**IN THE INCOME TAX APPELLATE TRIBUNAL**
**KOLKATA 'SMC' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member)**

**ITA No. 1235/Kol/2018**
Assessment Year: 2010-11

***Paramarth Sadhak Sangh……Appellant***
***P-113, New Raipur Road (E)***
***Kolkata – 700 084***
***[PAN : AAATP 4767 F]***

***Vs.***

***ADIT (E), Circle-2/ Now I.T.O. (Exem), Ward-14, Kolkata……Respondent***

**Appearances by:**
*Shri V.N. Dutta, Advocate, appeared on behalf of the assessee.*
*Shri Kalyan Nath, Addl. CIT, Sr. D/R. appearing on behalf of the Revenue.*

Date of concluding the hearing : September 6th , 2018
Date of pronouncing the order : October 10th , 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This is an appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 25, Kolkata (hereinafter the 'Ld. CIT(A)'), passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2010-11.

2. The assessee is a trust and had filed its return of income declaring 'Nil' Income. The return was processed u/s 143(1) of the Act, and the taxable income was determined at Rs.9,00,000/- . The assessee claimed credit of TDS. The assessee's claim of an amount of Rs.27,298/-, was not allowed. Aggrieved the assessee carried the matter in appeal. The ld. First Appellate Authority, set aside the issue to the file of the Assessing Officer with a direction to examine the claim of the Trust u/s 2(15) of the Act.

3. Aggrieved the assessee is before us.

4. After hearing rival contentions, we find that the claim of the assessee u/s 11 of the Act has been disallowed by processing the return of income u/s 143(1)(a) of the Act. Such action is not in accordance with law. The issue whether the assessee is eligible for claim of exemption u/s 11 of the Act, or not requires factual verification and is a debatable issue. Such adjustments cannot be made by processing the return u/s 143(1)(a) of the Act. For this proposition we rely on the judgment of the Hon'ble High Court of Punjab and Haryana in the case of *Commissioner of Income-tax v. Khalsa Dewan [2008] 300 ITR 357 (Punjab & Haryana)*, wherein it has been held as follows:-

*We have heard learned counsel for the Revenue and perused the record.*

> *The material question which, in our view, requires to be decided is whether the Assessing Officer was justified in changing the status of the assessee from a trust to an AOP while processing the return under section 143(1)(a) of the Act. The scope and ambit of powers vested with the Assessing Officer for making prima facie adjustments at the relevant time was provided under the proviso to section 143(1) (a) of the Act and the same was confined only to such adjustments specifically enumerated in the proviso (i), (ii ) and (iii) of the Act. In the case of S. R. F. Charitable Trust v. Union of India [1992] 193 ITR 95, the hon'ble Delhi High Court held that as per the provisions of section 143(1) (a) of the Act the Assessing Officer could allow or disallow only such claims which were admissible/inadmissible on the basis of the returns and documents accompanying the return. It was also held that the Assessing Officer had no power to disallow the claim merely on the ground that no proof was furnished by the assessee. While interpreting clause (iii) of the first proviso to section 143(1) (a) of the Income-tax Act, 1961, it was held as under (page 98) :*
>
> *"The said clause clearly provides that the Income-tax Officer can make an adjustment to the income or loss declared in the return if, on the basis of the information available in such return, accounts or documents, the deduction, allowance or relief claimed is prima facie inadmissible. The conclusion that the claim of the assessee is inadmissible must, in other words, flow from the return as filed. No power is given to the Income-tax Officer to disallow a claim for the reason that there is no proof in support of the claim made by the assessee. In a way, the said clause (iii) of the proviso is analogous to section 154 of the Act. Where it is evident from the return as filed, along with the documents in support thereof, that a claim of the assessee is inadmissible, only then an adjustment under the said proviso can be made. If proof in support of the claim is not furnished by an assessee, then for the lack of proof, no disallowance or an adjustment can be made. The only option which is open to the Income-tax Officer, in such a case, is that he can require the assessee to furnish proof in which case he will presumably have to issue notice under section 143(2). This is also evident from the fact that, except for the documents specified, the assessee is not required to file the entire books of account or other documents along with the return. The proof in support of the claim may be evidenced from correspondence,*

*from the books of account or other documents and it is not the law, as we understand it, that, in support of a claim made in the return for deduction or non-taxability of a receipt, all the proofs available and original documents must be filed along with the return. It is apparent on a reading of the said provision that adjustment can be made only if there is information available in such return that prima facie a claim or allowance is inadmissible."*

*The same view was taken by the Delhi High Court in the case of Samtel Color Ltd. v. Union of India [2002] 258 ITR 1 and it was held as under (headnote) :*

*"A bare reading of section 143(1)(a) of the Income-tax Act, 1961, makes it clear that if, on the basis of the return filed by the assessee, any tax or interest is found due after adjustments, as set out in the section, an intimation has to be sent to the assessee specifying the sum so payable. Similarly, if any refund is found due to the assessee on the basis of the said return, it shall be granted. However, the first proviso to the section authorises the Assessing Officer to make certain adjustments while calculating the tax or interest payable or while granting refund. The adjustments permitted to be made are also specified under the proviso. Clause (iii) of the first proviso lays down that unless the return or the accompanying documents or accounts show that the deduction, allowance or relief claimed therein is prima facie inadmissible on the basis of information available in the said documents, such deduction or allowance claimed cannot be disallowed. The phrase 'prima facie' is not defined in the Act. In common parlance the phrase 'prima facie' means 'on the face of it'. Going by the literal and dictionary meaning of the phrase 'prima facie', for the purposes of adjustments under clause (iii) of the proviso, a deduction claimed must be inadmissible on the face of the return, documents and accounts accompanying it. If the deduction or allowance or relief so claimed is capable of a debate or requires further proof it cannot be made under clause (iii) of the proviso to section 143(1)(a) of the Act. It is not open to the Assessing Officer to make any adjustment in the returned income by disallowing any claim for deduction, allowance or relief, unless he is satisfied on the basis of information available in the return, documents and the accounts accompanying it, that such a claim is inadmissible on the face of it and there is no possibility of any debate thereon. If anything more is read into the power of the Assessing Officer to make unilateral adjustments it would render the provision wholly arbitrary and unreasonable because :*

*(a)* *a disallowance is made without giving an opportunity to the assessee to explain his view point in support of the deduction or allowance, and*

*(b)* *additional tax on the increased amount is charged from him arbitrarily. This would not only be in total violation of the principles of natural justice, it will also be not in consonance with the spirit of the provision to cause minimum inconvenience to the assessee and at the same time put the assessee on guard against claiming inadmissible deductions and allowances. No prejudice will be caused to the Revenue. In a given case where the Assessing Officer has any doubt about the allowability of deduction or claim made by the assessee, it is*

*open to him to issue a notice under sub-section (2) of section 143 and have the evidence in support thereof."*

*The hon'ble Kerala High Court in the case of CIT v. K.V. Mankaram and Co. [2000] 245 ITR 353, while interpreting the scope of section 143(1)( a) of the Act where the status of a firm was changed to an AOP, held as under (headnote) :*
*"The proceeding under section 143(1)(a) does not result in an order of assessment. The intimation given under section 143(1) (a) cannot be treated an order of assessment. It is only to be deemed an order for the limited purpose of sections 154, 246 and 264 of the Act. Under section 143(1)(a) of the Act, the intimation is deemed to be a notice of demand under section 156 of the Act. Except intimation, no other order is contemplated under section 143(l)( a). There is a distinction between an order of assessment and a notice of demand. Under section 246 also, a clear distinction is made between an intimation and an order of assessment. The Assessing Officer cannot, under section 143(1)(a), change the status of a firm to 'association of persons' which can be done under section 185 of the Act, at the time of assessment."*

*We are in respectful agreement with the judgements in Samtel Color Ltd.'s case [2002] 258 ITR 1 (Delhi) and K.V. Mankaram and Co.'s case [2000] 245 ITR 353 (Ker).*

*The scope and ambit of the powers vested with the Assessing Officer for making prima facie adjustments at the time of processing the return under section 143(1)(a) are very limited. The change of status of the assessee from trust to an AOP is not covered in the nature of adjustments mentioned in any of the provisos to section 143(1)(a) much less under the proviso (iii) of the said section. It is immaterial that the trust was not registered with the Commissioner of Income-tax and was not eligible for the exemptions under section 11 of the Act because there must be power vested with the Assessing Officer to allow or disallow the claim while processing the return which is not within the scope of section 143(1)(a) of the Act. It is not open to the Assessing Officer to make any adjustment in the returned income by disallowing any claim for deduction, allowance or relief, unless he is satisfied on the basis of information available in the return, documents and the accounts accompanying it, that such a claim is inadmissible on the face of it and there is no possibility of any debate thereon. If anything more is read into the power of the Assessing Officer to make unilateral adjustments it would render the provision wholly arbitrary and unreasonable.*
*In view of the above, no substantial question of law arises for the determination of this court and therefore, the present appeal is dismissed.*

4.1. It is also observed that the ld. CIT(A) has no power to set aside the matter for verification of facts and fresh adjudication by the Assessing Officer. Hence, the impugned appellate order, is not in accordance with law.

5. On the issue of claim of credit for TDS, the Assessing Officer is directed to verify the claim of the assessee and pass appropriate order, in accordance with law.

6. In the result, appeal of the assessee is allowed in part.

***Kolkata, the 10th day of October, 2018.***

Sd/-
[**J. Sudhakar Reddy**]
Accountant Member

Dated : 10.10.2018
*{SC SPS}*

*Copy of the order forwarded to:*
1.

2.

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches