

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 523/Kol/2022

Assessment Year: 2020-21

M/s Ashim Kar & Industries Pvt. Ltd. (PAN: AADCA 0819 R)	Vs.	DCIT, Circle-10(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Siddharth Jhajharia, A.R Shri Sujoy Sen, A.R
For the Respondent/ राजस्व की ओर से	Shri P.P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 26.08.2022 for the AY 2020-21.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) upholding the order of ADIT, CPC (hereinafter referred to as the AO) thereby

confirming the addition of Rs. 6,20,890/- on account of disallowance of expenses for non-deduction of tax u/s 40(a)(ia) of the Act.

3. Facts in brief are that the assessee filed the return of income on 10.02.2021 declaring total income of Rs. 1,91,97,000/- The return was processed u/s 143(1)(a) wherein the AO CPC has made an addition of Rs. 6,20,890/- which was stated to be on account of expenses u/s 40(a)(ia) of the Act on which TDS liable to be deducted was not deducted. The AO CPC noted this from the information furnished by the auditors of the assessee in the Tax Audit Report.

4. The assessee assailed the order of AO CPC before the Ld. CIT(A). The Ld. CIT(A) simply dismissed the appeal on the ground that the addition has resulted from wrong data furnished by the assessee in the return of income and the AO has computed the income on the basis of that data and therefore there is no mistake in the order of AO. The Ld. CIT(A) held that the correct remedy was to file the revised return against the order AO CPC when the order is erroneous and the appellate forum is not a platform to provide another opportunity to assessee to rectify its own mistakes. Thus the appeal of the assessee is dismissed.

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee's CA has furnished wrong data in ITR relating deduction to tax which the AO has added in the summary intimation passed u/s 143(1)(a) of the Act dated 18.12.2019 disallowing the expenses of Rs. 6,20,890/- for non-deduction of tax u/s 40(a)(ia) of the Act. The assessee submitted before us that this is a factual mistake by the Id. Counsel by uploading the wrong data while filing the return which has resulted into this addition which is not called for and is incorrect. Therefore the assessee may kindly be given one more opportunity to present its case before the AO so that the issue can be verified and decided on correct facts accordingly. The order of Ld. CIT(A) simply stated that the mistake is only on the part of the assessee and that the AO passed intimation u/s 143(1)(a) of the Act based upon the information/details furnished by the assessee which appears to be very harsh and

draconian as the mistake is factual which needs to be corrected. Accordingly we deem it fit to restore the file of the AO and direct him to look into the matter and decide the issue in accordance with law after affording a reasonable opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 5th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 5th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Ashim Kar & Industries Pvt. Ltd. , C/o, M/s Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata-700072.
2. Respondent – DCIT, Circle-10(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata