

आयकर अपीलीय अधिकरण न्यायपीठ, पटना।
IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
&
SHRI DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No. 361/PAT/2023
Assessment Year: 2014-15

Anil Kumar M/s Raj Trading Company, Harnaut, Nalanda, Patna-803110 Bihar [PAN : AZOPC268H]	Vs	National Faceless Assessment Centre NFAC, Delhi
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri AK Rastogi, Sr. Adv.
Revenue by :	Shri Ashwani Kumar, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : 12.09.2024
घोषणा की तारीख /**Date of Pronouncement** : 03.10.2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The captioned appeal filed by the assessee is directed against the order of National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 30.05.2023, which is arising out of the assessment order u/s 147 read with section 144B of the Income-tax Act, 1961 (the Act) dated 22nd August, 2021, framed by Income Tax officer, NFAC.

2. The registry has informed that the appeal is time barred by 46 days. The assessee had filed an application for condonation of delay. Perusal of the same indicates that the assessee did not come to know about the impugned order as he is not well versed with the technology advancement about the notices of hearing given through mails. When the

assessee was asked to deposit the remaining tax liability then the assessee came to know about the dismissal of appeal by learned CIT (A). We considering the said reason and also observing that assessee would not have gain anything by delay in filing the appeal, condone the delay in the interest of justice and admit the appeal for adjudication.

3. The assessee has raised following grounds of appeal:-

“For that the Ld. CIT(A) has erred in holding that the appellant has sought adjournment on one pretext or the other and is not interested in making any submission in response to various grounds of appeal raised by him.

2. For that the Ld. CIT(A) has erred in recording an incorrect finding of non-submission of ground-wise written submission whereas the fact remains that the appellant has uploaded the ground-wise written submission way back on 19/05/2023 and much before the date of compliance on 22/05/2023 in response to notice dated 15/05/2023.

3. For that the Ld. CIT(A) has erred in holding that Ground No.1, 3, 4, 5, 7, 9, 12, 14 & 15 are general in nature and does not require any separate adjudication especially considering the fact that the appellant has not furnished any submission in support of the grounds and therefore, these grounds remained unsubstantiated.

4. For that the Ld. CIT(A) has erred in holding that the AO has given proper opportunity of being heard and that the appellant has not availed the opportunity so granted and there is no violation of principles of natural justice on the part of the Assessing Officer.

5. For that the Ld. CIT(A) has erred in affirming the initiation of proceedings u/s 147/148 of the Act by the Assessing Officer and accordingly dismissed the grounds assailing the very reopening of assessment.

6. For that the Ld. CIT(A) has erred in relying on judgments for upholding the initiation of proceedings u/s 147/148 that too without confronting the appellant with the same.

7. For that the Ld. CIT(A) has erred in holding that there has been escapement to the extent of Rs. 1,44,000/- in the original assessment proceedings in view of Section 40(a)(ia).

8. For that the Ld. CIT(A) has erred in holding that the appellant has not fulfilled his obligation in view of judgment of Apex Court in the case of GKN Driveshaft and therefore, the question of its non-compliance on the part of the AO does not arise.

9. For that the Ld. CIT(A) has erred in holding that in absence of any proof of deduction of tax on payment of Rs.1,44,000/- under the head 'Accounting Charges'

u/s 194J, the disallowance of Rs. 1,44,000/- by the AO is justified in view of Section 40(a)(ia).

10. For that the order passed by the Ld. CIT(A) is wrong, illegal and unjustified in the facts and circumstances of the appellant's case.

11. For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before date of hearing.

12. For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.

13. For that the whole order is bad in fact and law of the case and is fit to be annulled.

14. For that the other grounds, if any, shall be urged at the time of hearing of the appeal.”

4. Though the assessee has raised 14 grounds of appeal but the sole grievance is against the disallowance u/s 40(a)(ia) of the Act at ₹1,44,000/- for the alleged non-deduction of tax at source u/s 194J of the Act on the accountancy charges debited in the profit and loss account at ₹1,44,000/-. The learned Authorized Representative submitted that the assessee has paid monthly salary to his accountant at the rate of 12,000/- per month and the same is not liable for deduction of tax at source.

5. On the other hand, the ld. DR supported the orders of the lower authorities.

6. We have heard the rival contentions and perused the materials available on record. We observe that the assessee is an individual running a sole proprietorship concern in the name of M/s Raj Trading Company and is engaged in the business of trading of potatoes and onions on wholesale basis income declared of ₹466470/- in the return for A.Y. 2014-15 furnished on 27th November, 2014. Case of the assessee was selected for scrutiny and assessment completed u/s 143(37 of the Act on 29th December, 2016 assessing income at ₹5,66,470/-. Subsequently, the ld. Assessing Officer based on the reason to believe that ₹1,44,000/- debited

in the profit and loss account has not been subject to TDS, issued notice u/s 148 of the Act and carried out the re-assessment proceedings. But since the assessee did not respond to the notices, the ld. Assessing Officer completed the reassessment proceedings making disallowance u/s 40(a)(ia) of the Act at ₹1,44,000/- for non-deduction of tax at source u/s 194J of the Act. Though assessee has filed the appeal before the ld. CIT (A) but failed to succeed.

7. We observe that the assessee has paid salary to his accountant at the rate of 12,000/- per month. We failed to find any merit in the action of ld. AO who has treated the salary as professional and technical fee. As the assessee had paid a salary to its accountant and the total sum paid as a salary is below the taxable limit, there was no liability to deduct the tax at source u/s 192 of the Act. Therefore, since the alleged sum of ₹1,44,000/- is a salary expenditure and not a payment towards Professional or Technical Services, no disallowance was called for u/s 40(a)(ia) of the Act for non-deduction of tax at source u/s 194J of the Act. We therefore, set aside the finding of ld. CIT (A) and delete the impugned disallowance of ₹1,44,000/- and allow, the effective ground of appeal raised by the assessee is allowed.

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

Order pronounced in the Court on 3rd October, 2024 at Kolkata.

Sd/-

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 03.10.2024

**SS, Sr.Ps*



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata