

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.667/Bang/2020: Asst.Year 2018-2019

M/s.Kuberan No.229 & 230 Ground Floor Chickpet Bangalore - 560 095. <b>PAN : AAKFK2685F.</b>	v.	The Dy.Commissioner of Income-tax (CPC) Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.Suman Lunkar, CA  
Respondent by : Sri.Kannan Narayanan, JCIT-DR

<b>Date of Hearing : 02.09.2021</b>	<b>Date of Pronouncement : 03.09.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 27.08.2020. The relevant assessment year is 2018-2019.

2. Solitary issue that is raised is whether the CIT(A) is justified in confirming the disallowance made u/s 43B of the I.T.Act with respect to professional tax and GST.

3. Brief facts of the case are as follow:

The assessee is a partnership firm. For the assessment year 2018-2019, return of income was filed on 15.10.2018 declaring total income of Rs.1,22,45,120. The DCIT (CPC) passed intimation u/s 143(1) of the I.T.Act by assessing the total income at Rs.1,39,34,360. In the intimation, the income from business was computed at Rs.49,52,296 as against

Rs.32,63,060 returned by the assessee in the return of income. The addition in the intimation is due to the disallowance of Rs.16,89,236 made u/s 43B of the I.T.Act on account of delayed remittance of employees' contribution to ESI, PF, Professional Tax, GST for the period 01.04.2017 to 31.03.2018. According to the assessee, the remittances were made before the due date of filing of the return, i.e., 31.10.2018. However, in the audit report, inadvertently the above sums had been reported under clause 26i(B)(b) of Form No.3CD. According to the assessee, subsequently the error has been rectified and the above sums have been reported under clause 26i(B)(a) by filing a revised audit report on 14.06.2019.

4. Aggrieved by the intimation u/s 143(1) of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee. As regards the payment of GST and professional tax, the CIT(A) confirmed the addition since the revised audit report was not filed prior to the intimation u/s 143(1) of the I.T.Act. As regards the payment of PF and ESI, the CIT(A) allowed the claim of the assessee and deleted the addition. As regards the addition sustained by the CIT(A) for GST and professional tax, the finding of the CIT(A) reads as follow:-

*“6.4 An assessee who is required to furnish Audit Report u/s 44AB of the Act, file all the details through Audit report and the same is treated as submission / evidence / proof of any payment made by the Assessee, in absence of any other documentary submission. In the instant case, the Audit report was submitted and it has reflected in column 26i(B)(b) of the form number 3 CD that the GST and professional fee were not paid before the due date of filing of return. Therefore it is evident that the appellant has failed to furnish the evidence of*

*payment `along with such return'. Any rectification in the Audit report, which the Appellant had done one day prior to filing of Appeal, cannot be tantamount to furnishing `along with such return'.*

*6.5 In view of the above discussion, I am of the considered view that there is no occasion to interfere with the order of AO in disallowing the GST and professional tax amounting to Rs.14,49,931/- and Rs.5,400/- respectively. The addition of Rs.14,55,331/-, is therefore confirmed and the appeal of appellant against these additions are disallowed.”*

5. Aggrieved by the confirmation of addition to the extent of Rs.14,55,331, the assessee has filed this appeal before the Tribunal. The assessee has filed a paper book enclosing therein copy of the written submission filed before the CIT(A), copy of the intimation u/s 143(1) of the I.T.Act, copy of the audited financial statement for the relevant assessment year, copies of challan payment of the statutory dues, copy of the revised audit report in Form 3CB-3CD, etc. The assessee has also filed a compilation of case laws. The learned Counsel for the assessee submitted that the assessment was later completed u/s 143(3) of the I.T.Act wherein no disallowance was made u/s 43B of the I.T.Act. A copy of the same is placed on record (order dated 02.09.2020) The learned Counsel further submitted that the mistake in the audit report was rectified and revised audit report in Form 3CB-3CD has been duly filed. Therefore, it was stated that disallowance made u/s 43B of the I.T.Act is not warranted, since, the assessee has made good all the statutory dues to the Government account before the due date of filing of the return.

6. The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. Admittedly, the assessee had remitted all the statutory dues before the due date of filing of the return, i.e., on 31.10.2018. However, in the audit report, the above sum was inadvertently shown as not paid on or before the due date of filing of the return. Subsequently the error was rectified and revised audit report was filed on 14.06.2019. A copy of the revised audit report is on record at page 195 to 209 of the paper book filed by the assessee. The assessee has placed on record the assessment completed u/s 143(3) of the I.T.Act (order dated 02.09.2020). On perusal of the said order, it is seen that the income from business and profession was assessed at Rs.32,63,060 (the same figure disclosed by the assessee in the return of income). In the intimation u/s 143(1) of the I.T.Act dated 31.05.2019, the income from business and profession is taken at Rs.49,52,296. This is on account of addition made u/s 43B of the I.T.Act. Since the assessment has been completed u/s 143(3) of the I.T.Act, the demand raised u/s 143(1) of the I.T.Act gets effaced and only demand raised in assessment completed u/s 143(3) of the I.T.Act alone survives. Therefore, in real sense, there is no prejudice caused to the assessee.

7.1 Even otherwise, a mistake in the audit report, which is subsequently revised by filing a fresh audit report, the same has to be taken note in view of the order of the ITAT Kolkata Bench in the case of Shri Subhash Bose v. DCIT in ITA No.429/Kol/2015 (order dated 22.11.2017). The relevant finding of the Tribunal in the case of Shri Subhash Bose v. DCIT (supra) reads as follow:-

“9. We have heard rival submissions and gone through the facts and circumstances of the case. The main grievance of the assessee was that before making the disallowance the assessee was never given an opportunity to explain the discrepancy which was made in the auditor’s report. According to the ld. Counsel, sec. 43B of the Act is attracted only when the amount in question are debited to the P&L Account for the relevant assessment year but not paid within the specified date. According to him, in this case the fact is that the concerned liability of Rs.1,78,334/- was not out of the current year’s VAT expenses of Rs.9,83,648/- but brought forward from the earlier year. For substantiating this contention, the Ld. AR drew our attention to ledger account available at page 76 of the paper book which is the VAT outstanding account wherein we observe as on 01.04.2009, the opening balance is shown as Rs.1,79,337.50 and the closing balance is also shown as Rs.1,78,334.50 an amount of Rs.1,003/- was paid as per challan on 24.09.2009. Therefore, according to Ld. AR, the tax auditor claimed that the impugned unpaid VAT amounting to Rs.1,78,334/- was incurred in the previous year of 2009-10 was, therefore, not true at all but a mistake happened to the auditor and the assessee cannot be victimized for the error committed by the auditor. The Ld. AR submitted that in the year under consideration, a total VAT expenditure debited to the P&L Account was Rs.9,83,648/- which is evident from page 77 of the paper book, which is the VAT ledger account for the period from 01.04.2009 to 31.03.2010 which shows that entire amount has been debited by various parties and therefore, there was no unpaid liability on this account. The Ld. AR brought to our notice that the entire disallowance represents the VAT outstanding for the FY 2007-08 and 2006- 07 of Rs.18,027/- and Rs.1,60,307 respectively and in this matter the tax auditor duly reported concerned liabilities in their tax audit report i.e. C-21B(b) of F/No.3CD which was placed at pages 84, 85 and 100 of paper book. From page 85 it reveals that VAT not paid was to the tune of Rs.18,027/- (For 3CD of AY 2008-09 starting from page 80) and from page 100 shows Rs.1,60,307.50 not paid (which is Form No. 3CD for AY 2007-08 (starting from page 96 of paper book onwards). Therefore, according to the Ld. AR, the impugned sum were also added back in the computation of income for those assessment years and the Ld. AR drew our attention to ITR Acknowledgement and computation pages 78, 79, 90 and 91 of the paper book from where we find the facts to be correct. Therefore, in the aforesaid facts and circumstances, the disallowance on account of VAT not paid of Rs.1,78,334/- was made by the AO only because of erroneous auditor’s report and it has been brought to our notice how the error has occurred and we find that assessee’s contentions are backed by records, therefore, we being the final fact finding authority, find that it was the mistake of the auditor who has wrongly given the figures and made wrong observation because of which the AO made the disallowance. However, the AO before making the disallowance could have asked the assessee to explain before making the disallowance. The Ld. CIT(A) has also erred in not appreciating the contention of the assessee in right perspective, therefore, we are inclined to delete the addition made by the AO and confirmed by the Ld. CIT(A).”

7.2 In view of the aforesaid reasoning, we allow the appeal of the assessee. It is ordered accordingly.

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

Order pronounced on this 03<sup>rd</sup> day of September, 2021.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 03<sup>rd</sup> September, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bangalore
4. The Pr.CIT-2, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore