

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 312/JP/2022
निर्धारण वर्ष/Assessment Year : 2019-20

M/s. Aijal Handicrafts Pvt. Ltd. 59, Jai Jawan Colony 1, Tonk Roadm, Jaipur- 302 018	बनाम Vs.	The ITO Ward 1(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGCA 0289 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Advocate
राजस्व की ओर से / Revenue by: Shri Chandra Prakash Meena, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 04/01/2023
उदघोषणा की तारीख / Date of Pronouncement: 03/04/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 09-06-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2019-20 wherein the assessee has raised the following grounds of appeal.

“1. That on the law and in the facts and in the circumstances of the case, the ld. lower authorities grossly erred in confirming the disallowance of Rs.3,42,152/- on account of late payment of PF.

2. That the Id. lower authorities grossly erred in disallowing the amount on account of depositing the PF amount beyond prescribed time as per the provision of 36(1)(va) of the Income Tax Act, despite the fact that the assessee had deposited the same before due date of filing its income tax return for the relevant year.

3. That the Id. lower authorities grossly erred in not following the order passed by the Hon'ble Jurisdictional ITAT, Jaipur Bench in Pee Tee Turners vs Assistant Director of CPC, Centralized Processing Centre, Bengaluru.

4. That the present appeal may kindly be allowed with heavy cost on the department for disobeying the various binding precedents of the Hon'ble ITAT and to burden the assessee with unnecessary litigations.

2.1 During the course of hearing, the Bench observed that there is delay 07 days in filing the appeal by the assessee for which the assessee filed an application dated 03-01-2022 and affidavit praying therein to condone the delay of 07 days because the assessee was out of Jaipur and could not file the appeal on account of travelling in official work and after returning from official tour the assessee filed an appeal immediately after consultation with this counsel.

2.2 On the other hand, the Id. DR opposed the delay of filing the appeal by the assessee but left the matter on the Bench to decide it as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench finds that the assessee is prevented by sufficient cause in late filing the

appeal which is allowed in view of the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji, 167 ITR 471.

3.1 The solitary issue raised by the assessee in this appeal relates to disallowance of late deposit of employees contribution towards PF and ESI amounting to Rs.3,42,152/-. It is noted that the payment of contribution towards ESI and PF though was late as per the provisions of said Act yet the same was deposited prior to the due date of filing of income Tax Return. The ld. CIT(A) has discussed the issue in length and confirmed the disallowance of Rs.3,42,152/- by observing as under:-

“5.9.4. Keeping in view the fact that the newly provisions are declaratory/clarificatory/explanatory in nature and therefore retrospective and relying on various decisions of Hon'ble High Courts and Hon'ble ITAT, cited supra which have decided the issue in favour of the Revenue and deriving strength from the observations of Hon'ble Supreme Court in various cases discussed at paras 5.6.1. and 5.6.3 above explaining the nature and scope of declaratory/ explanatory/ clarificatory amendments. I am of the considered view that the deduction claimed by the appellant u/s 36(1)(va) of the Act has rightly been disallowed by the Assessing Officer.

However, the Appellant has submitted that an amount of Rs.1,09,779/- out of Rs.4,51,931/- stands disallowed by the Appellant itself. This fact needs verification by the AO. The appellant is directed to furnish online the relevant details for verification by the AO. In cae the claim of the appellant is found correct, the amount of Rs.1,09,779/- stands deleted and only the remaining amount of Rs.3,42,152/- stands confirmed. If found contrary, the addition of the entire amount of Rs.4,51,931/- stands confirmed. Accordingly, part of disallowance made by CPC of Rs.3,42,152/- is confirmed and to that extent the grounds are dismissed. As regards the remaining amount of

Rs.1,09,779/- the ground is allowed for statistical purpose. The AO is directed to give effect by passing a speaking order.

5.9.5. Before parting, the issue of Hon'ble Supreme Court in the case of Pr. CIT vs Rajasthan Beverages Corporation Ltd. and various High Courts (cited supra) have decided this issue in favour of assessee, must be addressed. It could be observed that these decisions has been rendered by the Hon'ble Courts, on the law as it stood prior to the amendments through Finance Act 2021 which is to say, the Hon'ble Courts were seized of the matter prior to the insertion of Explanations of Section 36(1)(va) and 43B. The law as it stands today, after the insertion of the explanations, makes it abundantly clear that the provisions of Sec 43B are deemed never to have applied to the late payment of PF/ESI. In view of the above discussions the argument of the appelland would not stand.”

3.2 During the course of hearing, the ld. AR of the assessee filed the detailed written submission and relied upon following case laws.

1. Nirkar Sukurity & Consultancy vs ITO, (ITA No. 98/CKK/2022 dated 17-10-2022 – Cuttack Bench remanded back the issue to the AO)
2. BBG Metal Syndicate Pvt Ltd. Vs DCIT (ITA No.112/CTK/2022 dated 17-11-2022 - Cuttack Bench remanded back the issue to the AO)

The ld. AR further submitted that the present appeal of the assessee is also identical to the issue in the case of Nirakar Security & Consultancy Services Pvt. Ltd. (supra), hence the appeal of the assessee should also be restored to the file of the AO for re-adjudication after granting the assessee adequate opportunity of being heard on identical findings.

3.3 On the other hand, the ld.DR supported the order of the ld. CIT(A) as well as the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT in Civil Appeal No. 2833 of 2016 dated 12-10-2022.

3.4 The Bench has heard both the parties and perused the materials available on record. In this case, the ld. CIT(A) has confirmed the disallowance of Rs.3,42,152/- on account of late payment of ESI & PF. The ld. AR during the course of hearing has taken a resort of ITAT Cuttack Bench in the case of Nirakar Sukurity & Consultancy (supra) praying therein to restore the issue to the file of the AO for afresh adjudication by providing adequate opportunity of being heard on the ground that employees contribution to PF and ESI has been paid in some cases within grace period provided under the respective Act and also in some cases salary has been paid belatedly. Taking into totality of the case and submissions of the assessee citing the case of Nirkar Sukurity & Consultancy & BBG Metal Syndicate Pvt Ltd (supra), the Bench with a view to providing justice to the assessee, restore the appeal of the assessee to the file of the AO for afresh adjudication by providing adequate opportunity of being heard. Thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 03 / 04/2023.

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/04/2023

*Mishra

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

1. The Appellant- M/s. Aijal Handicrafts Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 312/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar