

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI S. RIFAUH RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.1362/Mum/2022
(Assessment Year: 2017-18)

Vishesh Hemendra Parekh 7, Row House, Swapan Lok Drashan, Military Road, Marol, Andheri(E), Mumbai- 400 059	Vs	DCIT, CPC, Bangalore & CTR-8(2)(1), Mumbai
PAN/GIR No. AGVPP 2722 P		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Bharat Kumar
Respondent by	:	Shri Vranda U. Matkari

Date of Hearing	:	10.08.2022
Date of Pronouncement	:	07.11.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18. The assessee has challenged the addition of Rs.6,00,000/- from income from salary on the ground that the same is added to the income from business and profession.

2. The brief facts are that the assessee is a service agent and earned income from business and profession, capital gain and income from other sources. The assessee is said to be a partner in a partnership firm by name M/s. Industrial and Commercial Enterprises

and has earned remuneration from partnership firm amounting to Rs.24,00,000/- and share of profit claimed exempt, amounting to Rs.76,05,282/-. The assessee filed his original return of income dated 18.10.2017, declaring total income of Rs.1,61,87,692/- and revised his return on 07.06.2018 with no variation in income. It is observed that while processing the return of income, Rs.6,00,000/- was added to the assessee's income on account of salary income and subsequently a demand of Rs.59,673/- was raised rather than granting refund claimed by the assessee amounting to Rs.1,50,660/-. The assessee's application for rectification u/s.154 of the Act dated 14.10.2020 was rejected vide order dated 14.10.2020.

3. Aggrieved by this, the assessee was in appeal before the Id. CIT(A) on the ground that the assessee has earned remuneration from the partnership firm which was treated as income from business and profession and not income from salary. The Id. CIT(A) dismissed the assessee's appeal on the ground that upon perusal of ITR, 26AS, TAR and the intimation order shows difference of amount reflected in 26AS and amount shown in the ITR and that the assessee should have taken up the issue with the deductor to amend/modify the information in 26AS statement and the assessee ought to have filed a fresh rectification application within the prescribed time limit to the CPC/Assessing Officer (A.O. for short), thereby rejecting the claim of the assessee.

4. Aggrieved by this, the assessee is in appeal before us as against the order of the Id. CIT(A).

5. The Id. Authorized Representative (AR for short) of the assessee contended that the assessee did not earn any income from salary and had only received income from

business and profession and that there was a technical error by CPC, Bangalore in making the addition of the impugned amount as 'income from salary' thereby raising a demand. The Id. AR contended that the assessee's claim for refund amounting to Rs.1,50,660/- is to be allowed as remuneration received from the partnership firm which was already treated as 'income from business and profession'. The Id. AR further contended that the assessee has been taxed the same income twice and that it was a mistake apparent from the record, which needs to be rectified u/s.154 of the Act.

6. The Id. Departmental Representative (Id. DR for short), on the other hand, relied on the decision of the Id. CIT(A).

7. Having heard the rival submissions and perused the materials available on record, we are of the considered view that the assessee has earned income from business and profession by rendering services, remuneration and exempt share profit, capital gains from sale of mutual fund and interest and dividend income. It is evident that the assessee has not received any income from salary amounting to Rs.6,00,000/- and that while processing the return of income, the impugned income of Rs.6,00,000/- was added inadvertently as 'salary income'. The Id. CIT(A) has observed that ITR, 26AS and other relevant records show that the assessee has earned salary income amounting to Rs.6,00,000/- from M/s. Industrial and Commercial Enterprises. It is further observed that the assessee has furnished the relevant details to substantiate his claim and had referred to page nos. 30, 55 and 60 of the paper book filed by the assessee to collaborate the fact that the impugned amount has already been declared by the assessee as 'remuneration from partnership firm' and share of profit claimed exempt. The assessee

has denied the fact that he was employed and has received the salary income. From the above observation, we are of the considered view that the assessee has earned remuneration from the partnership firm which is to be treated as 'income from business and profession' and not under the head 'income from salary', thereby concluding that the impugned addition is to be deleted from the head 'income from salary' and the same is to be added only under the head 'income from business and profession'.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07.11.2022

Sd/-
(S. Rifaur Rahman)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 07.11.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai