

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 232/RPR/2022

निर्धारण वर्ष / Assessment Year : 2019-20

Vivek Kumar Batra
1, Geedam Road, Jagdalpur,
Chhatisgarh-494 001
PAN : ADFPB7478M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-Jagdalpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri N.C Gupta, Advocate
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.03.2023

घोषणा की तारीख / Date of Pronouncement : 27.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 25.10.2022, which in turn arises from the intimation passed by the Centralized Processing Center (CPC)/A.O under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 26.05.2020 for the assessment year 2019-20. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That under the facts and the law, the learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in making disallowance by way of adjustment of Rs.80,289/- u/s 43B made by AO CPC in intimation u/s 143(1) for non-payment of GST which was erroneously mentioned by the auditor in form 3CD Report in Column No. 26(i)(B)(a) in as against column just to above column, as the same was paid on 26.06.2019 & 20.09.2019. Prayed that the provisions of Sec — 43B are not applicable and disallowance of Rs.80,289/- be deleted.

2. That under the facts and the law, the learned Commissioner of Income Tax (Appeals), NFAC, Delhi further erred in not admitting additional evidence filed under rule 46A of payment of 2 challans of Rs.44,530 & Rs.37,000, certificate of auditor & affidavit of the appellant confirming that above sums were paid towards GST. Prayed that the provisions of Sec — 43B are not applicable & the disallowance of Rs.80,289/- be deleted.

2. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of the disallowance of Rs.80,289/- made by the A.O u/s.43B of the Act.

3. Shorn of unnecessary details, the assessee had e-filed his return of income for A.Y.2019-20 on 30.09.2019, declaring an income of Rs.27,13,900/-. The ADIT/CPC vide his letter dated 19.09.2020 proposed an adjustment i.e. disallowance u/s.43B of the Act of Rs.80,289/-. As the assessee failed to reply to the aforesaid objection, therefore, the ADIT/CPC vide his intimation passed u/s.143(1) of the Act dated 26.05.2020 disallowed an amount of Rs.80,289/- u/s.43B of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

7. On a perusal of the records, I find that the genesis of the controversy leading to the impugned disallowance u/s.43B of the Act

lies in a narrow compass, i.e. despite the reporting by the auditor in his audit report filed u/s.44AB of the Act that GST payable of Rs.80,289/- was not paid on or before the “due date” of furnishing return of income prescribed u/s.139(1) of the Act, the assessee had failed to make disallowance of the said amount while computing its income for the year under consideration.

8. As is discernible from the records the auditor of the assessee had in his “audit report” reported at Sr. No.26, as under:

26.	(i)(b)(a)	Paid on or before the due date for furnishing the return of income of the previous year under section 139(1)		
		Section	Nature of liability	Amount
		Nil		
26.	(i)(B)(b)	Not paid on or before the aforesaid date		
		Section	Nature of Liability	Amount
		Tax, Duty, Cess, Fee etc.	GST	80,289
		(state whether sales tax, goods & services Tax, customs duty, excise duty or any other indirect tax, levy cess, impost etc. is passed through the profit and loss account)		No

After receiving the aforesaid intimation u/s.143(1)(a) of the Act dated 26.05.2020, the assessee had filed a revised report of the auditor in Form 3CB on 25.02.2023, wherein it was, inter alia, reported by him at Para 26 that the amount of GST payable of Rs.80,289/- (supra) was paid on or before the “due date” of furnishing of return of the

income for the year under consideration u/s.139(1) of the Act. For the sake of clarity, the reporting by the chartered accountant in his revised audit report filed u/s.44AB in Form 3CB dated 25.02.2023 is culled out as under:

26.i. In respect of any sum referred to in clause (a),(b),(c),(d),(e),(f) or (g) of section 43B, the liability for which:-

A. pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was

a. paid during the previous year;

Sl. No.	Section	Nature of liability	Amount
			₹ 0


b. not paid during the previous year;

Sl. No.	Section	Nature of liability	Amount
			₹ 0

B. was incurred in the previous year and was

a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

Vivek Kumar Batra



Acknowledgement Number: 966668010250223

Sl. No.	Section	Nature of liability	Amount
1	Sec 43B(a)- tax,duty,cess,fee etc	GST	₹ 80,289

b. not paid on or before the aforesaid date.

Sl. No.	Section	Nature of liability	Amount
			₹ 0

State whether sales tax, goods & services Tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account?

No

9. During the course of hearing of the appeal, it was the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that the aforesaid disallowance of Rs.80,289/- u/s.43B of the Act was made for the reason that though the assessee had duly deposited the amount of outstanding GST under consideration before the "due date" of filing of his return of income as contemplated under sub-section (1) of Section 139 of the Act, but it was due to a clerical mistake reported by the Chartered Accountant in his audit report u/s.44AB of the Act dated 21.09.2019 that the said amount was not paid on or before the aforesaid date. Elaborating on the reasons leading to the aforesaid mistake, it was submitted by the Ld. AR that the same had occasioned for the reason that the auditor had wrongly shuffled the relevant reporting at Sr.No.26(1)(B)(a) as against those at

Sr. No.26(1)(B)(b). In sum and substance, it was the claim of the Ld. AR that the auditor instead of reporting that the GST of Rs.80,289/- (supra) that was shown as payable in the assessee's balance sheet on 31.03.2019 was paid before the "due date" for furnishing return of income for the year under consideration u/s.139(1) of the Act, had in spite of making a reference of the said amount in Column "a" had wrongly made reference of the same in Column "b". The Ld. AR in order to fortify his aforesaid claim that the amount of Rs.80,289/- was duly paid by the assessee before the due date of furnishing of the return of income u/s.139(1) of the Act had taken me through the revised certificate of the auditor in Form 3CB, dated 25.02.2023, Page 1 to 23 of APB (relevant part at Page 14-15 of APB). Also, the Ld. AR took me through the certificate of the Chartered Accountant dated 04.03.2021, wherein he had certified that the GST of Rs.80,289/- as was payable by the assessee on 31st March, 2019 was deposited vide two challans on 26.06.2019 and 20.09.2019 of Rs.44,530/- and Rs.37,000/-, respectively. The Ld. AR had also taken me through an "affidavit" of the assessee dated 04.03.2021, Page 4 of APB a/w. copy of the ledger account for the immediately succeeding year i.e. F.Y.2019-20 wherein he had deposed that the aforementioned amount was clearly stated to have been paid before the "due date" of filing of the return of income as provided in sub-section (1) of Section

139 of the Act, Page 7 of APB. On the basis of the aforesaid facts, it was the claim of the Ld. AR that now when the GST payable of Rs.80,289/- was actually deposited by the assessee prior to the due date of filing of his return of income, therefore, no disallowance u/s.43B of the Act was called for in his hands.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. Having given a thoughtful consideration to the aforesaid issue, I find that it is a matter of fact borne from record that the assessee had before the due date of filing of his return of income for the year under consideration deposited an amount of GST of Rs.80,289/- that was shown as payable in his "balance sheet" on 31.03.2019. The aforesaid factual position is substantiated on a perusal of the revised audit report of the assessee u/s.44AB of the Act dated 25.02.2023; "affidavit filed by the assessee dated 04.03.2021 as was filed before the CIT(Appeals); and copy of the GST payable account for the immediately succeeding year i.e. A.Y.2019-20. Apart from that, I find from a perusal of the return of income as had been filed in the course of the proceedings before me that he had therein categorically stated that no disallowance u/s.43B of the Act was liable to be made. Be that as it may, I am of the view that considering the aforesaid

documents which substantiates the fact that the assessee had deposited the aforesaid amount of GST of Rs.80,289/- before the “due date” of furnishing of his return of income for the year under consideration, therefore, he could not have been saddled with any disallowance u/s.43B of the Act. At the same time, I cannot remain oblivion of the fact that the revised audit report filed u/s.44AB dated 25.02.2003 was not there before the lower authorities at the time of processing of the assessee’s return of income u/s.143(1) of the Act, and has been filed before me as additional evidence. Considering the totality of the facts involved in the present case, I am of the view that as the claim of the assessee that the amount of GST payable Rs.80,289/- as was reflected as payable in the “balance sheet” on 31.03.2019, is shown to have been deposited prior to the “due date” of filing of his return of income as provided in sub-section (1) of Section 139 of the Act, i.e., on the strength of his affidavit and the copy of GST payable account for A.Y.2019-20, therefore, the revised audit report dated 25.02.2023 that has been filed by the him as an additional evidence before me being merely supportive of the aforesaid factual position merits to be admitted.

12. On the basis of the aforesaid facts, I am of the considered view that the matter in all fairness requires to be revisited by the A.O, who shall in the backdrop of the aforesaid documentary evidence filed by

the assessee to fortify his claim, therein verify the authenticity of the same. In case the assessee is able to substantiate his claim as had been raised by him in his revised audit report, which was uploaded on 25.02.2023, i.e. the amount of GST of Rs.80,289/- was deposited by him on or before the due date of furnishing of his return of income for A.Y.2019-20, then, the disallowance made by the A.O u/s. 43B of the Act shall stand vacated.

13. In the result, appeal of the assessee is allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 27th day of March, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27th March, 2023.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur