

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI SMC BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Sandeep S Karhail (Judicial Member)]**

ITA No. 4963/Mum/2019
Assessment year: 2014-15

F.E. Dinshaw Charities

*C-1 Wadia International Centre,
Pandurang Budhakar Marg, Bombay Dyeing Premises,
Worli, Mumbai 400 025 [PAN: AAATF0029L]*

.....Appellant

Vs.

**Assistant Commissioner of Income Tax -CPC
Bangalore.**

.....Respondent

Appearances by:

Krupa Gandhi *for the appellant*

Sudha Ramchandran *for the respondent*

Date of concluding the hearing : 20/04/2022
Date of pronouncing the order : 15/07/2022

O R D E R

Per Pramod Kumar VP

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 29th May 2019, passed by the learned CIT(A) in the matter of processing of income tax return under section 143(1) of the Income Tax Act, 1961, for the assessment year 2014-15.

2. Grievances raised by the appellant are as follows:

GROUND I:

1. *On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-1 [CIT(A)] erred in upholding the order passed by the Assistant Commissioner of Income tax - CPC under section 143(1) of the act of disallowing the cost of acquisition of investments in the computation of capital gains and taxing the entire net consideration instead of only the capital gain/surplus from sale of capital asset while computing the total income chargeable to tax.*

2. *The CIT(A) erred in stating that exemption us II of the act was taken on purchase of said capital asset.*

3. *The Appellant prays that the AO be directed to allow the cost of acquisition of investments while computing the capital gain and tax only the net gain/surplus as claimed by the Appellant.*

GROUND II:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the order passed by the Assistant Commissioner of income tax - CPC of not allowing the Appellant exemption under section 11 (1)(a) of the act to the extent of 15% of income from property held under trust wholly for charitable or religious purposes.

2. The Appellant prays that the AO be directed to allow the exemption from income in a case where the Appellant inadvertently failed to mention the income in the desired column in the return filed.

GROUND III.

1. On the facts in the circumstances of the case and in law, the Appellant prays that the interest levied u/s. 234B and 234C of the Act be deleted.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is registered as a charitable institution under section 12A, and had accordingly claimed deduction under section 11. During the relevant previous year, the assessee had sold certain investment, in the mutual fund units, for Rs. 20,00,000/- which were said to have been acquired for Rs. 18,95,905/- on various dates. The assessee accordingly offered Rs. 1,04,995/- as income in computation of it's income. In the course of processing of the income tax return, however, the Assessing Officer declined the cost of acquisition, in it's computation of income, can brought entire amount of Rs. 20 lakhs to tax. It is case of the assessee that the assessee was not put to any notice in respect of this adjustment under section 143(1). When matter was carried in the appeal , learned CIT(A) confirmed action of the Assessing Officer, and observed *inter alia* as follows:-

6.3 I have carefully considered the facts of the case, oral contentions and written submissions of the assessee, the intimation u/s 143(1) of the Act and materials available on record. In this case, in the intimation u/s 143(1) of the Act, cost of acquisition in respect of capital asset to the tune of Rs.18,95,905/- has not been allowed by the AO and the entire sale consideration of Rs. 20 lakhs has been brought to tax as income of the appellant. The assessee in their submission referring to the provisions of Sec. 11(1A) of the Act has contended that in their case when the 'net sale consideration' has not been utilized for the acquisition of another capital asset, then for working out the taxable portion of such transaction, provisions of Sec.48 would be applicable. In respect of such contentions and submissions of the assessee it is stated that to an assessee which is registered u/s 12A/12AA, claim of deduction/exemption on the income applied or accumulated is allowed as per the provisions of sec. 11 of the Act. Accordingly, in the year when such capital asset is purchased, the same is claimed as deduction us 11 of the Act as application of income and therefore in the first instance the income utilized for acquisition of such capital asset never gets to taxed. Accordingly, it will be imperative that the 'net sale consideration' in the year of sale is taxed, without resorting to the computation as provided u/s 48 of the Act. In this view of the matter, the contention of the assessee that since no portion of their 'net sale consideration' has been used for acquisition of another asset only 'capital gains' to the extent and computed in accordance with the provisions of Sec.48 of the Act should be taxed, is not found to acceptable and is accordingly rejected. This ground of appeal is accordingly dismissed.

7.3 I have carefully considered the facts of the case, oral contentions and written submissions of the assessee, the intimation u/s 143(1) of the Act and materials available on record. The appellant in this ground has contended that the claim of Exemption u/s 11(1)(a) of the Act amounting to Rs.14,26,280/- should have been granted being mandatory in nature. In this regard, it is seen from the intimation u/s 143(1) of the Act that in Col.9 assessee has shown gross total income at Rs.37,23,228/-. Further, in Col. 10 assessee which is in respect of aggregate of income derived during the previous year and to the extent included in the total income has been mentioned as Nil. It is accordingly inferred that the appellant in their return of income have

either mistakenly or otherwise have mentioned that there is no income derived from the properties held under the trust during the year under consideration. When such mention is there in the return of income of there being no income derived from the properties held under the trust during the year under consideration, there cannot be a case of allowing deduction us 11(1)(a) of the Act, even if the same is being mandatory in nature. In this view of the matter and in the facts and circumstances of the case, the contention and submission of the assessee is not found to be acceptable and is therefore rejected. This ground of appeal is accordingly dismissed.

4. The assessee is aggrieved and is in appeal before us.
5. We have heard the rival contentions, perused the material on record, and duly considered facts of the case in the light of the applicable legal position.
6. During the course of hearing before us, one of the issues which came up for our consideration was whether such an adjustment could be done under section 143(1) of the Act, and whether the assessee was at all put to notice, as required under first proviso to section 143(1), before making the impugned adjustment. As evident from the file noting dated 20th April 2022, "the learned Departmental Representative is given liberty to file the details as to when communication under first proviso to section 143(1) was issued and details pertaining to the same, within a period of two weeks". Pursuant to the liberty so granted, however, no details were filed. It is in this backdrop, and to elaborate upon the manner in which adjustment which can be carried out under section 143(1), we may refer to the following observations by a co-ordinate bench in the case of *Kalpesh Synthetics Pvt. Ltd. vs. DCIT [(2022) 137 taxmann.com 476 (Mum)]*:-

Coming to the mechanism of application of section 143(1), we find that the first proviso to section 143 (1) mandates that "no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode" and, under the second proviso to section 143(1), "the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made". The scope of permissible adjustments under section 143(1)(a) now is thus much broader, and, as long as an adjustment fits the description under section 143(1)(a) (i) to (v), read with Explanation to section 143(1), such an adjustment, subject to compliance with first and second proviso to section 143(1), is indeed permissible. It is, however, important to take note of the fact that unlike the old scheme of 'prima facie adjustments' under section 143(1)(a), the scheme of present section 143(1) does not involve a unilateral exercise. The very fact that an opportunity of the assessee being provided with an intimation of 'such adjustments' [as proposed under section 143(1)], in writing or by electronic mode, and "the response received from the assessee, if any" to be "considered before making any adjustment" makes the process of making adjustments under section 143(1), under the present legal position, an interactive and cerebral process. When an assessee raises objections to proposed adjustments under section 143(1), the Assessing Officer CPC has to dispose of such objections before proceeding further in the matter- one way or the other, and such disposal of objections is a quasi judicial function. Clearly, the Assessing Officer CPC has the discretion to go ahead with the proposed adjustment or to drop the same. The call that the Assessing Officer CPC has to take on such objections has to be essentially a judicious call, appropriate to facts and circumstances and in accordance with the law, and the Assessing Officer CPC has to set out the reasons for the same. Whether there is a provision for further hearing or not, once objections are raised before the Assessing Officer CPC and the Assessing Officer CPC has to dispose of the objections before proceeding further in the matter, this is inherently a quasi judicial function that he is performing, and, in performing a quasi judicial function, he has to set out his specific reasons for doing so. Disposal of objections cannot be such an empty formality or meaningless ritual that he can do so without application of mind and without setting out specific reasons for

rejecting the same. Let us, in this light, set out the reasons for rejecting the objections. The Assessing Officer-CPC has used a standard reason to the effect that "As there has been no response/the response given is not acceptable, the adjustment(s) as mentioned below are being made to the total income as per provisions of section 143(1)(a)", and has not even struck off the portion inapplicable. To put a question to ourselves, can such casually assigned reasons, which are purely on a standard template, can be said to be sufficient justifications for a quasi judicial decision that the disposal of objections inherently is? The answer must be emphatically in negative. It is important to bear in mind the fact that intimation under section 143(1) is an appealable order, and when consideration of objections raised by the assessee is an integral part of the process of finalizing the intimation under section 143(1) unless the reasons for such rejection are known, a meaningful appellate exercise can hardly be carried out. When the first appellate authority has no clue about the reasons which prevailed with the Assessing Officer-CPC, in rejecting the submissions of the assessee, because no such reasons are indicated by the Assessing Officer CPC anyway, it is difficult to understand on what basis the first appellate authority sits in judgment over correctness or otherwise of such a rejection of submissions. Whether the statute specifically provides for it or not, in our considered view, the need for disposal of objections by way of a speaking order has to be read into it as the Assessing Officer CPC, while disposing of the objections raised by the assessee, is performing a quasi judicial function, and the soul of a quasi judicial decision making is in the reasoning for coming to the decision taken by the quasi judicial officer. While on this aspect of the matter, we may usefully refer to the observations made by the Hon'ble Supreme Court, in the case of Union Public Service Commission v. Bibhu Prasad Sarangi [2021] 4 SCC 516. While these observations are in the context of the judicial officers, these observations will be equally applicable to the decisions by the quasi judicial officers like us as indeed the Assessing Officer CPC. In the inimitable words of Hon'ble Justice Chandrachud, Hon'ble Supreme Court has made the following observations:

..... Reasons constitute the soul of a judicial decision. Without them, one is left with a shell. The shell provides neither solace nor satisfaction to the litigant. We are constrained to make these observations since what we have encountered in this case is no longer an isolated aberration. This has become a recurring phenomenon.How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary

7. These observations of Their Lordships apply equally, and in fact with much greater vigour, to the quasi judicial functionaries as well. Viewed thus, reasons in a quasi judicial order constitute the soul of the quasi judicial decision. A quasi judicial order, without giving reasons for arriving at such a decision, is contrary to the way the functioning of the quasi judicial authorities is envisaged. A quasi judicial order, as a rejection of the objections against the proposed adjustments under section 143(1) inherently is, can hardly meet any judicial approval when it is devoid of the cogent and specific reasons, and when it is in a standard template text format with clear indications that there has not been any application of mind as even the inapplicable portion of the template text, i.e. whether there was no response or whether the response is unacceptable, has not been removed from the reasons assigned for going ahead with the proposed adjustment under section 143(1).

7. Clearly, therefore, an intimation about the proposed adjustment is a condition precedent for making an adjustment under section 143(1). No such intimation is given in the present case, and, despite having been given a specific opportunity of furnishing evidence in support of such an intimation, no such evidence of intimation has been filed before us. For this short reason alone, the adjustment in question is vitiated in law. In any event, the adjustment under section 143(1) can only be made in the following respects:-

Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

- (a) the total income or loss shall be computed after making the following adjustments, namely:—
- (i) any arithmetical error in the return;
 - (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
 - (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
 - (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;
 - (v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
 - (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

8. None of these categories, in our humble understanding, cover an adjustment by denial of the cost of acquisition. The learned Departmental Representative could not enlighten us either, except for his placing reliance on the learned CIT(A)'s order. Whether the action of the Assessing Officer is justified on merits or not, is irrelevant-unless the jurisdiction of the Assessing Officer, in carrying out the adjustment, is held to be sustainable in law. We are unable to see any legally sustainable basis for the impugned adjustment in the course of processing of income tax return under section 143(1).

9. In view of the above discussions, and bearing in mind entirety of the case, we hold that the impugned adjustment, by denying the cost of acquisition of shares sold, was beyond the scope of adjustments permissible under section 143(1). The assessee succeeds on this short point.

10. Given our above findings, after hearing both the parties on the said issue at length, we see no need to deal with the contentions merits. That aspect of the matter, as on now, is wholly academic and infructuous.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 15th day of July 2022.

Sd/-
Sandeep S Karhail
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 15th day of July, 2022

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order etc

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai