आयकर अपीलीय अधिकरण 'ए" न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.455/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2020-2021)

National Contracting Company (India) Private Limited, No.32, Palani Centre, Vaidyaraman Street, Venkatanarayana Road, T. Nagar, Chennai 600 017.	**Vs.**	The Deputy Commissioner of Income Tax, Corporate Circle 4(1) Chennai.
[PAN: AAACR 8512M]		
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

अपीलार्थी की ओर से/ Appellant by	**:**	Shri. G. Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by	**:**	Shri. R. Mukundan, IRS, JCIT.
सुनवाई की तारीख/Date of Hearing	**:**	13.06.2024
घोषणा की तारीख /Date of Pronouncement	**:**	24.06.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal filed by the assessee is directed against the order of the Ld.Commissioner of Income Tax, Appeals ADDL/JCIT(A)-5 Mumbai ['CIT(A)' in short] dated 22.12.2023 for Assessment Year 2020-21.

2. The registry has noted delay of 1 days in filing the appeal. Considering the period of delay and reasons deposed at para 2 of affidavit given by Director of

assessee company, we find it sufficient cause hence condone the delay and admit the appeal for adjudication.

3. Brief facts of the case is that the assessee filed its return of income on 18.12.2020 declaring a total income of Rs.38,10,910/-. The return of income was processed on 26.12.2021 u/s 143(1) of the Income Tax Act, 1961 ('Act' in short). The CPC Bengaluru determined the total income at Rs.1,18,30,990/- and made following disallowances:

A) Disallowance of expense u/s 37 of the Act for Rs.90,240/-

B) Disallowance of Gratuity u/s 43B of the Act for Rs.79,25,442/-

C) Disallowance u/s 36 of the Act for Rs.4398/-

4. The only grievance raised by the assessee is that the Ld. CIT(A), erred in confirming the disallowance of Rs.79,25,442/- on the basis of audit report in the intimation generated u/s143(1) of the Act.

5. In the present case, the assessee has disclosed the gratuity paid of Rs.79,25,442/- as allowances under section 43B in 'Part-A OI Schedule under 10(b)' instead showing it under any other allowance 'Schedule BP A-33' Column in the Income Tax Return. The appellant has submitted that the said amount has been incorrectly claimed as deduction u/s 43B of the Act instead of claiming it under any other allowance in Schedule BP. Since there was no reporting of such amount by the auditor in its audit report in Form 3CD, CPC Bengaluru disallowed the same while processing u/s 143(1) of the Act.

6. In the mean while, appellant on 06.01.2022 filed Revised Tax Audit Report and revised ITR-6 for AY 2020-21. Vide rectification request dated 06.01.2022 also

prayed for to rectify the technical error u/s 154 of the Act. CPC Bengaluru vide order dated 30.06.2022 has not acceded to the prayer of assessee.

7. The appellant has also filed the appeal on 13.01.2022 before the ld.CIT(A) against the intimation order, however, disallowance of Gratuity u/s 43B of the Act for Rs.79,25,442/- has been upheld. The Ld.CIT(A) has given following findings while upholding disallowance:

> *''The CPC is bound the process the return of income as per the particulars furnished in the return of income. The appellant has reported the said amount under the incorrect head; therefore AO CPC has made the addition of the said amount to the total income as per the provisions of the Income Tax Act, 1961. It may be mentioned that if any incorrect particulars have been reported in the return of income, the only recourse available is, filing the revised return of income. There is no such provision in the Income Tax Act which allows to revise the particulars of income without filing a revised return of income. On perusal of CPC 2.0, it is seen that the appellant has not filed any revised return of income. Therefore, the claim made by the appellant during the appellate proceedings is not admissible as per the provisions of the Act".*

8. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

9. The Ld. AR before us filed a paper book running from pages 1 to 47 and contended that the sum of Rs.79,25,442/- was disallowed in the AY2020-21 for the reason that the assessee has disclosed the gratuity paid of Rs.79,25,442/- as allowances under section 43B in 'Part-A OI Schedule under 10(b)' instead showing it under any other allowance 'Schedule BP A-33' Column in the Income Tax Return. The appellant has further submitted that the said amount has been incorrectly claimed in part –A OI Schedule under 10 (b)' as deduction u/s 43B of the Act instead of claiming it under any other allowance in ''Schedule BP A-33'. As per the Ld. Counsel a genuine claim of the assessee cannot be denied merely on account of mismatch of an audit report in Form 3CD.

10. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. As discussed above, we note that the basis of making the disallowance is that such deduction was not mentioned in proper classification in Income Tax Return and also not reported in the tax audit report. We are of the considered view that inadvertent non-reporting in tax audit report by auditor is bonafide when when all details are available in ITR on records although such deduction was find mentioned in wrong classification in ITR as the discussed supra. Deductions based on the genuine claim of the assessee cannot be denied especially in the circumstances as narrated above. As such the assessee has claimed deduction u/s 43B of the Act and therefore in our considered view, the same should have been allowed by the authorities below.

12. The Allahabad High Court in CIT v. Dhampur Sugar Ltd [1973] 90 ITR 236 (ALL)] made a distinction between revised return and a correction of return. It held that:

> *There is distinction between a revised return and a correction of return. If the assessee files some application for correcting a return already filed or making amends therein, it would not mean that he has filed a revised return. It will retain the character of an original return. But once the revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of assessment.The same view has been taken in Gopaldas Parshottamdas v. Commissioner of Income-tax, [1941] 9 I.T.R. 130 (All.)".*

13. We also refer, Circular issued by the CBDT Circular No: 14 (XL-35) dated April 11, 1955. It states:

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should

(a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

14. The Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

18. ''The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as are sult of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting dehors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:

> *"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coal fields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizen shave a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."*

15. From the above, it is clear that the income of the assesse should not be over assessed even if there is a mistake made by the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining

the taxable income. In view of the above and after considering the facts in totality, we are of the view that the claim of the assessee cannot be denied for the reason that a deduction was mentioned in wrong classification in ITR especially in the circumstances where all other evidence is available on record suggesting the deduction in pursuance to the provisions of section 43B is available. Accordingly, we set aside the finding of the ld.CIT(A) and direct the AO to delete the addition made by him. Hence, the grounds of appeal of the assessee are allowed.

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

Order pronounced in the open court on 24th day of June, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated :24-06-2024
KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF