

आयकर अपीलिय 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. 864/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Goyal Automotive Pvt. Ltd. B-XXI-14665, G.T. Road, Dholewal Chowk, Ludhiana-141003	बनाम	The DCIT, Circle-4, Ludhiana
स्थायी लेखा सं. / PAN NO: AABCG9606N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Pankaj Bhalla, C.A
राजस्व की ओर से / Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03/07/2024
उद्घोषणा की तारीख / Date of Pronouncement : 04/07/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC Delhi dt. 08/12/2023 pertaining to Assessment Year 2017-18.

2. During the course of hearing, the Ld. AR submitted that the assessee filed its revised return of income declaring total income of Rs. 90,57,129/- which was processed by the CPC, Bangalore and thereafter, order under section 154 r.w.s 143(1) was passed on 06/01/2020 wherein certain adjustments were made by the CPC in terms of addition of Rs. 16,37,453/- on account of non- payment of Employees as well as Employers contribution to ESI Fund within the due date and disallowance of exempt income of Rs. 13,97,291/- being profit on sale of fixed assets.

2.1 It was submitted that against the said order, the assessee moved in appeal before the Ld. CIT(A), Ludhiana and thereafter the matter was

transfer to NFAC, Delhi wherein the appeal of the assessee was dismissed on statistical ground without considering the merits of the case.

2.2 It was submitted that the Ld. CIT(A) dismissed the appeal stating that the appeal so filed was defective and the same cannot be adjudicated upon. It was submitted that the alleged defect which has been pointed out by the Ld. CIT(A) was that no order under section 143(3) has been attached alongwith the appeal documentation and there is an internal contradiction between the order uploaded by the assessee vis-a-vis what has been stated in Form No. 35.

2.3 In this regard, it was submitted that the assessee company has correctly uploaded the intimation order passed by the CPC, Bangalore under section 154 r.w.s 143(1) dt. 06/01/2020 and even the order number, DIN number and date of order are all correct in the memorandum of appeal. The only clerical mistake which has happened while filing the Form No. 35 was that at Sr. No. 2(a), the Section in which the order appealed against was to be stated, the assessee has wrongly stated order passed under section 143(3) instead of Section 154 r.w.s 143(1) of the Act. It was submitted that the assessee has uploaded the correct order Section 154 r.w.s 143(1) alongwith Form No. 35 and merely basis an error while mentioning the section number, the appeal of the assessee has been dismissed stating to be defective.

2.4 It was further submitted that no defect notice or opportunity has been provided by the Ld. CIT(A) to cure the defect and it was only on receipt of the order, the assessee came to know that such an order has been passed on account of defect. In support reliance, was placed on the Coordinate Bench decision in case of Haryana State Roads and Development Corporation Ltd. Vs. The DCIT in ITA NO. 582/Chd/2016 dt. 24/10/2017 wherein in absence of adequate opportunity to address the defect in the

appeal Form filed by the assessee, the matter was restored to the file of the Ld. CIT(A) to be decided afresh after giving due opportunity to the assessee.

2.5 Further the Ld. AR has contested the findings of the Ld. CIT(A) wherein he has held that the defect, so pointed out, is not a curable defect and in this regard, the reference was drawn the provision of Section 292B of the Act wherein it is provided that no proceedings shall be deemed to be invalid merely by reason of any mistake, defect or omission, if such proceeding is in substance and in effect in conformity with or according to the intent and purpose of the Act.

2.6 It was further submitted that the clerical mistake in incorrectly mentioning the section number in the memorandum of appeal is attributed to the Counsel of the assessee and for the mistake occurred by the Counsel of the assessee, the assessee cannot be penalised.

2.7 It was accordingly submitted that in light of the aforesaid submissions, the assessee be allowed to file the corrected/amended Form No. 35 before the Ld. CIT(A) and the matter be heard on merits afresh after providing opportunity to the assessee.

3. Per contra, the Ld. DR has relied on the findings of the Ld. CIT(A). It was submitted that as per the procedure of filing of the appeal, the assessee is required to furnish Form No. 35 and alongwith that, it has to attach the copy of the order appealed against and the notice of the demand and these are mandatory documentation which are to be duly submitted and verified by the assessee before the matter may be adjudicated upon by the Ld. CIT(A). It was submitted that in the instant case, the assessee has mentioned the order against which the appeal has been filed as the order passed under section 143(3) and there was no such order which was apparently submitted

and uploaded by the assessee and in view of that, the appeal of the assessee has been rightly dismissed as defective.

3.1 At the same time, the Ld. DR fairly submitted that since the assessee has attached the copy of the order under Section 154 r/w 143(1) passed by the CPC Bangalore dt. 06/01/2020 and where the assessee is aggrieved by the said order, the matter may be remanded back to the file of the Ld. CIT(A) to allow the assessee to file amended Form No. 35 and let the matter be decided on merits by the Ld. CIT(A).

4. We have heard the rival submissions and perused the material available on record and find that except for the mistake in quoting the section number of the order appealed against, rest all particulars in Form 35 in terms of order date, number and DIN and the authority which has passed the order, the same are in conformity with the copy of the order which has been submitted and uploaded alongwith Form 35. In substance, the assessee has filed the appeal against the order passed under section 154 r/w 143(1) dated 06/01/2020 by CPC/AO and not against the order passed u/s 143(3) of the Act. At the same time, a mistake has been committed by the assessee by mentioning the wrong section under which the order appealed against has been passed and it is clearly a clerical mistake which is curable and the assessee/Counsel needs to be vigilant while filing the appeal and should have taken steps to rectify the said mistake by taking timely action. Where the Id CIT(A) is ceased of the same, he should have asked the assessee to cure the defect, however, we find that no show-cause has apparently been showed by the Id CIT(A) to cure the mistake so happened while filing the Form 35. Unless the assessee is put to notice, dismissing the appeal of the assessee holding the same to be defective won't meet the ends of justice and the assessee's right of seeking redressal cannot be taken away where the assessee has exercised its rights of filing the appeal in time and otherwise meeting the prescribed requirements under the law. In light of

the same, we hereby direct the assessee to file amended Form 35 before the Id CIT(A) and hereby direct the Id CIT(A) to consider the amended Form 35 and decide the matter on merits of the case as per law after providing reasonable opportunity to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 04/07/2024

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

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

AG

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar