

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No. **1099/SRT/2024** (AY 2018-19)

(Physical court hearing)

Binay Rambahal Singh 112, Sankaip Row House Society Ugat Canal Road, Jahangira Bag. Near Prabhudarshan Society, Surat-394 130 [PAN : AZYPS 7939 M]	बनाम Vs	Income Tax Officer, Ward-2(3)(6), Surat, Aayakar Bhavan, Majura Gate, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Ms. Anchal Poddar, AR & Shri Avinash Poddar, AR
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	15.01.2025
उद्घोषणा की तारीख/Date of pronouncement	21.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income Tax, (Appeals)/Addl/JCIT(A)-9, Mumbai [for short to as "Ld.CIT(A)] dated 29.08.2024 for assessment year (AY) 2018-19, which in turn arises out of assessment order passed by Centralized Processing Centre/Assessing Officer under section 139 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 23.03.2020. On perusal of record, we find that the Registry of this Bench has calculated delay of 1620 days in filing appeal. However, on perusal of record, we find that impugned order was passed on 29.08.2024 and present appeal was filed on 28.10.2024. Thus, the appeal is filed well within prescribed period of limitation. Such delay is calculated due to topographical mistake in

Form-36, wherein date of communication of order is mentioned as "23.03.2020". Thus, the appeal filed within time limit, the defect pointed out by the Registry is removed.

2. Rival submission of both the parties have been heard and record perused. The Ld. Authorized Representative (Ld.AR) of the assessee submits that though assessee has raised multiple grounds of appeal, however, substantial ground of appeal relates to disallowance of employer contribution to PF/ESIC. The Ld. AR of the assessee submits that due to inadvertent mistake in audit report by Tax Auditor, who wrongly submitted employees' share of contribution in column-20(b) of tax audit report. In fact, actual contribution of employees' share of PF is Rs.61,39,988/- and ESIC contribution of Rs.7,16,036/- and remaining employer's contribution on account of PF is Rs.67,25,981/- and ESIC contribution of employer's is Rs.17,85,745/-. Thus, disallowance, if any, should have been restricted to the extent of Rs.68,56,024/- out of total disallowance of Rs.1,53,67,750/-. The Ld. AR of the assessee submits that assessee filed application for rectification before CPC/Assessing Officer which was rejected and Ld.CIT(A) confirmed the action of CPC/Assessing Officer. The Ld. AR of the assessee furnished such bifurcation along with rectified/corrected tax audit report on record. The Ld. AR of the assessee submits that before Ld.CIT(A) assessee has raised additional ground of appeal about inadvertent mistake by tax audit report in reporting employees' contribution in Point No.20(b)/ column 20(b) in Form-3CB, wherein by mistake it has been reported Employer and Employee contribution. The additional ground of appeal was not considered by Ld.CIT(A). Copy of screen shot of

ITBA Portal about submission of additional ground of appeal with additional submission is also placed on record. The Ld.AR of the assessee submits that he has no objection if such excess disallowance is allowed subject to verification by Assessing Officer. The Id. AR of the assessee furnished following details of employees' and employer contribution and the relief sought:

Particulars	Amount in Tax audit Report and Intimation u/s 143(1)	Actual amount of Employee's Share of Contribution	Relief Sought
PF(A)	1,28,65,969	61,39,988	67,25,981
ESIC(B)	25,01,781	7,16,036	17,85,745
Total C = (A+B)	1,53,67,750	68,56,024	85,11,726

3. The Ld. AR of the assessee also submitted that constitutional validity of provisions of Section 36(1)(va) alongwith Explanation-2 and Explanation-5 to Section 43B of the Act are challenged before the Hon'ble Jurisdictional High Court in Special Civil Application No. 270 of 2022, which has been admitted for hearing vide order dated 11/01/2022, thus, in case, said Writ Petition is allowed, the Assessing Officer may be directed to allow similar relief to assessee. Copy of order dated 11/01/2022 in said Writ Petition is also filed.
4. On the other hand, Ld. Sr-DR for the Revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that there was no mistake apparent in the order of CPC, as the CPC processed the return of income as per details provided in return of income and in tax audit report. Since there was no mistake apparent in the order of CPC, thus, the Id. CIT(A) rightly confirmed the order/adjustment made by CPC. So far as reliance on anticipated

decision of Hon'ble Jurisdictional High Court in Special Civil Application No. 270 of 2022, is concerned, the same petition is not filed by the assessee. The said petition is filed by A.S. Construction, which would not be helpful to the assessee.

5. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. Before us, Ld.AR of the assessee has raised limited prayer that employer contribution with regard to ESIC and PF was inadvertently mentioned as "Employer & Employee Contribution". The LD. AR of the assessee has also placed on record the bifurcation of employees' contribution and vis-à-vis ESIC/PF along with relevant details. We further find that before the Id. CIT(A), the assessee raised specific additional ground of appeal, which was not considered while passing the impugned order. Considering the fact that impugned disallowance/adjustment made by CPC is due to factual mistake committed by Tax Auditor. Therefore, considering the peculiar facts of the case, the additional ground of appeal raised by assessee before the Id. CIT(A) is admitted. Further considering the fact that the additional ground of appeal requires verification of fact, therefore, we deem it appropriate to restore the matter back to the file of Assessing Officer to verify further fact and allow proper relief to assessee in accordance with law. Needless to direct that before passing the order afresh, the Assessing Officer shall give reasonable opportunity to assessee. The assessee is also directed to file requisite details and explanation as and when called for. So far as reliance on the anticipated order in Special Civil Application No. 270 of 2022, is concerned, in our view, the same is not helpful to the assessee as the assessee

is not a party to such petition, therefore, at this stage, no specific direction in anticipation of order can be given to the Assessing Officer. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 21/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 21/01/2025

Dkp Outsourcing Sr.P.S*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत