed under section 154 and the order of the CIT(A) dismissing the appeal filed by the

assessee. He, however, submitted that he has no objection if the matter is restored to the file of the AO for verification of details.

10. We have considered the rival arguments made by both the sides, perused the orders of the CPC & Id.CIT(A), NFAC and perused paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both the sides. We find the CPC, Bengaluru in the instant case made adjustment of Rs.2,05,01,600/-, which consists of an amount of Rs.2,04,97,276/- being liability of a contingent nature and the balance amount is on account of PF & ESI. We find after receiving the demand notice along with intimation, the assessee filed a rectification application, which was dismissed by the CPC and on appeal by the assessee, the Id.CIT(A), NFAC dismissed the appeal of the assessee. While doing so, he held that merely because the assessee has not displayed the said amount of Rs.2,04,97,276/- on the debit side of the P&L account under any of the head of expenses expressively provided in the P&L account, however it cannot be ruled out that such expenses has not been debited under some other head. It is the submission of the Id. counsel for the assessee that when the hard copy of the auditors report was filed showing that no such expenditure has been debited, the Id.CIT(A) should have allowed the appeal filed by the assessee on the ground that such entry in the Form 3CD was an inadvertent typographical error and therefore, the AO should have allowed the rectification application. It is also his submission that when the statute provides for a minimum period of 30 days from the date of receipt of any reply to the proposed adjustment, the CPC should not have passed the order on the very next day without considering the reply of the assessee. It is also his submission that given an opportunity, the assessee is in a position to substantiate his case by explaining each and every item of expenditure debited to the P&L account and show that no such

contingent expenditure has been claimed under any of the head of expenses provided under the P&L account. Considering the totality of the facts of the case and in the interest of the justice, we deem it proper to restore the issue to the file of the AO with the direction to grant an opportunity to the assessee to substantiate his case by showing that no such contingent liability has been claimed by the assessee in the P&L account under any head 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 purpose.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 12<sup>th</sup> October, 2022.

<b>Sd/-</b> <b>(K.NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 12<sup>th</sup> October, 2022.

**Thirumalesh/sps**

Copy to:

S.No	Addresses
1	Om Shiv Shakti Iron Industries Private Limited 19-2-226, Bahadurpura Hyderabad-500 062
2	DCIT, Circle-5(1) I.T.Towers, A.C.Guards Masab Tank Hyderabad-500 004
3	CIT(A), Hyderabad
4	NFAC, Delhi
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*