

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER

आअसं.2065/मुं/2021 (नि.व. 2017-18)
ITA NO.2065/MUM/2021(A.Y.2017-18)
आअसं.2066/मुं/2021 (नि.व. 2018-19)
ITA NO.2066/MUM/2021(A.Y.2018-19)

Nilkanth Mahadev Bala Hanuman Mandir,
Motilal Nagar No.1, Shrirang Sabde Marg,
Near Post Office, Motilal Nagar,
Goregaon (W) Mumbai 400 104.

PAN: AABTN-6127-G

..... अपीलार्थी /Appellant

बनाम Vs.

Dy.Commissioner of Income Tax -31(2)(4),
CPC Bangalore,
Pratyakshakar Bhavan, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rajesh S. Athavale

प्रतिवादी द्वारा/Respondent by : Shri Anil Gupta

सुनवाई की तिथि/ Date of hearing : 18/05/2022

घोषणा की तिथि/ Date of pronouncement : 18/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] for assessment years 2017-18 and 2018-19,

respectively. Both the impugned orders are of even date i.e. 16/09/2021. Since, the issue involved in both appeals is identical, these appeals are taken up together for adjudication and are disposed of by this common order.

2. For the sake of convenience, the facts are narrated from appeal of assessee in ITA No.2065/Mum/2021.

ITA NO.2065/MUM/2021-A.Y.2017-18:

3. Shri Rajesh S. Athavale appearing on behalf of the assessee submitted that the assessee is a Trust and has filed its return of income for the impugned assessment year on 05/08/2017 declaring total income of Rs.7,51,910/-. The return was filed by the assessee in the status of Association of Persons(AOP). Since, the assessee is not registered u/s. 12A/12AA of the Income Tax Act, 1961 [in short ' the Act"], the assessee did not claim any deduction. The short grievance of the assessee is that while filing return of income, the assessee had offered income to tax under normal rates. The return of the assessee was processed u/s. 143(1) of the Act on 06/06/2018. The Assessing Officer /CPC without notice to the assessee taxed the income offered by the assessee on maximum marginal rate. Aggrieved by the higher rate of tax in an unilateral action by the Assessing Officer / CPC, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal without giving any finding on the scope of adjustment that could be made u/s. 143(1) of the Act. The Id.Authorized Representative for the assessee submitted that a perusal of section 143(1) of the Act would show that the return of income of the assessee could have been processed u/s. 143(1) only after making adjustment specified in clause (a) to section 143(1). The case of the assessee does not fall in any of the categories of adjustments specified in clause (a) (supra). The

Id. Authorized Representative for the assessee further contended that without admitting but assuming that even if adjustment was required to be made it could have only been possible after notice to the assessee. In the present case no notice was ever served on the assessee before applying maximum marginal rate of tax on the income returned. The Id. Authorized Representative for the assessee referred to the decision of Hon'ble Rajasthan High Court in the case of J.K.S Employees Welfare Fund vs. ITO 66 Taxman 447 and the decision of Kolkata Bench of the Tribunal in the case of Radha Raman Jew Trust Fund vs. ITO, 83 taxmann.com 159 to contend that without notice no adjustment could be made under section 143(1) of the Act.

4. Per contra, Shri Anil Gupta representing the Department vehemently defended the impugned order. The Id. Departmental Representative referring to the income tax return filed by the assessee pointed that in the return of income against the name of Trustees the percentage of shares is mentioned zero. Hence, the shares of Trustees are indeterminable, therefore, the assessee was liable to be taxed at maximum marginal rate.

5. We have heard the submissions made by rival sides and have examined orders of authorities below. The assessee in appeal has raised as many as four grounds assailing the finding of the CIT(A). However, the Id. Authorized Representative for the assessee has restricted his submissions to ground No.3 of the appeal only. The same reads as under:

“3. The learned CIT(A) erred in not directing the learned CPC/AO to delete the additional tax demand as the same is not permissible u/s. 143(1) of the Income tax Act and such adjustment cannot be made without issuing intimation to the assessee.”

6. The short contention of the assessee is that before making any adjustment while processing the return of income u/s. 143(1) of the Act, intimation should have been given to the assessee in accordance with proviso to section 143(1)(a) of the Act. In the case of assessee no notice was allegedly served before applying the maximum marginal rate of tax instead of normal rate of tax on the income returned. It is a well settled law that before making any adjustment which results in increase in the tax liability or reduction in the refund claim or loss, the assessee has to be served with a notice even if the assessment is completed u/s 143(1) of the Act. The proviso to section 143(1)(a) specifically provides that no adjustment shall be made unless (as specified in clause (a) to section 143(1) of the Act) intimation is given to the assessee of such adjustments either in writing or in an electronic mode. In case the response is received from the assessee within a period of 30 days from the date of such intimation, the same should be considered before making any adjustment. The principle of natural justice also demand that before passing any order which has the effect of enhancing the liability of assessee, an opportunity of hearing should be given to the assessee. In the instant case there is nothing on record to suggest that the notice was ever served on the assessee before applying maximum marginal rate of tax as against normal rate of tax offered by the assessee on the income returned. We find that the adjustment has been made in an unilateral proceedings in violation of the principles of natural justice, as well as mandate of Section 143(1)(a) of the Act, hence, the same is unsustainable. The assessee succeeds on ground No.3 of appeal.

6. The Id.Authorized Representative for the assessee has not made any submission on ground No.1,2 and 4 of the appeal. Since, we have allowed

ground No.3 of appeal, these grounds have become academic. Consequently, ground No.1,2 and 4 of the appeal are not deliberated upon.

7. In the result, appeal by assessee is allowed, in the terms aforesaid.

ITA NO.2066/MUM/2021-A.Y. 2018-19:

8. Both sides are unanimous in stating that the facts in assessment year 2018-19 are identical to the facts in assessment year 2017-18, therefore, the submissions made in respect of appeal for assessment year 2017-18 would equally apply to the appeal for assessment year 2018-19.

9. We find that the assessee has raised identical grounds of appeal in assessment year 2018-19. Since, the facts germane to the issue are identical, the findings given by us while adjudicating the appeal of the assessee for assessment year 2017-18 would mutatis mutandis apply to the appeal for assessment year 2018-19. For parity of reasons appeal of the assessee is allowed.

10. **To sum up, appeals of the assessee for assessment year 2017-18 and 2018-19 are allowed.**

Order pronounced in the open court on Wednesday the 18th day of May, 2022.

Sd/-

(S.RIFAUH RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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