

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2464/DEL/2022
[Assessment Year: 2020-21]

Tapan Roy Security Agency, Flat 376, Diamond Swuare Apt., Plot 13A, Sector-6, South, West Delhi-110075 PAN- AACPR4813L	<u>Vs</u>	Income Tax Officer, Ward-69(1), New Delhi
APPELLANT		RESPONDENT
Assessee represented by	S/Shri Rohan Khare and Priyam Bhatnagar, Advocates	
Department represented by	Sh. S.L. Anuragi, Sr. DR	
Date of hearing	03.01.2023	
Date of pronouncement	11.01.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 04.08.2022, pertaining to the assessment year 2020-21. The assessee has raised following grounds of appeal:

“1. For that the order passed by the Commissioner (Appeals) is not

proper since he did not provide reasonable opportunity for submitting Revised Audit Report, as the Revised Audit Report was submitted on 09.08.2022

II. For that the Ld. Commissioner (Appeals) did not consider that the amount of Bonus mentioned in Form 3CB to the tune of Rs.11,85,326/- was by mistake. The correct figure was given in the Balance Sheet as Rs.4,15,300/- and the appellant had revised the Audit Report reflecting the said amount of Rs.4,15,300/- which was submitted on 8/8/2022 and hence disallowance of the entire amount of Rs. 11,85,326/- is not proper and cannot be maintainable in law more particularly when the Form 3CB has been revised and the appellant did not get reasonable opportunity to submit the same.

III. For that the Ld. Commissioner (Appeal) failed to appreciate that the disallowance of amount of Rs.5,632/- is not proper since the said amount is nothing but the interest on the Savings Bank Account and the said amount is within the allowable limit of deduction and the same cannot be added back more particularly when the appellant was in his possession the Pass Book reflecting the said amount of interest and the appellant did not get the reasonable opportunity to submit the same.

IV. For that the Ld. Commissioner (Appeal) failed to appreciate that the appellant was eligible for deductions of customary bonus in terms of Section 36(1)(ii) of the Income Tax Act, 1961 and also eligible for deduction of S/B. Interest in terms of Section 80TTA of the said Act and wrong mentioning of the provision as stated in the Order- in-Appeal is not fatal for extending the benefit.

V. For that the appellant craves leave to further evidence and/or to make further submissions at the time of hearing of the Appeal.

2. The facts giving rise to the present appeal are that in this case the assessee had filed his return of income declaring total income at Rs. 34,15,240/-. The return was processed u/s 143(1) of the Income-tax Act, 1961, hereinafter referred to as the "Act" on 16.12.2021. Thereby the Central Processing Centre made adjustments

disallowing the claim of deduction of Rs. 11,85,226/- u/s 36(1)(ii) of the Act and also disallowing deduction u/s 80-TTA of Rs. 5,632/- on interest from savings bank account. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before this Tribunal.

3. Apropos to ground nos. 1 & 2, learned counsel for the assessee submitted that the learned CIT(Appeals) did not provide adequate opportunity to the assessee and further submitted that the learned CIT(Appeals) failed to appreciate the fact that the amount of bonus mentioned in form no. 3CB to the tune of Rs. 11,85,326/- was by mistake. The correct figure was given in the balance-sheet at Rs. 4,15,300/- and the appellant had revised the audit report reflecting the said amount Rs. 4,15,300/- which was submitted on 8.8.2022. Learned counsel submitted, therefore, the assessee was not provided adequate opportunity by the learned CIT(Appeals).

4. On the contrary learned Sr. DR opposed the submissions and supported the orders of the authorities below. He contended that the assessee himself had filed a wrong audit report and no certificate by the Chartered Accountant has been filed.

5. I have heard the rival submissions and perused the material available on

record. It is stated in ground no. 2 of the assessee's appeal that the revised audit report was submitted on 8.8.2022. However, the impugned order was passed on 4.8.2022. Looking to the totality of the facts and to sub-serve the interest of principles of natural justice, this ground is restored to the file of Assessing Officer who would verify the correctness of the claim of the that the audit report has been revised and a correct figure has now been mentioned in the audit report relating to payment of bonus. The Assessing Officer would therefore decide the issue as per law. Ground nos. 1 & 2 are allowed for statistical purposes.

6. Ground no. 3 relates to disallowance of deduction claimed u/s 80-TTA of the Act regarding interest earned on savings bank account.

7. Learned counsel for the assessee submitted that the authorities below failed to appreciate that the disallowance is contrary to the record. In fact the assessee had in possession of pass book reflecting the amount of interest earned by the assessee.

8. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below.

9. I find that the learned CIT(Appeals) has decided by observing as under:

“4.1 Ground No. 1 relates to disallowance u/s 36(1)(ii) of the Act. Perusal

of intimation order reveals that the appellant had declared income from BoP at Rs. 2,42,898/- and the CPC has assessed it at Rs. 14,28,124/- resulting into addition of Rs. 11,85,226/-. In the intimation order, a variance of Rs. 11,85,226/- has been identified in Annexure-OI at clause 6(c) on a/c of “any sum paid to an employee as bonus or commission for service rendered, where such sum was otherwise payable to him as profit or dividend[36(1)(ii)J’. This variance is due to non-disallowance by the appellant in ITR in view of qualification made by the Auditor in TAR at clause no. 21(a). Section 36(1)(ii) provides that

“36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission

The provision is abundant clear that if any sum is paid to an employee as bonus or commission for services rendered instead of payable as profits or dividends, then the same shall not be an allowable expenditure for computing taxable income u/s 28 of the Act. In the instant case, the tax auditor has categorically stated in his tax audit report that an amount of Rs. 11,85,226/- has been paid as bonus or commission, which was otherwise payable as profits or dividends. Thus, the AO/CPC has added this amount as disallowance u/s 36(1)(ii) of the Act in the intimation order. Against this disallowance, the appellant has pleaded that it has only debited profit & loss a/c by Rs. 4,15,300/- as bonus but did not made any effort to get a revised tax audit report and upload it electronically. In fact, the profit and loss account as well as Tax Audit, both have been certified by the same auditor. So, it is the Chartered Accountant who can certify any mistake in his audit report/audited financial statement and revised his tax audit report/audited financial statement. So the proper course of action in this matter should be to ask the auditor to e-file revised tax audit report/audited financial statement and then take a proper course of action. Since the appellant neither furnished any revised tax audit report nor a certificate from concerned CA in support of his contention, the AO/CPC’s action of disallowance on the basis of information available in ITR and TAR is hereby sustained. Thus, this ground of appeal is dismissed.

4.2 Ground No. 2 relates to denial of deduction of Rs. 5,632/- of saving

bank interest under chapter VIA. Perusal of Income Tax Return reveals that the appellant has declared interest income from saving bank account at Rs. 5,632/- under the head "IFoS and claimed deduction u/s 80JJAA of the Act in the return of income. Section 30JJA of the Act provides deduction in respect of employment of new employees for which the appellant is not eligible. Thus, the CPC has rightly denied the deduction claimed u/s 80JJAA of the Act. Now, the appellant has argued that he is entitled for deduction u/s 80TTA of the Act without correcting the data by way of revising / rectifying the return of income, which can't be entertained. In fact, the appellant has not made any submission stating that an incorrect claim has been made in the return and not furnished a copy of bank statement to show the receipt of saving bank interest income of Rs. 5632/- during the present financial year. Hence, the action of the AO/CPC is hereby confirmed and thus, this ground is dismissed.

5.In the result,the appeal of the appellant is dismissed."

10. From the above finding of the learned CIT(Appeals) it is clear that the disallowance was made purely on the ground that no evidence was furnished. However, it is the contention of the assessee that the interest was in fact earned and the assessee was also having the bank pass book, which duly reflected the interest from savings bank account. Considering the totality of the facts, this ground is also restored to the file of Assessing officer, who will verify the correctness of the claim of the assessee and in the event the interest is found to have been reflected in the bank statement of the assessee, the Assessing Officer would grant deduction as per law.

11. The other grounds are general in nature and need no separate adjudication.

4. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 11th January, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**