

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.414/Ind/2022**  
**Assessment Year: 2011-12**

Kamal Nayan Agrawal, 218, Sadguru Niketan, College Road, Civil Lines, Betul (M.P.)	<b><u>बनम/</u></b> Vs.	DCIT, Itarsi
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AANPA 3147 P</b>		
Assessee by	Shri Atik Bansal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	30.03.2023	
Date of Pronouncement	18.04.2023	

**आदेश / O R D E R**

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

Feeling aggrieved by appeal-order dated 31.10.2022 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [**“Ld. CIT(A)”**], which in turn arises out of rectification-order dated 07.05.2018 passed by learned DCIT, Itarsi [**“Ld. AO”**] u/s 154 of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2011-12, the assessee has filed this appeal on following effective grounds:

*“(1) AO passed original order u/s 143(3) on 31/03/2014 and rectification order u/s 154 was passed on 07/05/2018; whereas rectification order was to be passed within 4 years from the end of financial year in which original order was passed; therefore, it is time barred order and same needs to be quashed.*

*2. In AO's rectification order u/s 154 regarding disallowance of salary and wages of Rs. 24,15,000 also confirmed by the CIT(A) was erred legally and on facts. It was also not the intention in the original assessment order and nor consistent with previous and preceding year's assessment orders."*

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

3. Briefly stated the facts are such that the assessment of assessee for the relevant AY 2011-12 was framed by way of scrutiny-assessment vide assessment-order dated 31.03.2014 passed u/s 143(3) of the act whereby an addition of Rs. 2,68,197/- was made through Para No. 11 which reads as under:

*"11. During the course of assessment proceedings, it was observed that the assessee has debited the amount of Rs. 5,36,63,948/- under the head "Salary & Wages". The assessee was required to produce the wages register alongwith payment vouchers for verification. In response, the assessee did not produce the same. Therefore, the assessee was required to show cause as to why a **reasonable amount** of the wages expenses claimed should not be disallowed and added to the total income of the assessee. In response, the assessee did not furnish any explanation.*

*12. Since, the assessee did not furnish any explanation, therefore, it clear that the assessee has nothing to say in this regard. The burden of proof/onus is upon the assessee to get the expenses verified. In view of the no verifiability, it is reasonable to disallow the 5% of the total expense claimed under the head "Salary & Wages". Therefore, 5% of the total expense claimed under the head "Salary & Wages" i.e. Rs. 2,68,197/- is hereby disallowed and added to the total income of the assessee for A.Y. 2011-12."*

4. Subsequently, Ld. AO carried out rectification vide an order dated 07.05.2018 passed u/s 154 of the act, where the impugned addition of Rs. 2,68,197/- was increased to Rs. 26,83,197/-; thereby a further addition of Rs. 24,15,000/- was made. The reason of the rectification, as pointed out by Ld. AR, is such that in the original assessment-order, the AO has talked of "5%" disallowance out of "Salary & Wages Exp." of Rs. 5,36,63,948/- according to which the amount of disallowance comes to Rs. 26,83,197/- but the AO has made disallowance of Rs. 2,68,197/- only which comes to ".5%". Hence, the differential of Rs. 26,83,197 (-) 2,68,197 = Rs. 24,15,000/- was added.

5. Aggrieved, the assessee went in first-appeal but did not succeed. Now, the assessee has come in this appeal on the grounds mentioned in the beginning. We proceed to adjudicate these grounds in seriatim.

**Ground No. 1:**

6. In this ground, the assessee claims that the rectification-order dated 07.05.2018 is time-barred and therefore needs to be quashed.

7. Apropos to this ground, Ld. AR submitted that the impugned rectification-order dated 07.05.2018 was passed to rectify the original assessment-order dated 31.03.2014. Ld. AR submitted that the 4 years' time-period prescribed in section 154(7) had expired on 31.03.2018; therefore the rectification-order passed on 07.05.2018 is barred by limitation and hence illegal.

8. On perusal of the show-cause notice u/s 154 dated 30.11.2016 and the final order u/s 154 dated 07.05.2018 (copies placed at Page No. 11 and 12 of the Paper-Book), we find that the show-cause notice as well as final-order talk of rectification of intimation dated 10.04.2014 and not of assessment-order dated 31.03.2014. Thus, viewed from 10.04.2014, the rectification-order dated 07.05.2018 is within the 4 years' time-limit prescribed in section 154(7) and there would be no illegality. Therefore, to ascertain correct state of affairs, we confronted the Ld. AR about the details of intimation dated 10.04.2014 but the Ld. AR could not spell out satisfactorily. Hence, in absence of clear details coming before us, we are not satisfied with the claim projected by assessee in this ground; resultantly we dismiss this ground.

**Ground No. 2:**

9. In this ground, the assessee has challenged the addition of Rs. 24,15,000/- made by AO through the rectification-order dated 07.05.2018.

10. Ld. AR submitted that while passing assessment-order, the AO has rightly made an addition of Rs. 2,68,197/- which is “.5%” of the total expenditure of Rs. 5,36,63,948/-. He submitted that the mention of “5%” by AO in the assessment-order is a mistake; the amount of Rs. 2,68,197/- is very much correct. Ld. AR raised following contentions to support such a conclusion:

- (i) Had the AO intended to make a disallowance of Rs. 26,83,197/-, it would have easily caught his eye while drafting the assessment-order itself.
- (ii) Para No. 11 of the assessment-order clearly reveals that the AO show-caused the assessee to make a “reasonable amount” of disallowance. The disallowance of Rs. 2,68,197/- is reasonable but certainly the disallowance of Rs. 26,83,197/- cannot be reasonable.
- (iii) The cases of assessee of preceding and succeeding assessment years have also been subjected to scrutiny-assessments and the status is as under:

AY	Turnover (Rs.)	Total Salary & Wages Paid	N.P. Ratio	Addition in 143(3) order w.r.t. Salary & wages	Percentage of Addition
2010-11	16,06,18,814	4,76,26,988	7.10%	NIL	NIL
2011-12	18,54,27,735	5,36,63,948	7.12%	2,68,197	0.5%
2012-13	15,95,93,618	4,12,61,688	7.15%	3,00,000	0.73%
2013-14	19,47,86,471	3,54,12,215	7.10%	NIL	NIL

Ld. AR submitted that the figures in this Table clearly indicate that no disallowance out of similar expenditure was made in AY 2010-11 and 2013-14. Further, the disallowance made in AY 2012-13 was Rs.

3,00,000/- which is very proximate to the disallowance of Rs. 2,68,197/- made in current year.

11. Per contra, the Ld. DR strongly supported the assessment-order and raised following points:

- (i) The AO clearly intended to make “5%” disallowance and not “.5%” and that is why he has mentioned “5%” in assessment-order. However, the AO made a mistake in arithmetical-calculation and thereby made disallowance of Rs. 2,68,197/- in place of Rs. 26,83,197/-.
- (ii) If the AO wrongly mentioned “5%” in assessment-order, the assessee could have very well filed a rectification-application and requested the AO to make “.5%” in place of “5%”. Since the assessee has not filed any such rectification-application, it is obvious that the assessee has accepted “5%”.

12. In rejoinder, Ld. AR submitted that after getting assessment-order, the assessee noticed the quantum of disallowance at Rs. 2,68,197/- which was very much correct as well as intended during assessment-proceeding. Therefore, the assessee was not concerned with “5%” or “.5%” and did not visualise to file any rectification-application. Ld. AR submitted that even otherwise, non-filing of rectification application by assessee cannot be treated as assessee’s acceptance to “5%”.

13. We have considered rival submissions of both sides and given a mindful thought. After a careful examination, *firstly* we observe that before making the impugned disallowance, the AO show-caused the assessee to make a “reasonable amount” of disallowance. Thus, the thrust of AO was on “amount” and that too “reasonable”. *Secondly*, we observe that there was a disallowance of Rs. 3,00,000/- of similar nature in AY 2012-13, which is very close to Rs. 2,68,197/- and far distant from Rs. 26,83,197/-. This shows that the reasonable amount of disallowance could be Rs. 2,68,197/-

only. Ld. DR is not able to place any cogent evidence before us to demonstrate that the AO wanted to make disallowance as high as 5%. *Lastly*, we are of the view that even if there be any ambiguity or doubt in drafting the assessment-order, it has to be resolved in favour of assessee and the revenue cannot take advantage of it for the simple reason that the AO, who is an officer of revenue, has drafted assessment-order. Being so, we are of the considered view that there was no mistake in the quantum of disallowance made by AO in assessment-order. Consequently, we quash further addition of Rs. 24,15,000/- made in rectification-order. The assessee succeeds in this ground.

**14. Resultantly, this appeal is partly allowed.**

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

*Order pronounced in the open court on 18/04/2023.*

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 18.04.2023

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	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
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	