

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.713/Asr/2019
Assessment Year: 2016-17**

Yashpal Nehra C/o Pankaj Arora, 3039A Power House Road, Sharma Complex Bathinda. [PAN:-AJQPN6644Q] (Appellant)	Vs.	PCIT, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Sh. P.N. Arora, P.K. Singla, Advs.
Respondent by	Sh. Nakul Aggarwal, Sr. DR

Date of Hearing	06.06.2023
Date of Pronouncement	19.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-1,Amritsar,[in brevity ‘the CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity ‘the Act’] for

A.Y. 2016-17. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-2(1), Bathinda, [in brevity 'the AO'] order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

(a) That the order has been received on dated 15.10.2019 and hence the appeal is being filed within limitation of time.

(b) That the order passed by Ld CIT (Appeals), Bathinda is highly erroneous & against the law and facts.

(c) On the facts and in the circumstances of the case, the authorities below were incorrect and unjustified in up-holding addition of Rs. 13339614/- by treating gross receipts from the contractor as income of the appellant. The gross receipts of the appellant, who was a Govt Contractor and total receipts was at Rs. 15160082.00 and the income was estimated at Rs. 14151954/-.

(d) That the Ld CIT (A) failed to appreciate that the appellant who is a contractor and under the provisions of Income Tax Law, the N.P. rate on contractor is fixed at 6% or 8% and up-holding the income at Rs. 14151954/- against the receipts of Rs.

15160082.00 is without any justification and liable to be deleted.

(e) Withtjut prejudice to the above grounds and without accepting, the Ld CIT (A) failed to appreciate that NP rate @ 93.35% in the cases of contractors is highly contradiction under the provisions of Income Tax Law and the Ld CIT (A) has erred both in law and on facts in rejecting the appeal of the assessee.

(f) On the facts and in the circumstances of the case and in law, the order passed is illegal. Invalid and void ab initio.

(g) On the facts and in the circumstances of the case, the order passed is without any jurisdiction and hence not applicable to the facts of the case.

(h) On tlje facts and in the circumstances of the case, the authorities below were incorrect and unjustified in dismissing the appeal of the assesseeand also then incorrect in confirming the addition.

(i) That it is prayed that the order of Ld CIT (A) be set aside.

(j) That Jthe appellant craves leave to add or amend any grounds of appeal before the appeal is herd off or disposed off.”

3. Brief fact of the case is that the assessee filed his return u/s 139. The return was processed and treated as defective u/s 139(9) of the Act. The assessee filed another return and also the tax audit report in Form 3CB u/s 44AB of the Act. The assessee has made an error during filing of the return for the impugned assessment year. In the turnover column, the assessee mentioned the gross profit amountRs. 18,20,468.38. After allowing the expenses the net profit amount to Rs.8,12,342/- was offered to tax. There is no change in the net profit in filing computation and in return. During this impugned assessment year the assessee declaredhis financial statement in following manners;

- i) Contractual receipt amount to Rs.1,51,60,082/-
- ii) Interest amount to Rs.60,664/-
- iii) Gross profit amount to Rs. 18,20,468.38
- iv) Net profit amount to Rs.8,12,342/-

The assessment was framed by the Id. AO and addition was made amount to Rs.1,33,39,614/- as short declaration of turnover in the return of income. The Id. AO calculated the amount in following manners.

i) Amount declared as turnover in return amount to Rs.18,20,468/- minus the turnover as per 26AS amount to Rs.1,51,60,082/- which works out balance amount Rs.1,33,39,614/-. The entire amount was treated as undeclared turnover and added with the total income of the assessee. Being aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. The Id. AR for the assessee filed written submission which is kept in the record. The Id. AR Mr. Sudhir Sehgal, Advocate first pointed out that the tax audit report with balance sheet was duly filed with the return of income which is enclosed in **APB page nos. 22 to 32**. The mistake was made by the accountant during the filing of the return and mentioned the gross profit Rs.18,20,468/- as gross receipt in designated column of the ITR. The Id. AO had not rejected the books of account. Only the difference of gross receipt and the gross profit was added back with the total income as a result, the net profit ratio shoots up @ 93%

which is an absurd for the assessee's business transaction. The ld. AR in argument relied on the order of the Jurisdictional High

Court in the case of **Manoj Ahuja and Anr vs. Inspecting Assistant [1984] 150**

ITR 696 (High Court of P & H)

“12. It is now well recognized that no litigant should ordinarily suffer for a mistake of his counsel. If any authority for this proposition is needed, reference may be made to a Division Bench judgment of this court in Smt. Nirmal Khosla v. Union of India, AIR 1976 P & H 22. In that case, because of the wrong calculation made by a counsel, the appeal had been filed beyond limitation. The Bench condoned the delay in filing the Letters Patent Appeal.

13. As a result, we allow the appeal and set aside the order dated March 24, 1975, of the Appellate Tribunal, and allow the application for condonation of delay and remit the appeal to the Appellate Tribunal for fresh decision on merits. The respondents shall pay the appellants costs which are assessed at Rs. 500”

5. The ld. DR vehemently argued and placed that the assessee had made the mistake in the return and nowhere to allow the same for rectification. The ld. DR was not able to submit any contrary judgment against the assessee's submission.

6. We heard the rival submission and relied on the documents available in the record. During filing of the ITR both original return and return file in lieu of defective notice. The accountant of the assessee had made a mistake by mentioning the G.P. in the column of turnover. In the factual matrix there is no change in the net profit of the assessee which is declared correctly in both the returns amount to Rs. 8,12,342/-. The assessee completed the tax audit on dated 16.10.2016 and also filed the copy with the returns which were filed on dated 24.02.2017 and 20.03.2017 related to initiation of notice u/s 139(9), copies are enclosed **APB page nos. 1 to 19**. The difference of turnover cannot be the part of income of the assessee. The ld. AO in arbitrary manner calculated the balance amount of turnover as the net profit. It is quite absurd in point of regular business that net profit of a business related to this construction work will be 93%. For a bonafide mistake committed on the part of the assessee's accountant, we find that the assessee had disclosed all the relevant facts and documents and had not concealed any income. The assessee had furnished the turnover as per form-26AS in his financial statement and tax audit report which was duly enclosed in both the ITRs. There is no difference in the turnover declared by the assessee and the turnover was casted in form-26AS. Even there is no difference in declared net profit in impugned

assessment year. We considered that the mistake was due to an inadvertent clerical error and was rectified by the assessee as soon as it was noticed. A bonafide mistake by an accountant is a mistake that is made in good faith and without any intention to deceive or defraud. The Id. DR has also accepted the fact of the assessee. But, the Id. CIT(A) had not taken the proper cognisance of the submission of the assessee during appeal proceeding. We set aside the appeal order and the addition made by the Id. AO amount to Rs.1,33,39,614/- is quashed.

7. In the result, the appeal of the assessee bearing **ITA No. 713/Asr/2019** is allowed.

Order pronounced in the open court on 19.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order