

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं

श्री संजय अवरुथी, लेखा सदस्य
के समक्ष

Before

PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1199/KOL/2024
Assessment Year: 2018-19

Anup Kumar Agarwal.....*Appellant*
[PAN: ACYPA 1971 A]

Vs.

CPC, Bangalore [ITO, Ward-43(1), Kolkata].....*Respondent*

Appearances:

Assessee represented by: Soumitra Choudhury, Adv.

Department represented by: Bibekananda madhu, JCIT, Sr. DR.

Date of concluding the hearing : September 12th, 2024

Date of pronouncing the order : September 19th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

The instant appeal filed by the assessee is time barred by 5 days. The appellant has filed an affidavit explaining the reasons for delay and the contents of the same are extracted as under:

"I, Sri Anup Kumar Agarwal, son of Late Babulal Agarwal, aged about 61 years, by religion Hindu, of 80, Jawpur Road, Dumdum, Kolkata-700074, do hereby solemnly affirm and state as follows:

1. That the appellate order passed by the C.I.T.(A)-NFAC, Kolkata on 20.03.2024 and received by the assessee on 20.03.2024 through LT. Portal,

so the statutory date of filing the appeal after 60 days was 19.05.2024. The appeal is to be filed on 24.05.2024 i.e. after 5 days of delay.

2. That the Memorandum, grounds of appeal prepared by A/R. Sri Soumitra Choudhury, Advocate and duly signed by me on 17.05.2024 and handed over to my accountant Sri Binod Singh, but he was absent on 18.05.2024 to 22.05.2024 and suffering from viral fever. Then he resumes his work on 23.05.2024 and handed over to my A/R. on 23.05.2024 and deposit the challan fees on the same day, but 23.05.2024 is National Holiday, therefore, filed on 24.05.2024, thereby delay of 5 days which is very negligible and may kindly be condoned.

3. Under the abovementioned facts and circumstances your goodself is requested to condone the said delay and to hear the appeal on merits at the end of justice.”

1.1. Considering the explanation submitted during the course of oral submissions on the date of hearing and the contents of the affidavit (*supra*) the appeal is admitted for adjudication in the interest of substantive justice.

2. In this case the Assessing Officer (hereinafter referred to as ld. 'AO'), CPC Bengaluru passed a processing order dated 20.05.2019 through which the AO made an addition of Rs. 11,20,292/-. Admittedly, this addition was made by considering the income from proprietary business as an item of addition. For the sake of facts, the appellant is proprietor of one M/s. Maruti Packaging Industries and has prepared accounts for the proprietary business as also in his individual capacity, but in the computation of income two sets of accounts have been combined for working out the taxable income. Aggrieved with this action, the appellant approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)']. However, the ld. CIT(A) has recorded a finding that it was not clear that under which head of income the proprietary business was disclosed. He thereafter, preceded to confirm the addition made.

2.1. Due to this action of ld. CIT(A), the appellant has approached the ITAT through the following grounds of appeal:

“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 20.03.2024 which is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, that while issuing intimation u/s. 143(1) could not deny the expenditure claimed by the assessee as the same does not come within the ambit of 'an incorrect claim apparent from any information in the return', therefore, enhanced the gross total income made by the CPC was without jurisdiction which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

4. For that the Ld. CIT(A) has erred both in law and fact by upholding the order dated 20.05.2019 passed u/s. 143(1) of the LT. Act making addition amounting to Rs.11,20,292/- by the A.O. (CPC), Bangalore without considering the computation of income reported by the assessee in ITR, as such his finding is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, that while processing the return u/s. 143(1) of the LT. Act, the A.O. (CPC) was wrong in holding the income of proprietary business amounting to Rs.11,23,048/- twice, therefore, the total income has been increased and assessed the income Rs.16,97,870/-, against return income at Rs.577,570/- which is confirmed by the Ld. CIT(A), although the assessee has in depth explained and submitted cogent evidence.

6. For that the charging interest u/s. 234A, 234B & 234C amounting to Rs.2,784/-, 38,976/- and Rs.14,674/- respectively which are mechanically wrong and illegal.

7. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. Before us the ld. AR has filed a short paperbook in which he demonstrated that the accounts for the proprietary business and in individual capacity were prepared separately but consolidated for the purposes of computation of income. Accordingly, the net profit of Rs. 11,23,047.84 was transferred to the individual account and ultimately an amount of Rs. 3,71,940.18 was transferred to the capital account. Thereafter, the ld. AR took us through the computation of income in which all the relevant amounts were demonstrably available for the purposes of taxation.

3.1. The ld. DR relied on the order of ld. CIT(A).

4. We have carefully considered the impugned order, the documents filed before us and also considered the arguments advanced. It is clear that in case

the action of Id. AO/CIT(A) is to be believed then there would be a double addition of an amount which is already considered in the computation of income. At this stage, we would like to reserve our judgement on whether at all it was within the legal brief of the Id. AO to make an adjustment of this kind u/s 143(1) of the Income Tax Act, 1961 (in short the 'Act'), but suffice it to say that the addition so made cannot be sustained on the basis of the facts before us.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 19th September, 2024.

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 19.09.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Anup Kumar Agarwal, 80, Jawpur Road, Dumdum, Kolkata, West Bengal, 700074.**
- 2. CPC, Bangalore [ITO, Ward-43(1), Kolkata].**
- CIT(A)-Aurangabad.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata