

आयकर अपीलीय अधिकरण  
मुंबई पीठ "सी ", मुंबई  
श्री प्रमोद कुमार, उपाध्यक्ष एवं  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 1934/मुं/2021 (नि. व. 2018-19 )  
ITA NO.1934/MUM/2021(A.Y.2018-19)

Chetas Gulabbhai Desai,  
7-37 Kalyan Building,  
130-D Khadilkar Road,  
Mumbai 400 004

**PAN: AFLPD-4523-P**

..... अपीलार्थी /Appellant

बनाम Vs.

The Dy. Commissioner of Income Tax,  
Central Processing Centre,  
Bangalore -560 500

..... प्रतिवादी/Respondent

Appellant by : None  
Respondent by : Shri T. Shankar, Sr. DR

सुनवाई की तिथि/ Date of hearing : 14/01/2022  
घोषणा की तिथि/ Date of pronouncement : 04/03/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commission of Income Tax (Appeals), National Faceless Appeals Centre [in short the 'CIT(A)'] dated 25/08/2021, for the Assessment Year 2018-19.

2. The brief facts of the case as emanating from records are: The assessee filed his return of income for impugned assessment year on 03/10/2018

declaring total income of Rs.33,25,433/-. The return of the assessee was processed by Central Processing Centre (CPC) and intimation under section 143(1) of the Income Tax Act, 1961 [ in short ' the Act' ] dated 26/08/2019 was communicated to the assessee. The CPC while processing the return of income disallowed assessee's claim of expenditure towards Club membership, entrance fee and subscription fee aggregating to Rs.35.00 lacs. The assessee filed rectification petition u/s. 154 of the Act before the CPC on 24/09/2019. The CPC vide order dated 13/11/2019 rejected assessee's petition for rectification. Against the order passed by CPC u/s. 154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee holding that the disallowance sought to be rectified u/s. 154 of the Act is a debatable issue, hence, outside the purview of section 154 of the Act. Aggrieved by the aforesaid findings of the first appellate authority, the assessee is in appeal before the Tribunal.

3. Shri T. Shankar representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. The assessee during the period relevant to the assessment year under appeal had incurred expenditure of Rs.35.00 lakhs towards club membership, entrance fee and subscription fee. The aforesaid expenditure was claimed as business expenditure on the ground of commercial expediency. The said expenditure was also reflected in the Tax Audit Report under clause 21 of Form 3CD. The return of income was processed u/s. 143(1) of the Act and the aforesaid expenditure was disallowed. The assessee filed rectification petition u/s. 154

of the Act, the same was also rejected by the CPC. It is a well settled law that before disallowing any expenditure/making any addition, an opportunity of hearing has to be given to the assessee. In the instant case since return of the assessee was processed u/s. 143(1) of the Act, no opportunity was granted to the assessee to put forth his stand before disallowing the expenditure. In the First Appellate proceedings, the CIT(A) dismissed the appeal of assessee against the order passed u/s. 154 of the Act on the ground that the issue raised is debatable. If that be so, the CPC has erred in disallowing the assessee's claim of expenditure while processing the return of income u/s. 143(1) of the Act. The Revenue cannot in unilateral proceedings disallow expenditure without affording an opportunity to the assessee. What cannot be done u/s. 154 of the Act on the ground of debatability, cannot be done u/s. 143(1) of the Act to the assessee's claim on which two views are possible. A debatable issue cannot be a subject matter of adjustment u/s. 143(1) of the Act.

5. The Hon'ble Jurisdictional High Court in the case of Bajaj Auto Finance Ltd. vs. CIT reported as 404 ITR 564(Bom) has held that debatable claim cannot be disallowed by way of an intimation u/s.143(1) of the Act. The relevant extract of the observations made by Hon'ble High Court in this regard are reproduced herein under:

*“10. In the present facts, it is undisputed that the decision of Gujarat High Court was referred to in the computation of income. Thus, the Assessing Officer could not have disallowed the claim on a prima facie view that the same is inadmissible. In fact, there can be no dispute that even according to the Assessing Officer, the issue was debatable. This is evident from the fact when the applicant assessee had filed an application under section 154 of the Act for deletion of the adjustment made of provision of bad debts by intimation under Section 143(1)(a) of the Act, it was disallowed on the ground that it is a debatable issue. This itself would indicate that whether the claim of a provision for bad debts is deductible under Section 36(1)(vii) of the Act or not is debatable. Further, the*

*above claim for deductions as made by the applicant was by following the decision of the Gujarat High Court in Vithaldas Dhanjibhai (supra). Thus, a debatable issue. Therefore, the same could not have been disallowed by way of an intimation under section 143(1)(a) of the Act.”.*

6. In view of the undisputed facts and the decision of Hon'ble Bombay High Court, referred above, we find that the authorities below have erred in disallowing assessee's claim of expenditure in proceedings u/s. 143(1) of the Act and thereafter, rejecting assessee's application u/s. 154 of the Act. Ergo, the impugned order is set-aside and appeal by the assessee is allowed.

Order pronounced in the open court on Friday the 04<sup>th</sup> day of March , 2022.

Sd/-  
(PRAMOD KUMAR)  
उपाध्यक्ष/VICE PRESIDENT

Sd/-  
(VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/03/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**