

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Vijay Pal Rao, Vice-President**  
**A N D**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No.987/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2018-19)

Baba Akhila Sai Jyothi Industries Private Ltd Hyderabad PAN:AADCB3413C	Vs.	Dy. CIT Circle 1 ( 1 ) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		Advocate A.V. Raghuram
राजस्व द्वारा / Revenue by::		Shri Srinath Sadanala, DR
सुनवाई की तारीख / Date of hearing:	02 / 12 / 2024	
घोषणा की तारीख / Pronouncement:	05 / 12 / 2024	

**आदेश / ORDER**

**Per Vijay Pal Rao, Vice President**

This appeal filed by the assessee is directed against the order dated, 6/8/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The assessee has raised the following grounds:

*"1. On the facts and in the circumstances of the case, the order of the learned CIT (A) is erroneous both on facts and in law.*

*2. The learned CIT (A) erred in sustaining the penalty of Rs.5,80,424/- levied by the Assessing Officer u/s 270A of the I.T. Act, 1961.*

*3. The learned CIT (A) failed to appreciate that the appellant has voluntarily offered for the disallowance of gratuity provision and that explanation offered by the appellant falls within the exceptions provided u/s 270A()(a) of the I.T. Act, 1961.*

*Tax Effect: Rs.5,80,424/-*

*4. Any other ground that may be urged at the time of hearing”.*

3. The learned AR of the assessee submitted that during the assessment proceedings, the Assessing Officer has noted from the audit report in Form 3CD that, the assessee has shown the provisions for payment of gratuity of Rs.9,30,140/- which is not allowable u/s 40A(7) of the I.T. Act, 1961. However, the assessee has not offered the said income in the return of income. The learned AR has further contended that, in response to the notice of the Assessing Officer, the assessee has filed reply, dated 30/11/2020 and explained the reason for not declaring the said income in the return of income as a bonafide and inadvertent mistake on the part of the assessee as well as the Tax Consultant of the assessee. He has further submitted that, the assessee has disclosed all relevant facts regarding the provisions for payment of gratuity which is duly reflected in the books of account as well as in the audit report in Form 3CD and therefore, in view of section 270A(6) that, if the assessee has offered an explanation which is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered, then the penalty u/s 270A is not leviable. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Price Water House Coopers Pvt Ltd vs. CIT (2012) 384 ITR 306 and submitted that the Bonafide and inadvertent mistake on the part of the

assessee while submitting the return is a human error and therefore, the assessee is not guilty of either furnishing inaccurate particulars of income or concealment of income.

4. On the other hand, the learned DR has relied upon the orders of the authorities below and submitted that, despite this fact was pointed out by the Auditor in the Audit Report, the assessee did not disclose this income in the return of income which tantamount to under reporting of income on the part of the assessee. He has referred para 6.2.4 of the order of the learned CIT (A) and submitted that the learned CIT (A) has relied upon the judgment of the decision of the Hon'ble Supreme Court in the case of MAK Data (P) Ltd vs. CIT (2013) 38 Taxmann.com 448 (SC).

5. We have considered the rival submission as well as the relevant material available on record. During the assessment proceedings, the Assessing Officer has made addition/disallowance u/s 40A(7) para 4 as under:

**“4. Disallowance u/s 40A(7) Gratuity Provision**

*On verification of Form 3CD, it is observed that and the column 21(e) relating to provision for payment of gratuity of Rs.9,30,140/- is not allowable u/s 40A(7) of the I.T. Act, 1961. On perusal of the return of income for the A.Y 2018-19, it is seen that the assessee has not offered as income.*

*In response to the notice issued, the assessee filed in his reply dated 30.11.2020 and received email in this office on 07/12/2020. The assessee submission was carefully considered. The disallowance of gratuity provision, the assessee has not submitted any supporting documents for the addition. In the absence of the supporting documents/evidences, an amount of Rs.9,30,140/- as Gratuity Provision is disallowed u/s 40A(7) and added to the*

*total income and brought to tax under the head "Profits and Gains of Business or Profession".*

*Addition: Rs.9,30,140/-“*

6. Thus, it is clear that the Assessing Officer noted this fact from the audit report of the assessee itself wherein the Auditor has pointed out that the assessee has made a provision for payment of gratuity of Rs.9,30,140/- which is not allowable u/s 40A(7) of the Act. Since the assessee did not offer this income in the return of income, the Assessing Officer issued a notice to the assessee which was responded by the assessee vide reply dated 30/11/2020 as under:



**BABA AKHILA SAI JYOTHI INDUSTRIES PVT. LTD.**

Date: 30.11.2020

To,  
The Assessing Officer,  
Additional/Joint/Deputy/Assistant Commissioner of Income Tax,  
National E-Assessment Centre,  
Delhi.

Respected Sir/Madam,

Sub: Submitting of Furnishing of Information – Regarding.  
Ref : Notice Under Sub-Section (1) of Section 142 of the Income Tax Act, 1961,  
DIN: ITBA/AST/F/142(1)/2020-21/1028681228(1), dt:20.11.2020.

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We are in receipt of the above referred Notice U/s Sub-Section (1) of Section 142(1) of the Income Tax Act, 1961, dt:20.11.2020. In this connection we state and submit that we have no objections to disallow the sum of Rs 9,30,140/- (Rupees: Nine Lakh Thirty Thousand One Hundred and Fourty Only),being the provision of gratuity allowance U/s GOA (1) of the I.T Act 1961,and we did not disallow in our Return of income.

Kindly acknowledge.  
Thanking You,  
Yours faithfully

For BABA AKHILA SAI JYOTHI INDUSTRIES PVT LTD

  
DIRECTOR



7. It is manifest from the reply of the assessee that, the assessee accepted the mistake of not disallowing the said amount in the return of income. Provisions of sub-section 6 of section 270A carves out an exception to section 270A which reads as under:

**“270A. Penalty for under-reporting and misreporting of income.**

(1).....to.....(5).....

(6)The under-reported income, for the purposes of this section, shall not include the following, namely:—

(a)the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;

(b)the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c)the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d)the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(e)the amount of undisclosed income referred to in section 271AAB.”

8. Therefore, no penalty shall be levied u/s 270A of the I.T. Act, 1961, if the amount of income in respect of which the

assessee offers an explanation to the satisfaction of the Assessing Officer/CIT (A) and the explanation is bonafide and the assessee has disclosed all the material facts, to substantiate the explanation offered. As it is manifest from the assessment order itself that, this amount was duly pointed out in the audit report of the assessee and, therefore, there was nothing more to be required to be disclosed by the assessee. Once the reason for not including this amount in the return of income has been explained as bonafide and inadvertent mistake, then the case of the assessee falls under sub-section 6 of section 270A of the I.T. Act, 1961. The Hon'ble Supreme Court in the case of Prive Water House Coopers Pvt Ltd vs. CIT (Supra) has held in para 17 to 20 as under:

*“17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and, indeed this has been acknowledged both by the Tribunal as well as by the High Court*

*18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.*

*19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total*

*income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*

*20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.”*

9. Thus, the bonafide and inadvertent error in not offering the income in the return of income, despite due diligence on the part of the tax professional, the assessee cannot be held guilty of under reporting/misreporting of income, inviting the levy of penalty u/s 270A of the I.T. Act, 1961. Accordingly, in the facts and circumstances of the case, and following the judgment of the Hon'ble Supreme Court in the case of Price Water House Coopers Pvt Ltd vs. CIT (Supra), we delete the penalty levied u/s 270A of the Act.

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

Order pronounced in the Open Court on 5<sup>th</sup> December, 2024.

Sd/- <b>(MANJUNATHA, G)</b> <b>ACCOUNTANT MEMBER</b>	Sd/- <b>(VIJAY PAL RAO)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 5<sup>th</sup> December, 2024

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Baba Akhila Sai Jyothi Industries P Ltd, Flat No.C-4, House No.8-1-284/OU/314, 3 <sup>rd</sup> Floor, OU Colony, Manikonta Road, Shaikpet, Hyderabad 500008
2	Dy. CIT, Circle 1(1) IT Towers, AC Guards, Masab Tank, Hyderabad-04
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*