

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरोड, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 11/KOL/2022

Assessment Year: 2013-14

Kirit N Modi (HUF).....Appellant
[PAN: AACHK 7819 K]

Vs.

A.C.I.T., Circle-52, Kolkata.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT (D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : January 30th, 2023

Date of pronouncing the order : February 06th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Commissioner of Income Tax (Appeals)-NFAC, Delhi [in

short ld. "CIT(A)"] dated 22.07.2021 which is arising out of the assessment order framed u/s 143(3) of the Act dated 27.02.2016.

2. Registry has informed that the appeal is time barred by 109 days. Condonation application has been filed by the assessee. Perusal of the same shows that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide Miscellaneous Application No. 21 of 2022 find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the assessee falls during this period, the same deserves to be extended and we, therefore, condone the delay of 109 days and admit the appeal for adjudication.

3. The assessee is in appeal before this Tribunal raising the following grounds:

"1. For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

2. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of 5% of telephone expenses i.e. Rs.76,855/-. The disallowance is uncalled for hence the same be deleted.

3. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.23,300/- on account of general expenses by holding that the same was not substantiate by evidences. The disallowance is uncalled for hence the same be deleted.

4. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.2,57,100/- on account of Hemali charges (for 3

Units) not substantiate by evidences. The disallowance is uncalled for hence the same be deleted.

5. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.2,31,775/- on account of Loading & Unloading charges not substantiate by evidences. The disallowance is uncalled for hence the same be deleted.

6. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.71,271/- on account of travelling expenses not substantiate by evidences. The disallowance is uncalled for hence the same be deleted.

7. For that the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.77,587/- on account of interest on late payment of TDS and Penalty. The disallowance is uncalled for hence the same be reversed.

8. For that the learned CIT (Appeals) relied on judgments and definition without giving any proper opportunity to the Appellant to distinguish the same and therefore the Appellate order was bad in law.

9. For that the interest computed u/s 234 A/B/C of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.

10. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

11. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of appeal.”

4. At the outset, ld. Counsel for the assessee submitted that the impugned additions are only towards ad-hoc disallowances made by ld. AO and there is no specific defect found out in books of accounts and thus, prayed that the alleged disallowances may be deleted.

5. On the other hand, ld. D/R supported the order of both the lower authorities.

6. We have heard rival contentions and perused the records placed before us.

7. We notice that the assessee is a Hindu Undivided Family (HUF) engaged in the business of manufacturing of card board boxes. E-return for AY 2013-14 filed on 29.09.2013 declaring income of Rs. 9,76,55,140/-. Subsequent to selection of the assessee's case for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. We notice that ld. AO without rejecting the book results, made certain disallowances for expenses namely telephone expenses, general expenses, Hemali charges, loading & unloading charges, travelling expenses at Rs. 76,855/-, Rs. 23,300/-, Rs. 2,57,100/-, Rs. 2,31,775/- & Rs. 71,271/- respectively. From perusal of the impugned order as well as the assessment order, we notice that while disallowing these expenses ld. AO has not mentioned any defect in the books of account or the supporting vouchers and the said disallowances are merely ad-hoc in nature.

8. We, therefore, considering the fact that the assessee has disclosed the total income of Rs. 9,76,55,140/- and the amount of disallowances is too meagre and that too on estimated basis, do not find any merit in the finding of ld. CIT(A) confirming the said disallowance made by ld. AO.

9. We, therefore, reverse the finding of ld. CIT(A) and delete the said disallowance and allow ground nos. 2, 3, 4, 5 & 6 raised by the assessee.

10. As regards ground no. 7 is concerned the same is regarding interest on delayed payment of TDS and penalty levied at Rs. 77,587/- since the said expenditure has not been incurred with regard to the revenue operations and is penal in nature, the same is disallowed being not allowable u/s 37(1) of the Act. Thus, ground no. 7 raised by the assessee is dismissed.

11. Other grounds are either general or consequential in nature which need no adjudication.

12. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 06th February, 2023

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 06.02.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Kirit N Modi (HUF), 1A Vivek Vihar, 13/3 Ballygunge Circle Road, Kolkata-700 019.**
- 2. A.C.I.T., Circle-52, Kolkata.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata