

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1029/Ahd/2023
Assessment Year 2021-22**

Rishit Pravinbhai Patel C/O. M.S. Chhajer & Co. CA, "Kamal Shanti" Nr. Sardar Patel Statue, Ahmedabad-380014 PAN: AUJPP2725J (Appellant)	Vs	The Income Tax Officer Ward-3(3)(2), Ahmedabad (Respondent)
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**Assessee Represented: Shri Mahesh Chhajer, A.R.
Revenue Represented: Shri Ketan Gajjar, Sr.D.R.**

Date of hearing : 27-02-2024
Date of pronouncement : 06-03-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the exparte appellate order dated 12.10.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the Rectification order passed under section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2021-22.

2. The assessee was given hearing opportunity by Ld. NFAC on 25.08.2023, 12.09.2023 and 25.09.2023 to file its written submission in support of the grounds. The assessee sought for an adjournment on 01.09.2023 and thereafter not responded to the notices issued by Ld. NFAC. Therefore the Ld. NFAC confirmed the addition made by the Assessing Officer by observing as follows:

“7.2 The matter has been considered The order u/s 154 of the Act filed with Form 35 along with statement of facts and grounds of appeal have been carefully examined The appellant claimed in statement of fact attached with Form 35, "during the A. Y interest income from partnership was shown in Profit & loss account, while preparing computation of income, appellant treated said income separately as income form partnership firm i.e appellant had reduced the income from partnership firm of Rs 7,78,932/-(i.e amount of interest on capital or Rs. 5,98,868/- and share of profit of Rs. 1,80,064/-) form the net profit of its ordinary business and have subsequently disclosed and offered the same separately as interest from partnership(Shreeji Construction Co.) under the head business and profession and Rs. 1,80,064/- The appellant was provided adequate opportunities to furnish supporting documents/evidence i.e. Profit and loss account and any other submission in support of his claim so that it can be examined, but he failed to do so. However despite the requests, the same have not been filed by the appellant till date despite three notices till date. In view of the same, there is no reason available on record for any change in the order of the AO CPC as even during the appellate proceedings no response was furnished by the appellant before the Appellate Authority to any of the notices served on it. In view of all of the above the order u/s 154 of the AO is confirmed. Accordingly, all the grounds of appeal are dismissed.”

3. Aggrieved against the same, the assessee is in appeal before us. Brief facts is that the assessee is an individual having source of income from business and other sources. In the Profit and Loss account, the assessee shown Net Profit from the Partnership Firm (M/s. Shreeji Construction CO.) of Rs.1,80,064/- and Partners Interest from the said Firm of Rs.5,98,868/-, both amounting to Rs.7,78,932/-.

3.1. While processing return u/s. 143(1), the interest from the Partnership Firm was erroneously considered as share profit from the Firm. Further interest from the Partnership Firm was again added to the income of the assessee treating to double addition of Partners Interest Income. Therefore the assessee made a Rectification application before the CPC and to delete the demand of Rs.1,98,440/-. However the CPC rejected the Rectification application vide order dated 15.07.2022 confirming the double addition made by CPC.

4. Aggrieved against the same, the assessee filed an appeal before CPC raising the ground that “the CPC has erred in law and on facts in making addition of interest of income of Rs.5,98,868/- earned from M/s. Shreeji Construction, twice by not allowing it from business income when it was shown separately as share income from partnership firm, which tantamounts to double taxation”. Though the Ld. CIT(A) after affording three opportunities to the assessee passed exparte order, however failed to verify this apparent mistake on record and dismissed the assessee appeal.

4.1. The Ld. CIT(A) apart from specific ground raised by the assessee and also demonstrated in the Statement of Facts, the mistaken double addition made by CPC (the entire statement of facts already reproduced by CPC at Page Nos. 3, 4 & 5 of its order), however dismissed the assessee appeal without application of mind.

5. In our considered view, even it is an exparte order, the Authorities are expected to pass order on merits of the case. Here

the prima facie mistake of Partners Interest Income offered both in the “share income from the firms of Rs.7,78,932/- as well as any other income namely commission, bonus and interest income from Firm of Rs.5,98,868/- offered by the assessee amounts to double taxation, which is not permissible in law. Both the Lower Authorities failed to consider the above submissions of the assessee which is liable to be set aside and demand raised by the CPC is liable to be deleted. Thus the Ground raised by the Assessee is hereby allowed.

6. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 06-03-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 06/03/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद