

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 375/Rjt/2018
निर्धारणवर्ष/Asstt. Year:2013-14

Shri Sureshkumar K Kataria Post & At – Panchiavadar, Taluka – Gondal PAN: ADSPK4928L	Vs.	DCIT Circle-1(2), Rajkot
(Applicant)		(Respondent)

Assessee by :	None
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : 21/12/2022
घोषणा की तारीख/**Date of Pronouncement**: 04/01/2023

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld.Commissioner of Income Tax (Appeals)-1 (in short the Ld. CIT(A)), Rajkot dated 04/09/2018 arising in the matter of assessment order passed under Section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. When the matter was called for hearing, none appeared on behalf of the assessee. The appeal was presented by the assessee in the year 2018 and thereafter it was listed for hearing on various occasions but none of the time anybody appeared from the side of the assessee except on one occasion. Considering the negligent approach of the assessee, we decided

to proceed with the hearing ex parte to the assessee but after hearing the learned DR appearing on behalf of the revenue.

3. The assessee raised following grounds of appeal:

"1. The learned Commissioner of Income Tax (Appeals)-1, Rajkot has erred in confirming the action of the assessing officer in respect of wrongly making the addition on account of difference in Contract Receipt and Form No.26AS i.e. as per 26AS Rs.7,47,20,781/- (-) Contract Receipt Shown Rs.7,43,07,700/- added to the total income of Rs. 4,13,081/- is unwarranted, unjustified and bad in law.

2. The learned Commissioner of Income Tax (Appeals) -1, Rajkot has erred in confirming the action of assessing officer in respect of charging the interest u/s.234A, 234B & 234C is unwarranted, unjustified and bad in law.

3. The learned Commissioner of Income Tax (Appeals)-1, Rajkot has erred in confirming the action of the assessing officer in respect of initiated the penalty proceedings u/s. 274 r.w.s. 271(1)(c) of the I T Act is unwarranted, unjustified and bad in law. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal."

3.1 The only effective issue raised by the assessee is that the learned CIT(A) erred confirming the addition of Rs. 4,13,081/- on account of difference in contract receipt shown in books viz-a-viz in form 26AS.

3.2 The AO during the assessment proceedings found that the assessee has shown contract receipt of Rs. 7,43,07,700/- in the books of accounts whereas receipt as per from 26AS was of Rs. 7,47,20,781/-. Thus, the AO made addition of difference amount of Rs.4,13,081/- only to the total income of the assessee.

4. The assessee carried the matter before the learned CIT(A) and submitted that it has shown contract income considering the amount received before filing the return of income. The amount of difference i.e. Rs. 4,13,081.00 represents the amount received after filing of return of income. Therefore, no addition should be made on the basis impugned difference.

5. However, the learned CIT(A) confirmed the addition made by the AO by observing as under:

"6.2 Ground of appeal no. 3

In this ground the assessee has challenged the addition of income of contract receipts on the basis of form 26AS. The AO has brought out that the contract receipts as per form 26AS amount to Rs. 7,47,20,781 where as the receipt declared by assessee are only of Rs. 7,43,07,700/-. The AO has made the addition of Rs. 413081/- in absence of explanation by the assessee. During the appellate proceedings the assessee has contended that he has received this amount after filing of return of income and therefore it was not reflected in the return of income. This contention of the assessee is not tenable as the receipts are clearly verifiable form no. 26AS and the assessee has not disputed the receipts as such. Since, the income had accrued to assessee he was liable to include the same in the return of income and therefore the contention of assessee is rejected. Addition is confirmed. Ground of appeal is rejected."

6. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

7. The learned DR before us vehemently supported the order of the authorities below.

8. We have heard the learned DR and perused the materials available on record. From the preceding discussion, we note that there was mismatch in the gross income reported by the assessee viz a viz the income reflecting in form 26AS for an amount of Rs. 4,13,081.00 only. As such, the assessee has shown less income by the impugned amount, therefore concurrent view was taken by the lower authorities that the assessee has suppressed the income in the books of accounts. However, we find that the assessee before the learned CIT (A) has contended that the impugned income was received after filing of return of income. Thus a doubt arises whether the impugned amount was shown by the assessee in the income tax return in the later year, if that be so, then if any addition is made in the year under consideration, it shall certain lead to the double addition which is undesirable under the provisions of law. However, it is equally important to note that the assessee under a mercantile system of accounting has to declare income based on the concept of accrual. Be that as it may be, in the interest of justice and fair play we are inclined to give one opportunity to the assessee to make the properly presentation of the facts so that the AO could adjudicate the issue of

afresh as per the provisions of law. Hence, the ground of appeal is allowed for the statistical purposes.

9. In the result, the appeal is allowed for the statistical purposes.

Order pronounced in the Court on 04/01/2023 at Ahmedabad.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 04/01/2023

Tanmay, Sr. PS

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आदेशकीप्रतिलिपिग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad