

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.601/Mum/2024
Assessment Year: 2021-22**

GEP Solutions Private Limited 1301, 13 th Floor, Building No. 3, Gigaplex Estate, SEZ IT PLT 5, TTC Industrial Area, Knowledge Park, Airoli (W), Navi Mumbai-400708. PAN: AADCG 4827 H	vs.	NFAC, Delhi/ DCIT, Circle-15(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sumant Chadha, CA & Shri Paras Nath, CA
Revenue by : Dr. Kishor Dhule, CIT, DR

Date of Hearing : 01.07.2024

Date of Pronouncement : 06.09.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, Delhi dated 13.12.2023 for A.Y. 2021-22. The grounds of appeal are as follows:

“Ground No. 1 - General

1.1 That on the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well on fact while passing order under section 250 of the Act without providing the appellant adequate opportunity of being heard.

1.2 That on the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well on facts by not providing adequate opportunity to substantiate the case on merits before proceeding for

passing the Order by rejecting the request for withdrawal of appeal made by the appellant based on rectification order passed by the Ld. AO under section 154 r.w.s. 143(1) of the Act.

1.3 That on the facts and circumstances of the case, Ld. CIT(A) has erred on the Principal of Natural Justice by not informing the Appellant about the reasons for not accepting the request for withdrawal of appeal and not asking for submission on the merits.

1.4 That on the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well on facts while passing order under section 250 of the Act in a hurry and arbitrary manner by deciding an appeal by passing the Order without examining the case on merits.

Ground No. 2: Disallowance of Rs.69,46,63,93 1 on account of filing of Form 56F after specified due date.

2.1 That on the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well on facts in denial of deduction under section 10AA read with section 44AB of the Act and Rule 16D of the Income-Tax Rules, 1962 ("The Rules") ignoring the facts that the assessee has filed Form 56F along with ROI.

2.2 That on the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well as on facts while denial of deduction without calling for the reason for delay in filing of Form 56F wherein the appellant has appointed consultant for all Income Tax compliances including filing of Form 56F and relied on the expertise and professional services of the consultant for the timely and accurate filing of necessary forms and documents. However, the consultant failed to file Form 56F within the stipulated time and has never informed the Appellant that Form 56F was filed delayed and the appellant was, for the first time, came to know regarding the delayed filing on receipt of the Order of Ld. CIT(A) mentioning the reason as delayed filing. Hence, penalizing the appellant by denying the deduction for a delay caused by an external expert consultant, without having any reason to doubt that the expert consultant will make such delay, is unjust and contrary to the principles of fairness and equity and accordingly, the denial of deduction u/s 10AA of the Act was bad in law.

Without Prejudice to the contention that delay in filing of Form 56F by consultant of which the Appellant was not aware:

2.3 That on the facts and circumstances of the case, CIT(A) has erred both in law as well on facts and failed to appreciate that the filing of the report in Form 56F on or before one month prior to filing of return of income is procedural and directory in nature. Hence, the denial of deduction u/s 10AA of the Act was unsustainable in law.

2.4 On facts and circumstances of the case, CIT(A) has erred both in law as well as on facts not appreciating the fact that, there was no material intent/objective to be achieved by the appellant in delayed e-filing of Form 56F for claiming deduction under section 10AA of the Act.

2.5 On facts and circumstances of the case, CIT(A) has erred both in law as well as on facts by not appreciating that beneficial provisions should be given a liberal construction and once the assessee has satisfied all the other conditions laid down for claiming deduction under section 10AA of the Act. The same should not be denied for a procedural delay wherein the prescribed conditions for the benefit were fully complied and the requisite form was also filed before any intimation of delay by the Department.

2.6 On facts and circumstances of the case, CIT(A) has erred both in law as well as on facts by not using the powers to examine the eligibility of deduction under section 10AA of the Act.

2.7 On facts and circumstances of the case, CIT(A) has erred both in law as well as on facts while comparing the statute of section 10AA of the Act with provisions of section 10AB of the Act in denying the deduction claimed by the assessee.

Hence, Appeal.

3. Ground No.3: Disallowance of Rs. 6,57,036 on account of write back of sundry payables as deemed income under section 41 of the Act.

3.1 That on the facts and circumstances of the case, Hon'ble CIT(A) has erred in holding that the sundry creditors written back amounting to Rs. 6,57,036 u/s 41 of the Act as reported in clause 25 of Tax Audit Report ("TAR) has not been offered to tax.

3.2 That on the facts and circumstances of the case, Hon'ble CIT(A) has erred in making addition under section 41 of the Act without appreciating the fact that expense on account of sundry balance written off as grouped

in the head of 'other expenses' in financials and duly claimed in computation of income amounting to Rs. 1,41,18,767 is after netting off sundry balance written back amounting to Rs. 6,57,036 and therefore the action of making addition is bad in law.

3.3 Ld. CIT(A) erred in law as well as facts by holding that no record found to substantiate the aforesaid fact from ITR Form filled and, in the order, ld. CIT(A) has quoted the extract of ITR in his order to establish that the amount was not disclosed. However, the ITR extract quoted in the order by ld. CIT(A) is not of the appellant. This shows that order passed by the ld. CIT(A) was completely in hurry, with prejudice mindset against the appellant, without application of mind and relying on incorrect facts.

3.4 Ld. CIT(A) erred in law as well as facts in comparing data furnished in Tax Audit Report filed by the appellant for the subject year with disclosure made in the ITR Form which was not of the appellant. The extract the wrong ITR was quoted in the order also, referred as ITR filed by the appellant and held that there is inconsistency in ITR and TAR filed by the appellant.

Hence, Appeal.

4. Ground No. 4: Leave to alter, amend and substitute

The appellant craves leave to add, alter, delete, rectify and modify any of the grounds of appeals before or at the time of hearing the appeal.”

2. Fact in brief is that the assessee has filed return of income for A.Y. 2021-22 on 12.03.2022 and intimation u/s 143(1)(a)(ii) was issued on 23.12.2022 intimating proposed adjustment of Rs. 69,46,63,931/- in respect of deduction claimed u/s 10AA of the Act. Thereafter vide intimation u/s 143(1) of the Act, the CPC has disallowed the claim of deduction u/s 10AA of the Act.

3. The assessee filed appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee submitted that it had filed rectification application u/s 154 of the Act and the assessing officer had passed order u/s 154

of the Act on 06.09.2023 and allowed the claim of deduction u/s 10AA of the Act. Therefore, he requested the ld. CIT(A) that appeal filed may be allowed to be withdrawn. However, the ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The CPC vide intimation u/s 133(1) dated 28.12.2022 has disallowed the claim of deduction u/s 10AA in the case of the assessee, therefore, the assessee has filed appeal before the ld. CIT(A). Before adjudication of the appeal, the assessee has brought to the notice of the ld. CIT(A) that its rectification application was moved before the jurisdiction of the Assessing Officer and order u/s 154 of the Act was passed on 06.09.2023 by which the claim of deduction u/s 10AA has been allowed to the assessee. Therefore, requested that appeal filed before the ld. CIT(A), we allowed to be withdrawn. However, the ld. CIT(A) has dismissed the appeal of the assessee holding that CPC has rightly disallowed the claim of deduction u/s 10AA of the Act since the assessee failed to furnish the audit report in Form No. 56F within the specified due date u/s 44AB of the Act.

5. After perusal of the material on record, we find that the intimation issued u/s 143(1) by the CPC against that the ld. CIT(A) has passed order u/s 250 of the Act on 13.12.2023 has already been rectified vide order passed u/s 154 of the Act on 06.09.2023 and the claim of deduction has been allowed. Therefore, we consider that the appeal filed by the assessee before the ld. CIT(A) should be treated as withdrawn because of rectification order already passed by the Assessing Officer before passing the order u/s 250 of the Act by the ld. CIT(A). Therefore, the ground of appeal no. 1 of the assessee is allowed. Since, we have allowed the ground no. 1 of the appeal of the assessee for treating the

appeal as withdrawn before the Id. CIT(A), therefore, other ground of appeal filed by the assessee become infructuous and not required any adjudication. Accordingly, the appeal of the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06.09.2024.

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

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 06.09.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai