

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 157/Rjt/2021
Assessment Year 2017-18**

Parmeshbhai Parbatbhai Chandera Kodinar, Gir Somnath PAN: AGRPC8793M (Appellant)	Vs	The ITO, Ward-4, JND Veraval (Respondent)
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**Assessee by: Shri Shreyash Khalpada, Ld. A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 08-02-2023
Date of pronouncement : 15-02-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2017-18, arises from order of National Faceless Appeal Centre (NFAC), Delhi dated 30-08-2021, in proceedings under section 143(1) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised the following grounds of appeal:-

“The grounds of appeal mentioned hereunder are without prejudice to one another.

1. *The order of the ld. CIT(A), National Faceless Appeal Centre in so far as he confirmed the addition of Rs. 2,35,877/- is totally bad on facts as also in law.*

2. *The order passed by the learned CIT(A) of the Act is totally invalid in law, which deserves to be quashed and may kindly be quashed.*

3. *The ld. CIT(A) grievously erred on facts as also in law in alleging that the expenditure must be disallowed based on typo error in TAR crept and thereby in disallowing expenditure of Rs. 2,35,877/-. The addition to the income due to this disallowance made is totally unjustified on facts as also in law, deserves to be deleted and may kindly be deleted.*

Your Honour's appellant craves to leave to add, amend, alter or withdraw any or more grounds of appeal or before the hearing of appeal.”

At the outset we observe that there is a 33 days delay in filing appeal. However, since the appeal was filed during Covid period, the delay is hereby being condoned.

3. The brief facts in relation to this case are that assessee filed return of income which was processed by CPC after making addition of ₹ 2,35,877/- under the head “income from business and profession”. The addition was on account of late contribution of employer’s contribution to PF amounting to ₹ 1,53,837/- and late deposit of gram panchayat tax amounting to ₹ 82,040/-. The additions were made by CPC in view of the data reported by the auditor of the assessee in the tax audit report.

4. The assessee filed appeal before CIT in relation to the aforesaid additions, before whom the assessee contended that the above additions have been made on account of typographical error in the tax audit report

submitted by the auditor of the assessee. The assessee submitted that both the above payments were made within the due permissible dates- so far as employers' contribution to PF is concerned, the due date of payment was 21-04-2017 and the same was deposited on 08-04-2017 and as regards the gram panchayat tax of ₹ 82, 040/-is concerned, the same was paid on 09-10-2017 and accordingly as per law, the assessee cannot be denied deduction in respect of the above expenses under section 43B of the Act, since both payments were paid/ deposited before the date of filing of return of income for the captioned year. The Ld. CIT(Appeals) however dismissed the assessee's appeal with the following observations:

“6. Decision

6. I have considered the facts of the case, grounds of appeal and statement of facts. I have carefully perused the submission filled by the assessee.

6.1 In the intimation u/s 143(1) dated 25/10/2018 for AY 2017-18, an adjustment/addition of Rs. 2,35,877/- has been made under the head " disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)" with further narration as "Inconsistency in amount debited to profit and loss account of the previous year but disallowable under section 43B".

6.2 On perusal of Tax Audit Report, it is found that clause 26(i)(B)(b) of the same specifies that Rs. 1,53,837/- on account of PF [Sec 43B(b)-provident /superannuation /gratuity /other fund] and Rs. 82,040/- on account of Gram Panchayat Tax [Sec 43B(a)-tax, duty, cess, fee etc.] were not paid on or before the due date for furnishing the return of income u/s 139(1). The appelland did not get the tax audit report revised and corrected.

*6.3 Section 143(1)(a)(iv) mandates the disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. Therefore, the disallowance/adjustment of Rs. 2,35,877/- based on tax audit report in the order u/s 143(1) is found to be absolutely justified and there is no scope with the AO u/s 143(1) to examine documents/evidences as to the nature of liability and dates of their payment and override the findings given in the tax audit report. **In view of above, the addition of Rs. 2,35,877/- made in the order***

u/s 143(1) is hereby confirmed. All the grounds of appeal filed by the appellant are dismissed.

7. *In the result, the appeal of the assessee is treated as dismissed.”*

5. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(Appeals) in the appellate proceedings. The counsel for the assessee submitted that the aforesaid payments were made/deposited by the assessee within the due prescribed dates and accordingly, no disallowance can be made in respect of the same under section 43B of the Act. On the issue of the typographical error which had crept in the tax audit report filed by the auditor of the assessee, the counsel for the assessee submitted that the tax audit report was not revised by the auditor on account of dispute between the assessee and his auditor. However, if given an opportunity, the assessee would be able to demonstrate that the payments were made within the due date prescribed under the Income Tax Act and accordingly was eligible to claim deduction of the same under section 43B of the Act. In response, DR relied upon the observations made by the Ld. CIT(Appeals) in the appellate order.

6. We have heard the rival contentions and perused the material on record. In our considered view, in the interests of justice, the matter is being restored to the file of Ld. CIT(Appeals) to examine whether the assessee has paid/deposited the employer's contribution to PF and gram panchayat tax within the due prescribed dates in accordance with section 43B of the Act. The assessee is directed to produce all supporting documents/evidences in support of its claim before Ld. CIT(Appeals) in order to substantiate that the payments were made within the due prescribed date. In the result, the appeal

of the assessee is restored to the file of Ld. CIT(Appeals) with the above directions.

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

Order pronounced in the open court on 15-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 15/02/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot