

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुकला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.348/Chny/2024
निर्धारण वर्ष /Assessment Years: 2022-23

Rapid Care Transcription Pvt Ltd
No.21/41, VLV Complex, Little Mount,
Mount Road, Saidapet S.O(Chennai),
Saidapet, Chennai-15.
[PAN: AABCR3254M]

Dy. Commissioner of Income Tax
Circle-1, LTU, Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Y.Sridhar, FCA

प्रत्यर्थी की ओर से /Respondent by

: Shri ARV Srinivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 28.05.2024

घोषणा की तारीख /Date of Pronouncement

: 12.06.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/S/250/2023-24/1059893685(1) dated 18.01.2024 of Ld.CIT(A). Through the aforesaid appeal the assessee has challenged order u/s 250 dated 18.01.2024 passed by Ld.CIT(A).

2.0 Brief facts of the case are that the assessee had filed its return of income on 30.11.2022 declaring total income of Rs.10,35,63,101/- for the AY 2022-23. The said return was processed u/s 143(1) of the Act on 21.02.2023 determining the total income at Rs. 10,57,87,210/- after

making disallowance u/s 43B of the expenses of Rs.22,24,111/- claimed in respect of gratuity payment, as the entry did not reflect in the Tax Audit Report in Form No. 3CD furnished by the assessee. Aggrieved by the order the assessee preferred an appeal before the first appellate authority, who took the view that in clause 26 of the audit report the auditor certified that no payment of gratuity of Rs.2224111/- was made before the due date of filing of return. It was opined that such view is based upon examination of books of account and that any mistake therein ought to be certified by the tax auditor relying upon these facts as well as certain case laws, the Ld.CIT(A) proceeded to dismiss assessee's appeal.

3.0 The Ld.AR argued that the claim of gratuity was made on payment basis and was rightly included in the books of account and shown in the income tax return. It was submitted that the gratuity payment of Rs.2224111/- was done prior to filing of return of income u/s 139(1). It was submitted that there was a typographical omission in tax audit report as a result of which the gratuity amount was shown as nil. It was further submitted that the said amount was rightly shown in the return of income in Item No.10B of the return of income and thus there was no intent on the part of assessee to conceal. It was submitted that the assessee has rightly included the said amount in its computation also. In support of its contentions, the assessee relied upon corresponding entries

in its Books of accounts and order of coordinate bench of this tribunal in ITA No.82/Chny/2018-19.

4.0 The Ld.DR contended that the assessee and its auditors are different persons and the assessee cannot take benefit on account of auditor's mistake. It was contended that the referred order of the coordinate bench does not come to the rescue of the assessee. It was considered that the assessee may be asked to file revised tax audit report.

5.0 We have heard rival submission in the light of facts of the case and material brought on records. There is no denying the fact that there is an omission in the tax audit report which has given rise to this controversy. It is also indicated that the gratuity of Rs.22,24,111/- was claimed on paid basis and shown in return of income filed u/s.139(1). In this regard, we respectfully concur with the findings of the coordinate bench in ITA No.82/Chny/2018-19(Supra) holding that " the deduction of gratuity is available in substantive law and it cannot be disallowed merely by the reference of inconsistent entries in explanation of section 143(a) of the Act being a procedural provision, it shall not take away the right confirmed in section 37 r.w.s 40A(7) and section 36(1)(v) of the Act...". Accordingly, we are of the view that ends of justice would be met if the matter is restored to the file of the AO. The order of Ld.CIT(A) is therefore set aside and the Ld.AO is directed to examine the accounts of the assessee along with its return of income and in case it is found that the impugned amount of

gratuity has been included in the books of accounts / return of income and paid before filing of the return u/s. 139(1) then allow the assessee the claim of the said gratuity.

6.0 In the result the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 12th June, 2024 at Chennai.

Sd/-

**(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)**

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 12th June, 2024.

KB/-

Sd/-

**(श्री अमिताभ शुक्ला)
(Amitabh Shukla)**

लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Coimbatore / Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF