

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 344/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Bhavesh Jagmalbhai Gohil 4, Vaibhav Bungalows, Near Gulab Tower, Sola Road, Thaltej, Ahmedabad, Gujarat, 380059	बनाम/ Vs.	Commissioner of Income Tax (Appeals) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALQPG3761M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Hardik Vora, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri N. J. Vyas, Sr. DR

Date of Hearing	12/09/2024
Date of Pronouncement	01/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 17.10.2023 for the Assessment Year 2017-18.

2. There was a delay of 69 days in filing of this appeal. The assessee has explained that the delay has been caused for the reason that the order of the Ld. CIT(A) was received on the email of his erstwhile Consultant who did not inform him in time and which lead to this delay. Considering the explanation of the assessee, the delay in filing of the appeal is condoned.

3. The brief facts of the case are that the return of income for A.Y. 2017-18 filed by the assessee on 31.03.2018 declaring total income of Rs.11,21,210/-. The case was selected for limited scrutiny to examine the deduction against the income from other sources. In the course of assessment, the deduction of Rs.30,13,811/- claimed under Section 57 of the Income Tax Act, 1961 (in short 'the Act') was disallowed and the assessment was completed u/s. 143(3) of the Act on 19.11.2019 at total income of Rs.41,35,021/-.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

5. Now, the assessee is in appeal before us and has taken following grounds in this appeal:

"In the case of BELAVESH JAGMALBHAI GOHIL, 4 VAIBHAV BUNCLOVIS PARTIIL OPE JAL CAMPUS CILAS TOWER, AHMEDABAD, 380059, Gujarat, having PAN: ALOPG3761M. AY 2017-18.

1. *The CIT(A) NFAC has erred in confirming the addition of Rs.30,13,811/- by ITO without following any parameter prescribed in law hence order of CIT(A) NFAC may be set aside and impugned addition by AO be ordered to be deleted.*
2. *The CIT(A) NFAC has erred in not appreciating the explanation submitted before AO requesting for estimation of income a/s 44AD, therefore the order of CIT(A) NFAC may be set aside and impugned addition by AD be ordered to be deleted.*
3. *The CIT(A) NFAC has erred in confirming the decision of AO in rejecting the coin of the Assessee on technical basis, therefore, the order of CT(A) NFAC may be set aside and impugned addition of Rs 30,13,811/- by AO be ordered to be deleted.*
4. *The CIT(A) NFAC bus erred in denying adequate opportunity of being heard, therefore, may please be set aside as the same is issued in a premeditated manner without following the principle of natural justice."*

6. Shri Hardik Vora, Ld. AR appearing for the assessee submitted that the assessee had disclosed salary income, business income, income from house property and interest income in his return of income. However, the deduction of Rs.30,13,811/- was wrongly claimed u/s.57 of the Act in the return of income. The entire expenses of Rs.30,13,811/- was in respect of business activity carried out by the assessee, the details of which was furnished before the AO and a request was made that the business income of the assessee may be computed on presumptive basis u/s.44AB of the Act. The assessee had further submitted before the AO that he was unable to rectify his return as the system was not allowing to file rectified return for the reason that the original return was filed in Form ITR-2, whereas the rectified return was to be filed in Form ITR-3. The Ld. AR submitted that the Ld. CIT(A) has dismissed the appeal of the assessee for the reason that no compliance could be made before him. He explained that all the notices were received by the erstwhile Consultant who neither made the compliance before the Ld. CIT(A) nor informed the assessee in this respect. He, therefore, requested that the matter may be set aside to the file of the Ld. CIT(A) for re-adjudication of the matter on the merits of the case.

7. Per contra, Shri N. J. Vyas, Ld. Sr. DR supported the order of the Ld. CIT(A). He submitted that neither the assessee had made any compliance before the Ld. CIT(A) nor any request for any adjournment was sought before him, in spite of receiving all the communications sent by him.

8. We have carefully considered the rival submissions. It is found that the Ld. CIT(A) had allowed opportunity to the assessee on 19.09.2023, on 28.09.2023 and then on 13.10.2023, but no compliance was made by the assessee on any of the dates. Under the circumstances, the Ld. CIT(A) had dismissed the appeal for non-prosecution. On merits, he has simply upheld the disallowance as made by the AO. It is found from the assessment order that the expenses of Rs.30,13,811/- claimed u/s. 57 of the Act was in respect of electric installation work, civil material expenses, civil supervision expenses and civil job work and other expenses. It is, thus, evident that all these expenses were connected with job work contractual work done by the assessee and was wrongly nomenclatured for deduction u/s.57 of the Act. While the AO had rightly disallowed the claim for deduction made u/s.57 of the Act, the AO did not examine the submission of the assessee that these expenses should be allowed as deduction under head of business. The AO has also not given any comment on the eligibility of these deductions under business head. Neither the submission of the assessee to compute the business income of the assessee on presumptive basis u/s 44AD of the Act was commented upon by the AO. These aspects were also not examined by the Ld. CIT(A) for the reason that no compliance was made before him.

9. Once the assessee had admitted that there was a mistake in the return filed by him, the assessee should have been allowed opportunity to rectify the said mistake by filing a revised claim in the course of assessment proceeding, which was not done by

the AO. We, therefore, deem it necessary to set aside the matter to the file of the Ld. CIT(A) to examine the claim of assessee on merits and thereafter determine the real and correct income of the assessee. However, **since the assessee has not given any explanation for non-compliance made before the Ld. CIT(A), we deem it appropriate to impose a cost of Rs.5,000/- (Rupees five thousand only) on the assessee** which should be deposited to the Prime Minister National Relief Fund within a period of 15 days from the receipt of this order and a copy of the payment receipt should be filed with the Registry. The Ld. CIT(A) will proceed in the set aside matter only after verifying the payment of the cost by the assessee. The assessee is further directed to make compliance before the Ld. CIT(A) and should not seek adjournment without any valid reason. In case of non-compliance on the part of the assessee, the Ld. CIT(A) will be free to pass the order as deemed fit.

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

This Order pronounced on	01/10/2024
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 01/10/2024
S. K. SINHA

(True Copy)