

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

**ITA No. 1350/M/2024
Assessment Year: 2022-23**

Haldiram Foods International Private Limited A-204, Shyamkamal Agrawal Market, Vile Parle (E.), Mumbai- 400057. PAN: AAACH3628L	Vs.	Deputy Commissioner of Income Tax CPC, Bengaluru, Karnataka- 560500.
(Appellant)		(Respondent)

Present for:

Assessee by

: Shri Yogesh Thar, A.R.

Revenue by

: Shri P. D. Chougule, (Addl. CIT), SR. D.R.

Date of Hearing

: 13 . 06 . 2024

Date of Pronouncement

: 27 . 06 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed against the order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide its DIN & Order No. ITBA/NFAC/S/250/2023-24/1060657271(1) dated 08/02/2024 for the Assessment Year 2022-23.

2. The following grounds of appeal have been raised by the appellant:

“GROUND NO. 1: THE ORDER PASSED U/S, 250 IS BAD IN LAW:

- 1.1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in dismissing the appeal filed by the Appellant against the order passed u/s 154 of the Act on the footing that the grounds raised in appeal do not emanate from the rectification order.*
- 1.2. *Ld. CIT (A) failed to appreciate that the omission in disclosure in the tax audit report regarding payment of gratuity is a mistake apparent on record leading to adjustment in the intimation u/s. 143(1) and therefore the same is liable for rectification u/s. 154 and therefore the grounds emanated from the rectification order declining to rectify the mistake apparent on records.*
- 1.3. *The Appellant prays that the order passed u/s 250 declining to decide the grounds arising from the rectification order be quashed.*

WITHOUT PREJUDICE TO GROUND NO 1;

GROUND NO. 2: DISALLOWANCE OF PAYMENT MADE TO GRATUITY FUND AMOUNTING TO RS. 84,89,878/-:

- 2.1. *On the facts and in the circumstances of the case and in law, Id. CIT(A) erred in not adjudicating the ground on merits and thereby upholding the disallowance made by ld. AO amounting to Rs. 84,89,878/- towards payment made to an approved gratuity fund.*
- 2.2. *The Id. CIT(A) failed to appreciate and ought to have held / considered that:*
 - 2.2.1. *As per section 43B of the Act, contributions towards the approved Gratuity fund which was disallowed during any preceding previous year due to nonpayment thereof, then same is allowed in the year in which such contribution is actually paid.*
 - 2.2.2. *Without prejudice to the above, mere omission in disclosure made by the tax auditor in tax audit report does not automatically trigger disallowance in the hands of the Appellant which is otherwise allowable as per the Act.*
 - 2.2.3. *Once the Appellant has deposited Rs. 84,89,878/- towards the gratuity fund during the financial year under consideration, the same should be allowed u/s. 43B.*

2.3. *The Appellant prays that the disallowance of payment of contribution to an approved gratuity fund amounting to Rs. 84,89,878/- be deleted.*

GENERAL

The Appellant craves leaves to add to, alter and/or amend any of the above grounds of appeal on or before the date of hearing.”

3. The facts of the case, in brief, are that the appellant filed the return of income for the assessment year 2022-23 on 30/09/2022 declaring total income at Rs.348,36,26,430/-. The return was processed by the AO, CPC, Bangalore u/s. 143(1) of the Act on 16/03/2023 and the special rate of tax u/s. 115BAA of the Act, opted by the assessee, was denied. Thereafter, the assessee filed a rectification application before the CPC u/s. 154 of the Act on 09/04/2023 which was rejected by the CPC vide its order dated 05/06/2023 without assigning any reason.
4. Aggrieved by the above order of AO, CPC, passed u/s 154 of the Act dated 05/06/2023, the assessee filed appeal before the Ld. CIT (A) who dismissed the appeal of the assessee vide its order dated 08/02/2024 by holding as under:

“In this case, the CPC had denied the special rate of tax u/s. 115BAA, as was opted by the appellant during the year under consideration while processing the return u/s 143(1). The appellant could have filed an appeal against the intimation u/s. 143(1) as per the provisions of the Act. However, it appears that the appellant has not filed an appeal against the intimation u/s. 143(1). Thereafter, the appellant has filed an application u/s. 154 before the CPC

which has been rejected and hence the appellant has filed the present appeal against the order u/s. 154. In this regard, it is stated that the original cause of action in the present case had arisen at the stage of the proceedings u/s 143(1) and not u/s 154. The appellant is trying to make a back door entry by filing an appeal against the order u/s 154, the original cause of action for which had arisen at an earlier point of time during the proceedings u/s. 143(1). Therefore, as the original cause of action has arisen at the stage of 143(1), the issue cannot be adjudicated upon in the present appeal and further there is no mistake apparent from record at the stage of 154. Therefore, the grounds of appeal are dismissed.”

5. Aggrieved by the order of the Ld. CIT(A), the present appeal has been filed.

During the appellate proceedings before us, the appellant made a written submission as under:-

“i. Appellant is engaged in the business of manufacturing of Namkeen and sweets. They had filed their return of income for the assessment year 2022-23 on 30/09/2022, declaring total income of Rs.348,36,26,430/-. At the time of filing of return, the appellant has opted to pay tax under section 115BAA by selecting tab (e) on the first page of return of income and mentioned details of filing of form 10-IC. Their return was processed u/s.143(1) on 16/03/2023.

ii. However, while processing the said return, the Ld. AO had denied the special rate of tax u/s.115BAA, as was opted by the appellant since

assessment year 2020-21 and has fastened huge tax liability of Rs.39,87,50,500/- on the appellant. The said special rate of tax had been allowed to the appellant in both the previous years i.e. A.Y. 20-21 and A.Y. 21-22.

iii. One of the conditions for opting for the said special rate of tax is that once the assessee opts for the said scheme or exercise its option to claim benefit under said section, it cannot be withdrawn and will be applicable to subsequent years.

iv. Further, the Ld. AO made an addition of Rs.93,83,050/- by disallowing payment of Gratuity and ESIC.

v. Immediately on receiving the said intimation, appellant had submitted rectification application on 09/04/2023 requesting the Ld. AO to reprocess the return. However, the Ld. AO vide his order dated 05/06/2023, has rejected the said application u/s.154 without assigning any reason thereof.”

6. The A.R. of the assessee also submitted a paper book and pleaded before us that the Ld. CIT(A) should have appreciated the fact that as per provision u/s. 43B of the IT Act, contribution towards the approved gratuity fund, which was disallowed due to non payment, should be allowed in the year in which such contribution was actually paid. The mere omission in disclosure made by the tax auditor in the tax audit report does not automatically trigger

disallowance in the hands of the assessee which is, otherwise, allowable as per the act.

7. The D.R., on the other hand, justified the action of the CPC and the Ld. CIT(A) on the ground that there was no mistake apparent from record which could be rectified either by the CPC or by the Ld. CIT(A).
8. We have considered the rival submissions and it is found that the AO, CPC has disallowed the payments made to an approved gratuity fund amounting to Rs.84,89,878/- without giving any prior intimation to the appellant. Thus, the action of the AO, CPC is both against the law as well as the principle of natural justice. We, therefore, set aside the order of the AO, CPC and restore the matter back to the file of the AO to decide the issue afresh after providing adequate opportunity of being heard to the appellant.
9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 27.06.2024.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.06.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.