

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH : PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 545/Chd/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Madhav KRG Limited Unit No. 1003, 10 th Floor, Aggarwal Millennium Tower Pitampura North- West, Netaji Subhash Palace, West Delhi, Delhi	बनाम	The DCIT Central Circle, Patiala
स्थायी लेखा सं. / PAN NO: AADCM6458N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashok Goel, C.A
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 31/01/2024
उद्घोषणा की तारीख/Date of Pronouncement : 02/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 23/05/2022 wherein the Ld. CIT(A) has confirmed the rejection of application under Section 154 by the AO on account of adjustment on account of ICDS amounting to Rs. 3,52,475/-.

2. During the course of hearing, the Ld. AR submitted that the assessee company filed its return of income declaring total income of Rs. 62,51,16,364/-. Subsequently, a communication dt. 03/09/2019 was received from CPC Portal for proposed adjustment of Rs. 3,52,475/- on account of ICDS.

2.1 In response, the assessee company in its submission dt. 30/09/2021 submitted that the said amount of Rs. 3,52,475/- was allowable during the current year on the basis of actual incurrence of the said losses and the same was disallowed in the previous year

on provisions basis. Regarding non mentioning of the same in the return of income, it was submitted that the same has been inadvertently omitted to be shown in other information. It was submitted that the said response was not considered by CPC, Bangalore and intimation dt. 04/11/2019 under section 143(1) was issued after making the adjustment of Rs. 3,52,475/-.

2.2 It was further submitted that the assessee thereafter moved an application under section 154 against the intimation under section 143(1) on 17/10/2020 before the DCIT, Central Circle, Patiala. However no action was taken by the DCIT, Central Circle, Patiala for the apparent reasons that the assessment proceedings by issuance of notice dt. 23/09/2019 under section 143(2) has been initiated and which were ongoing at the relevant point in time.

2.3 It was further submitted that the case of the assessee was selected for scrutiny assessment and one of the reason was to verify ICDS compliance and adjustment. It was submitted that in response to notice under section 143(2) dt. 23/09/2019, it was submitted that the sum of Rs. 3,52,475/- being M2M losses the provision of which was added back in A.Y. 2017-18 as per ICDS, the same has been claimed in the impugned A.Y. on the basis of actual incurrence of the said losses.

2.4 It was further submitted that the AO thereafter issued another notice dt. 21/01/2020 wherein the assessee was asked to explain the adjustment as per the provision of income computation and disclosure standards(ICDS). In response, the assessee submitted that in accordance with Accounting Standards 29, the provision should be recognized when it is probable and the reasons being the provision of loss on future trading recognized in Balance Sheet. But as per ICDS, the provision should be recognized when it is actual and on the said basis provision of Rs. 3,52,475/- made in the books of account were added back while filing the return of income for A.Y 2017-18 but basis actual transaction, the same has been claimed in the impugned A.Y 2018-19.

2.5 It was submitted that thereafter another notice dt. 09/04/2021 was issued wherein the assessee was asked to furnish the documentary evidence in support of actual transaction of loss on future trading and in response, the assessee vide its

submission dt. 23/04/2021 submitted the documentary evidence and the computation of loss incurred in such transaction.

2.6 It was submitted that the assessment order was thereafter passed under section 143(3) dt. 27/09/2021 in which no adverse finding has been recorded by the AO, thereby accepting the claim of the assessee. It was however submitted that while computing the income, the AO took the income as computed under section 143(1) of the Act instead of income as per return of income wherein the CPC, Bangalore already made the adjustment towards the ICDS.

2.7 It was submitted that the assessee thereafter again moved an rectification application under section 154 on 24/12/2021 stating that the assessed income includes the amount of Rs. 3,52,475/- on account of adjustment for ICDS even though during the course of assessment proceedings, necessary information and documentation has been submitted and the AO was satisfied with the same and no adverse finding has been recorded and inspite of that while computing the income, the adjustment as done in terms of intimation under section 143(1) has been reiterated by the AO while passing the assessment order under section 143(3) of the Act and which needs to be rectified.

2.8 Further, drawing our reference to the rectification order under section 154 r.w.s 143(3) dt. 15/02/2022 disposing off the assessee's aforesaid application, it was submitted that in the said order, the AO has stated that the assessee did not challenge the addition made under section 143(1) during the assessment proceedings under section 143(3) which got completed on 27/09/2021. It has been further stated by the AO that assessee did not submit any documentary evidence during the assessment proceedings under section 143(3), hence the AO was of the view that there was no mistake apparent from the record and the request of the assessee for seeking necessary rectification under section 154 was rejected.

3. It was submitted that being aggrieved with the said action of the AO, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition.

4. In the aforesaid background, it was submitted that right from the time, the proposed adjustment was intimated by the CPC, Bangalore, the assessee has been stating that the ICDS claim is allowable and has been claimed on actual basis. It was submitted that the assessee has moved rectification application against the intimation under section 143(1) however given the fact that the assessment proceedings were initiated at that time, the AO did not dispose off the rectification application and proceeded with examining the said issue which was also one of the reasons for selecting the case for scrutiny. During the course of assessment proceedings, necessary information and documentation were submitted and no adverse finding has been recorded by the AO while passing the assessment order. In spite of that, while computing the income, the AO wrongly considered the income as per the intimation under section 143(1) which include the adjustment towards the losses on actual basis. It was submitted that all the relevant information and documentation are part of the assessment record, the necessary inquiry have been conducted during the course of assessment proceedings and therefore the findings of the AO that the assessee did not challenge the addition as well as did not submit any documentary evidence is clearly not factually correct. It was accordingly submitted that the claim is clearly eligible as per the ICDS provision and which has been claimed on actual basis and all the necessary documentation / information has been submitted during the course of assessment proceedings, therefore the necessary relief be provided to the assessee by deleting the adjustment so made by the AO and sustained by the Ld. CIT(A).

5. Per contra, the Ld. DR relied on the orders of the lower authorities. Referring to the findings of the Ld. CIT(A), it was stated that the grievance of the assessee arises from the intimation dt. 04/11/2019 issued under section 143(1) as no such disallowance or adjustment was made vide order passed under section 143(3) dt. 27/09/2021 wherein only an addition of Rs. 2,58,837/- was made on account of unexplained expenditure. It was submitted that there is nothing on record as to whether any appeal was filed by the assessee against the intimation dt. 04/11/2019 and therefore the assessee failed to act timely to file the appeal against the intimation under section 143(1) of the Act and as no grievance arises out of the order passed under section 143(3) of the Act. Accordingly, the rectification application dt. 24/12/2021 filed after passing the said

order has been rightly rejected by the AO since there was no mistake apparent from the record which could be rectified in terms of Section 154 of the Act. It was submitted that the right course of action for the assessee was to file appeal before the Ld. CIT(A) against the intimation dt. 04/11/2019 but the same was not done by the assessee and therefore, the assessee could not take advantage of its own inaction and accordingly the appeal filed against the order under section 154 r.w.s 143(3) is found to be without merit and has been rightly dismissed by the Ld. CIT(A). It was accordingly submitted that there is no infirmity found in the order and the findings of the Ld. CIT(A) and therefore the appeal filed by the assessee deserves to be dismissed.

6. We have heard the rival contentions and perused the material available on record. From perusal of the records, it is manifestly clear that the case of the assessee was selected for scrutiny for examining ICDS compliance and adjustment and which in the facts of the present case relates to claim of Rs. 3,52,475/-. The AO has issued specific notices calling for information /documentation in support of the said claim from time to time and in response, the assessee has filed its submissions providing the necessary explanation as to the nature of the transaction in relation to which claim of losses has been made during the year under consideration as well as filed the necessary information/documentation in support thereof. The matter was therefore examined during the course of assessment proceedings and while passing the assessment order, no adverse finding has been recorded by the AO which means that the claim of the assessee has been examined and duly accepted by the AO. However, while computing the income, the AO took the figure of income as computed u/s 143(1) of the Act which in normal course would be the right basis but in the facts of the present case, where there was adjustment on account of ICDS as per intimation u/s 143(1) and thereafter, the matter relating to ICDS adjustment was subject matter of examination and in fact, duly examined and accepted during the course of assessment proceedings, the AO should have considered the income after deleting the adjustment as per intimation u/s 143(1) of the Act which apparently has not happened in the instant case. We therefore find that the facts are crystal clear and apparent from record that the adjustment towards the ICDS has not been deleted by the AO while computing the income whereas the same was duly examined and accepted during

the course of assessment proceedings. In view of the same, we set-aside the order of the Id CIT(A) and direct the deletion of adjustment of Rs 3,52,475/-.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 02/02/2024.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 02/02/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar