

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.184/Ind/2022
Assessment Year: 2018-19

M/s Beyond Key Systems Private Ltd. Indore	बनाम/ Vs.	DCIT/ACIT-Circle,1(1) Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AACCB 7622 G		
Assessee by	Shri Manish Dafaria, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.01.2023	
Date of Pronouncement	19.01.2023	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 06.05.2022 passed by National Faceless Appeal Centre (NFAC), Delhi ["**Ld. CIT(A)**"] which in turn arises out of assessment-order dated 01.01.2021 passed by National E-assessment Centre, Delhi ["**Ld. AO**"] u/s 143(3) of Income-tax Act, 1961 ["**the Act**"] for Assessment-Year["**AY**"] 2018-19, the assessee has filed this appeal on following grounds:

"1 On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals), NFAC has erred in treating the appeal as infructuous by holding that grounds of appeal do not emanate from the order u/s 143(3) but from the order u/s 143(1). Ld. CIT ought to have appreciated that as per settled judicial

position, once regular assessment u/s 143(2) is commenced, summary proceedings u/s 143(1) is no longer valid.

2.On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in not appreciating that assessment order had been passed without considering the submissions made by the assessee and in the assessment order disallowance of Rs 7,94,516/-made u/s 143(1), had been mechanically confirmed without examining the merits of the disallowance.

3.On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in not accepting the assessee's objection about the claim of Rs 1,37,500/- which has been disallowed by the Assessing officer without assigning any reasons for the same. The fact that Ld. CIT (A) observed in his order about disallowance of Rs 1,37,500/- being made by order u/s 143(1) and not by order u/s 143(3) reflects gross failure of Ld. CIT (A) in appreciating the facts of the case.

4.On the facts and in circumstances of the case and in law and without prejudice to above grounds of appeal, the order passed by Ld. CIT(A) NFAC deserves to be set aside as the same has been passed before expiry of the time given to the assessee for furnishing detailed submission in support of grounds of appeal.

5.On the facts and in circumstances of the case, a reasonable cost of appeal may be awarded to the assessee as Ld. CIT(A) has passed the appeal order in a grossly negligent manner.

6.The appellant craves leave to add, alter or amend or vary any of the above grounds of appeal before or at the time of hearing.”

2. Heard the learned Representatives of both sides and case records perused.

3. Briefly stated the facts are such that the assessee-company filed return of income of the relevant AY 2018-19 on 27.10.2018, supported by tax audit report in Form No. 3CD u/s 44AB. In Form No. 3CD, the auditors of assessee reported a disallowance on account of gratuity provision of Rs. 7,94,516/- at two places, one u/s 40A(7) and other u/s 43B since the same disallowance is clutched in both sections of Income-tax Act. While filing return of income, the assessee voluntarily made and declared disallowance u/s 43B. The case of assessee was selected for limited-scrutiny through notice u/s 143(2) dated 22.09.2019 to examine the claim of “Disallowance u/s40A(7)-Gratuity provision”.While the scrutiny-proceeding was going on,

the CPC, Bangalore issued intimation of summary-assessment u/s 143(1) dated 04.11.2019. In this intimation, the CPC, Bangalore retained a disallowance of Rs. 7,94,516/- u/s 43B already made by assessee and also made second disallowance of Rs. 7,94,516/- u/s 40A(7). This resulted in double-disallowance of the same amount, one by way of section 43B and other by way of section 40A(7). Simultaneously, the pre-existing scrutiny-proceeding initiated on 22.09.2019 was also continuing wherein the Ld. AO issued a query letter u/s 142(1) dated 29.10.2020 [Paper-Book Page No. 53 & 54] to examine the disallowance u/s 40A(7). In response, the assessee filed a detailed reply dated 11.11.2020 [Paper-Book Page No. 55 to 57] wherein the assessee filed a scanned copy of the relevant portion of Form 3CD; explained to the Ld. AO that he had already made a disallowance of Rs.7,94,516/- u/s 43B in the returned-income and making disallowance again u/s 40A(7) would result in double disallowance of the same amount; and therefore the returned income be accepted. The assessee had a legitimate expectation that since the case has been clutched under scrutiny, the double disallowance made by CPC u/s 143(1) would also be taken care of by Ld. AO who shall compute total income in accordance with the provisions of the Income-tax Act, while completing scrutiny-assessment. But the Ld. AO, while passing assessment-order u/s 143(3) dated 01.01.2021, just upheld the intimation passed by CPC u/s 143(1) i.e. retained the double disallowance. Additionally, the Ld. AO also committed another grave mistake. In the "Computation-Sheet" Annexed to the assessment-order u/s 143(3), he allowed deduction of Rs. 1,18,823/- u/s Chapter VI-A instead of the correct deduction of Rs.2,56,323/- claimed by the assessee in the return of income [and even allowed by CPC in the intimation u/s 143(1)] and that too without speaking a single word in the body of assessment-order. This way, there were two mistakes in the assessment-order passed u/s 143(3) i.e. (i) double disallowance of gratuity provision of Rs.7,94,516/- and (ii) non-speaking disallowance of the deduction under Chapter VI-A by

Rs. 1,37,500/- (2,56,323 -1,18,823) which caused serious grievance to the assessee.

4. Being aggrieved, the assessee filed appeal to Ld. CIT(A). The Ld. CIT(A) decided first-appeal vide order dated 06.05.2022 but did not grant relief to assessee. Now being aggrieved by order of Ld. CIT(A), the assessee come in this appeal before us.

5. Before us, Ld. AR assailed all three orders of lower-authorities as under:

(i) Firstly, the CPC Bangalore had passed intimation u/s 143(1) dated 04.11.2019 even when the scrutiny-assessment had already commenced by notice u/s 143(2) dated 22.09.2019. Relying upon the decision of Hon'ble Supreme Court in **CIT Vs. Gujrat Electricity Board (2003) 260 ITR 84 SC**, the Ld. AR submits that the intimation u/s 143(1) could not be issued once scrutiny-assessment has begun, therefore the said intimation issued by CPC, Bangalore making the double-disallowance, is illegal. The conclusion taken by Hon'ble Supreme Court is reproduced below:

*“5. Even otherwise, the view taken by the Gujarat High Court seems to be correct on principle. There is no dispute that [Section 143\(1\)\(a\)](#) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under [Section 154](#). Apart therefrom, the provisions of [Section 143\(1\)\(a\)\(i\)](#) indicate that the intimation sent under [Section 143\(1\)\(a\)](#) shall be without prejudice to the provisions of Sub-section (2). The Legislature, therefore, intended that, where the summary procedure under Sub-section (1) has been adopted, there should be scope available for the Revenue, either suo motu or at the instance of the assessee to make a regular assessment under Sub-section (2) of [Section 143](#). **The converse is not available;***

a regular assessment proceeding having been commenced under Section 143(2), there is no need for a summary proceeding under Section 143(1)(a)”

[Emphasis added]

- (ii) Secondly, the Ld. AO has passed assessment-order dated 01.01.2021 u/s 143(3) just by upholding the intimation u/s 143(1) and thereby retaining the double disallowance of Rs. 7,94,516/-. Further, the Ld. AO has also committed a grave mistake of reducing deduction under Chapter VIA by Rs. 1,37,500/- without speaking a single word in the body of assessment-order. Ld. AR submits that the scrutiny-assessment is a comprehensive-assessment and the Ld. AO is duty bound not only to complete the assessment judiciously but also to compute correct total income in accordance with the scheme of Income-tax Act, 1961. According to Ld. AR, the assessment-order has resulted in computing the total income of assessee beyond the scheme of Income-tax Act, 1961 itself and, hence, the same is absolutely bad.
- (iii) Thirdly, the Ld. CIT(A) has passed appeal-order even before expiry of hearing-date and, therefore, the order of first appeal is also bad. Carrying us to the Paper-Book, the Ld. AR submitted that the Ld. CIT(A) initially fixed the hearing of appeal through notice dated 22.11.2021 in response to which the assessee filed a detail submission dated 06.12.2021. Thereafter, the Ld. CIT(A) re-fixed hearing through notice dated 02.05.2022 & 04.05.2022 on 17.05.2022 & 19.05.2022 respectively. However, the Ld. CIT(A) passed his order on 06.05.2022. Thus, it is clearly manifest that the appeal-order has been passed even before expiry of hearing dates i.e. 17.5.2022/19.05.2022 fixed by him. Being so, the order of Ld. CIT(A) is patently illegal.

Ld. AR submits that all three orders passed by lower-authorities suffer from grave mistakes. Ld. AR submits that in any case the total income of assessee

has to be computed in accordance with the provisions of Income-tax Act, 1961 and not in a hurried, casual, injudicious or illegal manner as done by authorities in present case.

6. Ld. DR dutifully supported the orders of lower authorities but, however, could not contradict the submissions of Ld. AR.

7. We have perused the documents and observed that the Ld. CIT(A) has passed order of first-appeal on 06.05.2022 which is before the hearing-dates of 17.5.2022/19.05.2022 fixed by him. Ordinarily we have set aside the order of Ld. CIT(A) in such a situation and remanded the case to him for passing appeal-order afresh after hearing the assessee. But in the present case, the Ld. AO has passed a scrutiny-assessment order u/s 143(3), which is a comprehensive assessment as compared to summary-assessment u/s 143(1) and there are grave mistakes in the form of twin-additions viz. (i) retaining the double disallowance and (ii) reducing deduction under Chapter VI-A by a non-speaking order. Hence, after a mindful consideration, we find it more appropriate to remand this case back to the file of Ld. AO so that he shall settle the grievance aptly by considering the case-records. Needless to mention that the Ld. AO shall confine his action to the twin-items of additions only.

8. Before parting, we would like to remind the Ld. AO of the guidance given by CBDT in Circular No. 14(XL-35) dated 11.4.1955 and letter No. F.81/27/65-IT(B) dated 18.5.1965 to the assessing officers to assist the taxpayers in a reasonable way and to provide the relief if due to the assessee. This attitude rather will help the Revenue in assessing the income correctly. A correct advice by the Department would inspire the confidence of public at large.

9. Resultantly, this appeal of assessee is allowed for statistical purpose. No order as to cost.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 19/01/2023.

Order pronounced in the open court on/...../2023.

Sd/-

Sd/-

(T.R. SENTHIL Kumar)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 19.01.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	4.1.22
2.	Date of typing & draft order placed before the Dictating Member	4.1.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	4.1.22
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	