

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.36/Ind/2023**  
**(Assessment Year:2020-21)**

Jaimal Singh and Sons 159 Nehru Ward, Pipariya MP	Vs.	ACIT, CPC, Bangalore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAAFJ 8045J</b>		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.08.2023	
Date of Pronouncement	23.08.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 20.12.2022 of Commissioner of Income Tax(Appeals), National Appeal Centre, Delhi for Assessment Year 2020-21.

2. None has appeared on behalf of the assessee despite repeated notices were issued through RPAD as well as e-mail. It transpires from the record the assessee has not been appearing since beginning after filing of the appeal. Therefore, the bench proposes to hear and dispose of this appeal *ex-parte*.

3. This appeal was filed by the assessee on 02.02.2023 against the impugned order dated 20.12.2022, therefore, this appeal is within the period of limitation and the registry has calculated the delay by taking an

incorrect date of communication mentioned in the form no.36. The Assesse has raised following grounds of appeal:

*“(1) The order passed by the Ld CIT (A) NAFC supporting the order of Ld ACIT CPC is bad in law and facts, void a initio and with jurisdiction.*

*(2) The Ld CIT (A) NAFC erred in supporting the order of Ld ACIT CPC by adding Rs 14,43,138 u/s 43B without appreciating the fact that GST payment of Rs 14,43,138 was deposited on 05.11.2021 whereas the due date of filing of return u/s 139(1) was extended to 15.02.2021. Therefore, the provision of section 438 was complied with to claim the deduction during AY 2020-21.*

*(3) The Ld CIT (A) NAFC erred in demanding the revised tax audit report for rectification of mistake in disallowing claim of Rs 14,43,138 when there is no such provision u/s 43B of the Income Tax. The addition made for Rs 14,43,138 to the returned income u/s 143(1) intimation must be deleted.*

*(4) The appellant reserves the right to add, amend or alter any grounds of appeal.”*

4. The solitary issue arises in this appeal of the assessee is regarding disallowance made by the CPC while processing the return of income on account of late payment of GST u/s 43B of the Act which was confirmed by the Ld. CIT(A).

5. We have heard the Ld. DR and carefully perused the impugned order of the Ld. CIT(A). The Ld. CIT(A) has confirmed the disallowance u/s 43B in respect of GST payment of Rs.14,43,138/- made by assessee belatedly on 05.11.2021 whereas the assessee has stated in the form 35 the date of payment as 05.11.2020. This fact is also stated by the assessee in ground no.3 raised before the Ld. CIT(A). Thus, it appears that there is confusion about the correct date of payment of GST whether it is 05.11.2020 or 5.11.2021. The Ld. CIT(A) has confirmed the addition in para 5.2 & 5.3 as under:

*“5.2 Now, the appellant has claimed that GST of Rs. 14,43,138/- was deposited on 05.11.2021 whereas due date of filing return was extended from 31.10.2020 to 15.02.2021 and return was filed on*

09.12.2020. Tax Audit Report was issued on 22.10.2020 and submitted on 09.12.2020. Thus, the GST was not deposited till the date of issue of tax audit report dated 22.10.2020 and auditor issued the report without waiting for GST to be deposited since due date to upload the tax audit report was initially 30.09.2020.

5.3 The claim of the appellant is considered. There is no dispute on the fact that disallowance u/s.43B is not made if the payment of GST is made on or before due date of filing return and the said information is available in the tax audit report. The tax audit report needs to be rectified if any information mentioned therein got changed. The adjustments / additions to be made u/s.143(1) have been specified in that section and there is no scope of any independent verification, discussion or argument. As per section 143(1)(a)(iv), addition is to be made by disallowing expenditure indicated in the tax audit report but not taken into account in computing the total income in the return. While processing the return of the assessee, the tax audit report uploaded indicating non payment of GST of Rs. 14,43,138/- as per clause no. 26. Therefore, I do not find any infirmity in the order u/s.143(1) dated 03.11.2021 wherein disallowance of Rs.14,43,138/- was made u/s.43B based on remarks of the auditor in the tax audit report. In view of the above, the addition of Rs.14,43,138/- made in the order u/s.143(1) is hereby sustained. The relevant grounds of appeal are dismissed.”

6. On the contrary the assessee has stated in the ground no.3 before the Ld. CIT(A) that the actual date as under:

“3. That the Ld AO erred in law and facts of the case in addition of Rs 14,43,138/- u/s 438 of IT Act as assessee paid GST on 05.11.2020 whereas due date w/s 139(1) was 15.02.2021. Thus the addition must be deleted.”

7. Accordingly in the facts and circumstances of the case we are of the considered view that this issue requires proper verification about the

correct date of making payment of GST by the assessee and hence the impugned order of the Ld. CIT(A) *qua* this issue is set aside and the same is remitted to the record of the AO for proper verification and examination of the correct date of payment of GST in question and then deciding the issue as per law. Needless to say the assessee be given appropriate opportunity of hearing before passing afresh order.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.08.2023.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 23.08.2023**

**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*