

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 340/Ahd/2021
Assessment Year 2018-19**

Panther Surveillance and Allied Services Pvt. Ltd. Ahmedabad PAN: AAFCP2594J (Appellant)	Vs	ITO, Ward-3(1)(1), Ahmedabad (Respondent)
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**Assessee by: Prashant Srivastav, A.R.
Revenue by: Shri Rajdeep Singh, Sr. D.R.**

Date of hearing : 20-12-2022
Date of pronouncement : 21-12-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi, in proceeding u/s. 143(1) vide order dated 29/10/2021 passed for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:-

- “1. That the learned Commissioner of Income Tax - Appeals has erred in confirming the intimation of the Assessing officer under section 143(1) of the Income Tax Act, disallowing expenses of Rs. 56,25,391/- under section 36 of the Income Tax Act.*
- 2. Any other ground which may be urged before or during the time of hearing of the appeal.”*
3. The brief facts of the case are that the assessee is engaged in the business of providing security services. The assessee filed original return of income for assessment year 2018-19 on 31-10-2018 declaring total income of ₹ 48,14,000/-. The assessee revised the above return of income on 23-11-2019, wherein the assessee disallowed the delay in deposit of employee's share of provident fund u/s 36(1)(va) of the Act amounting to ₹ 56, 25, 391/-in the return of income and then claimed the same amount as allowable deduction under section 37 of the Act. The return of income was processed under section 143(1) of the Act by way of order dated 15-02-2020, wherein the total income of the assessee was assessed at ₹ 1,04,39,395/-. The assessee filed rectification application against the aforesaid order on 26-02-2020, which was processed by way of order dated 20-05-2020 u/s 154 of the Act wherein the total income was again assessed at ₹ 1,04,39,395/- by disallowing a sum of ₹ 56,25,391/-twice, once under section 36(1)(iv) of the Act and again under section 36(1)(va) of the Act. The assessee again filed rectification application against the aforesaid order on 14-07-2020 suggesting inconsistency in processing the order, which was processed by way of order dated 30-08-2020 u/s 154 of the Act, wherein the total income was again assessed at ₹ 1,04,39,395/- by disallowing ₹ 56,25,391/- twice, once under section 36(1)(iv) of the Act and again under section 36(1)(va) of the Act.

4. The assessee filed appeal before Ld. CIT(Appeals), which was “dismissed in limine” on the ground that there was a delay of about one year in filing of appeal, and further despite issuance of notice on five occasions, the assessee did not give a suitable explanation for the delay in filing appeal and hence the appeal of the assessee was dismissed. While dismissing the assessee’s appeal, Ld. CIT(Appeals) made the following observations:

“3. In this case intimation u/s 143(1) was issued on 15.02.2020, which is claimed to be received on 15.02.2020. The appeal has been filed on 11.03.2021 which is late by about 1 year. In this regard the appellant has submitted in Form no. 35 that the -"Respected Sir, there is delayed in the filing of the appeal because your assessee does not have the assessment order with it". The appellant was issued notice dated 03.08.2021, 02.09.2021, 17.09.2021, 05.10.2021 and 14.10.2021 to file reason for condonation of delay in filing appeal. The appellant has not furnished any reply whatsoever to the five notices issued to him. In view of the above facts, I am satisfied that the appellant has no satisfactory explanation in respect of delay of about one year in filing of appeal. The appellant has not substantiated his submission mentioned in Form 35 with any cogent reason or substantiating documents in respect of delay of about 1 year in filing of appeal. The timelines provided in the statute are for strict adherence. In view of the above, this appeal is **dismissed in limine.**”

5. The assessee is in appeal before us against the order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee “in limine” on account of not filing of appeal within due date and non-appearance despite issuance of several notices. The counsel for the assessee submitted that delay in filing appeal was primarily caused due to Covid-19 and delay was also caused due to shifting/migration of appellate process to on-line e-filing. He further submitted that the assessee’s office was burned down by electric short-circuit on 20-07-2020 which also led to delay in filing the appeal before Ld. CIT(Appeals). He also produced copy of inspection report by the Directorate of Forensic Science, Gandhinagar and Chand kheda Police Station before us

in support of the above fact. In response, DR relied upon the observations made by Ld. CIT(Appeals) in the appellate order.

6. We have heard the rival contentions and perused the material on record. In our considered view, looking into the facts and circumstances of the case of the assessee, we are hereby restoring the matter to the file of Ld. CIT(Appeals) with a direction to verify whether in the instant facts, disallowance with respect to late deposit of employees PF u/s 36(1)(va) of the Act has been added twice to the income of the assessee, as averred. In case, on verification of facts it is found that the disallowance with respect to late deposit of EPF has been added twice to the income of the assessee, relief as prayed for by the assessee may be granted. In the result, the matter of the assessee is restored to the file of Ld. CIT(Appeals) for carrying out the necessary verification, after giving due opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21-12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 21/12/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद