

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I T A. No. 690/MUM/2024  
(A.Y. 2018-19)

Sachin Dattaram Kadam, 1701, Prathmesh View, Residency, Opp CEAT Ltd Bhandup (W), Mumbai – 400078	Vs .	ITO,-National e- Assessment Centre, Delhi-110001.
PAN/GIR No. APPPK4462E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	None
Revenue by	Ms.Rajeshwari Menon.Sr.DR

सुनवाई की तारीख/Date of Hearing	30.05.2024
घोषणा की तारीख/Date of Pronouncement	31.05.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre,(NFAC) Delhi/ (CIT(A) passed u/sec 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Ld. Assessing Officer has erred in assessing the income of the appellant at Rs. 76,15,671/- instead of Rs.47,44,240/- returned. As such Aggregate additions of Rs.28,71,431/- may please be deleted*
- 2. The Appellant has all necessary register, vouchers evidencing the actual payment of both the salary and bonus.*

*3. The last hearing notice u/s 250 could have been unintentionally overseen without any malicious intentions and Non consideration of the records and vouchers on the basis would be against the principle of natural justice.*

*4. The aforesaid grounds of appeal are without prejudice to each other*

*5. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.*

2. The Brief facts of the case are that, the assessee company is engaged in the business and has filed the return of income for the A.Y 2018-19 on 30.12.2018 disclosing a total income of Rs.47,44,240/-. Subsequently, the case was selected for scrutiny under CASS and the Assessing Officer (AO) has issued notice u/sec 143(2) and u/sec 142(1) of the Act. Whereas, the assessee has filed the reply on 11.01.2021, 21.01.2021 and 24.01.2021 and submitted the details as per the information called for. Further the assessee has filed a note on reason for change in method of accounting policy and comparison of facts due to change in accounting method. The assessee has given the comparative figures based on change in accounting policy for the F.Y 2016-17 and 2017-18. Further it was mentioned that there is increase in turnover and similarly increase in expenses. The assessee was also called to submit further details with respect to payment of wages, bonus and overheads based on the change of method of accounting, The AO was not satisfied with the explanations and made addition of Rs.

28,71,431/- dealt at Page 4 Para 8 to 11 of the order as under:

*8 In view of above facts, despite several opportunities assessee failed to produce complete Supporting documents in support of his claim. Assessee also failed to produce working of effect of change in accounting method adopted by the assessee with supporting documents. Decrease in profit amounting to Rs. 31,03,832/- due to increase in expenses calculated on the basis of change in method of accounting as reported In 3CD report is not supported by the documents. Further, huge increase in salary and bonus expenses cannot be allowed without supporting documents. Accordingly. increase in expenses of Rs. 28,71,431/- on the basis of increase added to the income of the assessee. in expenses is being disallowed and added to the income of the assessee*

*9. A show cause notice dated 08/03/2021 was sent alongwith COPINT of draft a f draft assessment order wherein addition of Rs. 28,71,431/- was proposed due to non submission of supporting documents. Assessee vide letter dated 15/03/2021 submitted its reply gist of reply is as under:*

*1. The assessee is an individual engaged in the profession of labour law consultancy, labour law compliance and other ancillary services under the name and style as M/S SDK Associates. 2. The assessee till the F.Y. 2016-17 used to maintain his books of accounts under cash system. However since GST was implemented from the F.Y. 2017-18 and GST was to be paid on accrual basis, the assessee changed his method of accounting from cash system to mercantile system*

*3. Due to the above change, following was the impact on his income:*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount</i>
<i>1</i>	<i>Increase in Profit</i>	<i>39,65,976</i>

2	<i>Decrease in Profit</i>	31,03,832/-
	<i>Net increase / decrease</i>	8,62,144/-

*From the above it can be verified that the assessee has declared an additional income of Rs. 8,62,144/- due to change in its accounting method.*

*1. In respect to the difference in salary, we state that in the financial year 2017-18, the assessee had booked total salary of Rs. 76,02,179/-, out of which salary upto month of January of Rs. 60,11,282/- was paid in FY 2017-18 to its employees, and outstanding salary of Rs. 15,90,897/- for remaining two months i.e. February & March 2018 was paid in the FY 2018-19.*

*1. Further, apart from the salary the assessee had made provision for the Performance Bonus to its employees amounting to Rs. 13,35,534/- out of which Rs. 55,000/- was paid in FY 2017-18 and remaining amount of Rs. 12,80,534/- was paid in FY 2018-19 but before due date of filing of income tax return.*

*2. The details of provision of salary and bonus made during the F.Y. 2017-18 is attached herewith for your ready reference.*

*3. Also in supporting to prove that the two months outstanding salary and performance bonus was paid in FY 2018-19 to its employees, Confirmation letters from employees is attached herewith for your reference.*

*4. Since the bonus was paid before the due date of filing of return, the same was not disallowed u/s 43B of Income Tax Act, 1961.*

*10. Reply submitted by the assessee has been perused and it has been found that in reply of show cause notice also assessee has reiterated that bonus and salary has been paid before filing of ITR. Assessee has not submitted details like*

*copy of bank statement from which payment of salary and bonus has been made. Bank entries of the amount debited from the account. Further, confirmations have been submitted of some of the employees wherein it has been mentioned that part of salary was received in April, 2018. Further, it has also been mentioned that "I further confirm that I had received performance bonus in October 2018." Assessee has not submitted reason of nonpayment of salary in February and March 2017. Assessee could not provide the proof of payment of bonus on or before due date of filing of ITR. It is also not clear that assessee has paid these salary and commission in cash or through bank account. Assessee could not submitted copy of salary register. Payment of Bonus is allowed on actual paid basis only i.e also before due date of filing ITR. Increase in salary and bonus payments claimed by the assessee and that salary of month of February and March was paid in April do not seems genuine in absence of reliable supporting documents.*

*11. In view of the above facts and due to reasons discussed above increase in expenses of Rs. 28,71,431/- as claimed by the assessee due to change in method of accounting is not supported by documents, therefore being disallowed and added to the income of the assessee. Penalty u/s 270A also initiated for under reporting of income in consequence of misreporting of income.*

Finally the AO has assessed the total income of Rs. 76,15,670/- and passed the order u/sec 143(3) r.w.s 143(3A) & 143(3B) of the Act dated 18.03.2021.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved

by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing non appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

5. We heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 30.09.2022, 08.09.2023, 04.10.2023 & 22.11.2023 referred at Page 2 Para 4 of the order but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the addition made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided

adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.05.2024.

Sd/-

**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 31/05/2024

KRK.PS

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,

Mumbai