

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.1474/Ahd/2019
(Assessment Year: 2010-11)

Meghachem Industries Represented by it partner Mr. S.C. Damani, C/o. M.C. Mashruwala & Co., Chartered Accountants, 301-303, Akik, Opp. Lions Hall Mithakhali Six Road, Ahmedabad-380006	Vs.	DCIT Circle-3(2), Ahmedabad
[PAN No.AAIFM1621R]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Urvashi Sodhan, A.R.
Respondent by:	Dr. Mukesh Jain, Sr. DR

Date of Hearing	15.09.2022
Date of Pronouncement	28.10.2022

ORDER

This appeal is filed by the assessee against the order dated 28.06.2019 passed by the Ld. CIT(Appeals)-3, Ahmedabad for A.Y. 2010-11.

2. The grounds of appeal raised by the assessee read as under:

“1. The Ld. CIT(A) has erred in dismissing the appeal.

2. Order of rectification passed and served at a much later date:-

The appellant prays and urges that the order of Sec 154 passed for Asst. Year 2010-11 was passed on 31st March 2014 and was never served to the appellant. The appellant got to know about the passage of the order of rectification for Asst. Year 2010-11 only when it had approached the office of Income Tax Officer, Ward 3(2)(1), Ahmedabad for refund of its pre-deposit made for appeal for Asst. Year 2013-14.

The appellant even presented an affidavit stating all these facts before the Ld. CIT(A)-3, Ahmedabad which has been blissfully ignored and missed completely in the first appellate order. Hence, there is no inaction or delay on part of the appellant to contest the appeal and as such there is no delay of 1791 days as purportedly stated in the order of Hon'ble CIT(A)-3, Ahmedabad. Thus, the appellant's appeal be declared as within time and it must be ordered to be heard as there is no delay as such.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellants with regard to the impugned additions and receipt of the order of rectification.

3. **One more opportunity of being heard be granted:-**

The appellants pray that when it used to appear before each and every proceeding for various assessment years, there was no question of not chasing or giving up the claim to contest the appeal for Asst. Year 2010-11. Since the appellants had never received the order, the appeal wasn't filed. As soon as the order was made available, the appellants swung into action and filed an appeal. The appellants humbly pray that looking at the principles of natural justice it must be granted one more opportunity of being heard.

4. **Reg. Revision power exercised under the guise of rectification**

A plain look at the order of rectification would reveal that, the learned rectifying officer has exercised a change of opinion which requires the Hon'ble officer to pass revision order rather than rectification order. Hence such rectification is not a valid rectification, in the eyes of the law as there is no apparent mistake from the records of the appellants, when in fact all the required data were furnished at the time of regular assessment. Although averred before the Ld. CIT(A)-3, Ahmedabad, it has been blissfully ignored.

5. **Reg. Addition is made as other income while computing allowable remuneration**

A plain look at the order of rectification would reveal that, the learned assessing officer has added various items which are inextricably linked to the sales, purchases, duties and taxes relating to sales and purchases of the business being run by the appellants. Hence whatever additions have been made, do not qualify as income from other sources are inextricably part of net profit from business and/ or profession run by the appellants. Hence, the Ld. Assessing Officer has wrongly passed rectification order by construing certain items as other income and thereby making disallowance of remuneration to partners. Although averred before the Ld. CIT(A)-3. Ahmedabad, it has been blissfully ignored.

6. Without prejudice to above, all partners who have earned remuneration are paying tax at maximum slab rate and hence, tax effect in revenue is neutral. In any case, if remuneration is disallowed in hands of firm, the suitable effect be given to partners. Although averred before the Ld. CIT(A)-3, Ahmedabad, it has been blissfully ignored.

7. The appellants pray that it may be permitted to add, alter, amend any other grounds of appeal before the final hearing of the appeal.”

3. The assessee partnership firm filed income tax return for A.Y. 2010-11 on which order under Section 143(3) was passed on 11.12.2012 thereby

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assessing total income at Rs. 35,97,360/-. The Assessing Officer vide order dated 31.03.2014 enhanced the assessed income by Rs. 44,73,397/- under Section 154 of the Act passing thereby rectification order. The Assessing Officer recalculated the remuneration of partners by deducting Rs. 12,02,027/- from Net Profit treated it as income from other sources and disallowed excess remuneration of Rs. 8,76,037/- paid to partners of the firm.

4. Being aggrieved by the said rectification order of the Assessment order dated 31.03.2014, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the Assessing Officer wrongly added various items which are inextricably linked to the sales, purchases, duties and taxes relating to sales and purchases of the business. Therefore, the addition made do not qualify as income from other sources which are inextricably part of net profit of the business. The Ld. AR submitted that the Assessing Officer has exercised a change of opinion which is not as per the intention of Section 154 of the Act. In fact, the assessee has given all the required data to the Assessing Officer at the stage of Section 143(3) original assessment proceedings. The Ld. AR further submitted that the CIT(A) also ignored this fact, but dismissed the appeal of the assessee on delay part.

6. The Ld. DR relied upon the rectification order u/s 154 of the Act and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the remuneration of partners upon which the rectification order was passed thereby making addition, is related to the

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partners' remuneration and the same is taxable in the hands of the partners for income from other sources and not in the hands of the partnership firm i.e. assessee firm herein. The delay before the CIT(A) was also explained by the assessee as the assessee did not receive the assessment order and received the recovery notice of outstanding demand. In fact, the CIT(A) has not taken into account whether the rectification order was received by the assessee or not and did not give any finding as to the service of the rectification order. Thus, the CIT(A) was not right in dismissing the appeal. Besides this before us, the Ld. AR has explained the case on merit and from the merit of the case it appears that the assessee has explained all the details related to the business expenses and the same are incurred during the business of the assessee firm. Therefore, the rectification order passed by the Assessing Officer is not just and proper. Hence, appeal of the assessee is allowed.

8. In result, appeal of the assessee is allowed.

This Order pronounced in Open Court on	28/10/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 28/10/2022

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad