

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(Conducted through Virtual Court)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 10/Rjt/2023

निर्धारण वर्ष/Asstt. Year: 2019-2020

Maruti Enterprise, F-14, Mona Arcade, Nr. Bank of Baroda, Station Road Amreli, Amerli-365601. PAN: AAQFM2609H	Vs.	The ADIT(CPC), Bangalore.
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(Applicant)		(Respondent)
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Assessee by :	Shri DM Rindanil, AR
Revenue by :	Shri Ashish Kumar Pandey, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **08/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **20/03/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, arising in the matter of the intimation generated under s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2019-2020.

2. The only grievance raised by the assessee is that the Ld. CIT(A), erred in confirming the disallowance of Rs. 47,83,396/- in the intimation generated u/s 143(1) of the Act.
3. In the present case, the assessee has claimed deduction u/s 43B of the Act in the computation of income amounting to Rs. 47,83,396/- which was disallowed in the intimation generated u/s 143(1) of the Act dated 04/01/2021. It was disallowed on the reasoning that the claim made in the computation of income was not matching with the tax audit report. Thus, the addition was made for the sum of Rs. 47,83,396/- to the total income of the assessee.
4. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who has also confirmed the order of the AO.
5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.
6. The Ld. AR before us filed a paper book running from pages 1 to 77 and contended that the sum of Rs. 47,83,396/- was disallowed in the AY 2018-19 on account of non-payment in pursuance to the provision of section 43B of the Act. However, the same was claimed as deduction in the year under consideration on payment basis. But the same was disallowed on account of mismatch in tax audit report. As per the Ld. AR a genuine claim of the assessee cannot be denied merely on account of mismatch in the document. As per the Ld. AR all the details were available before the revenue about the disallowance made in the earlier AY and details of payment made in the year under consideration and therefore the same should have been allowed as deduction.

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

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the basis of making the disallowance is that such deduction was not claimed in the tax audit report. To our understanding, the tax audit report is a significant piece of evidence/ document but based on that the genuine claim of the assessee cannot be denied especially in the circumstances when other details are available on records. As such the assessee has claimed deduction u/s 43B of the Act on payment basis and therefore in our considered view, the same should have been allowed by the authorities below. We note that 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 a result 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 de hors 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.

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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 Coalfields 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 citizens have 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."

9. From the above, it is revealed that the income of the assessee 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 as it was not reported in the tax audit report especially in the circumstances where other evidence is available on record suggesting the deduction in pursuance to the provisions of section 43B on payment basis is available. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 20/03/2024 at Ahmedabad.

**Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
20/03/2024