

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 260/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18

Shri Paras Kuhad 307-309,Ganpati Plaza M.I. Road, Jaipur	बनाम Vs.	The DCIT Circle-7 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACWPK 8738 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Agarwal, CA &
Shri Maniesh Agarwal, CA
राजस्व की ओर से / Revenue by: Shri Sanjay Dhariwal, CIT-DR

सुनवाई की तारीख / Date of Hearing : 15/09/2022
उदघोषणा की तारीख / Date of Pronouncement : 26/09/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal filed by the assessee is directed against order of the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC/ld. CIT(A))] for the assessment year 2017-18 dated 17-06-2022 which in turn arise from the order of the passed by Assistant Commissioner of Income tax, CPC, Bangalore [here in after referred as CPC] dated 25.03.2019.

2. The assessee has marched this appeal on the grounds which were revised vide letter dated 22-08-2022 and thus, the grounds raised in this appeal are as under :-.

“1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the adjustments made by CPC, (resulting in addition of Rs. 4,37,99,929/-) to the total income of assessee, vide intimation issued u/s 143(1)(a) of the Income Tax Act (the Act), arbitrarily.

1.1 That, Id. CIT(A) further erred in confirming the adjustments made to the total income vide intimation issued u/s 143(1) by grossly ignoring the submission made by assessee that assessment for the year under appeal was completed u/s 143(3) of the Act vide order dated 20.12.2019, whereby no such addition was made. Appellant prays that once assessment is completed after thorough examination/verification of details, such order attains finality and intimation issued u/s 143(1)(a) merges into same by virtue of Doctrine of Merger. Since, the adjustments made vide intimation u/s 143(1)(a) do not find place in order passed u/s 143(3), it implies satisfaction of assessing officer on such issues, therefore addition made vide intimation deserves to be deleted.

1.2 That, Id.CIT(A) has further erred in not considering the submission made by assessee and the copy of "Rectification Application" filed against intimation was furnished before Id.AO and the adjustments made vide intimation were found uncalled for in Assessment order passed u/s 143(3) of the Act. It is therefore prayed that Id.AO impliedly accepted the request for Rectification made by assessee and thus the action of Id.CIT(A) in confirming the adjustments to the total income deserves to be bad in law.

1.3 That Id.CIT(A) has further erred in confirming adjustments made by CPC by grossly ignoring the submission of assessee that even on the 'e-portal' of Income Tax Department, only the demand pertaining to Scrutiny Assessment is appearing and assessee never paid the demand so created vide intimation u/s 143(1)(a) under challenge in present appeal, which further implies that Assessing Officer accepted the Rectification Application filed by assessee and as a result demand pertaining to intimation was removed from the e-portal. It is therefore prayed that order passed by Id.CIT(A) is not in accordance with law and deserves to be set aside.”

3. The brief facts as culled out from the records is that the assessee is a Senior Advocate practicing in the Supreme Court of India and had filed his

Return of Income for the year under appeal u/s 139(1) on 28.10.2017 declaring total income of Rs. 6,12,66,320/- (APB 1-7). The Return of Income so filed was revised u/s 139(5) on 30.09.2018 i.e. within the statutory time limit provided for revising the return. The return was revised declaring total income at Rs. 6,19,02,760/- (APB 8 14) which amounted to an onward revision of return by Rs. 6,36,440/- [6,19,02,760 6,12,66,320]. The Revised Return filed by the assessee was taken-cognizance of and it was processed by the department and vide intimation u/s 143(1)(a) assessee was informed that adjustment of Rs.4,37,99,929/- was made to the Returned Income of assessee, resulting into an addition of Rs. 4,37,99,929/-.

4. Aggrieved from the said initiation u/s. 143(1)(a) of the Act the assessee moved an appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee by holding that :

It is seen from the above that the appellant has reduced an amount of Rs. 3,62,21,756 from the schedule of Business Income (BP) as income from Capital Gains considered under other head, but only an amount of Rs. 19,86,017 has been shown in the Schedule of Capital Gains income. The appellant argued that the total Exempt Income shown in Schedule (EI) is much more than the total amount reduced from the Business Profit. The explanation of the appellant cannot be accepted. The exempt income which has been reduced from the Schedule of Business Income (BI) is only Rs. 9,65,342. The exempt income shown in the schedule of Exempt Income (EI) in the form of "Long Term Capital Gains from transactions on which STT is paid of Rs. 5,54,67,094 has nothing to do with the income credited to P & L account considered under other heads/or chargeable u/s 115 BBF in the form of Capital Gains of Rs. 3,62,21,756. The appellant has

reduced only Rs. 9,65,342 from the profit & loss account on account of exempt income. The appellant could not correlate the Capital Gains income which has been reduced from the business with any of the incomes shown by him in the Exempt Income (EI) Schedule. The appellant has shown only Rs.19,86,017 in the schedule of Capital Gains. The addition made by the Assessing Officer do not suffer from any infirmity. Therefore, the Ground of Appeal 2 is hereby dismissed.

It is seen from the above that the appellant has reduced an amount of Rs. 1,01,24,337 from the schedule of Business Income (BI) as income from Other Sources considered under other head, but an amount of only Rs. 2,79,081 has been shown in the Schedule of Capital Gains income. The appellant argued that the total Exempt Income shown in Schedule (EI) is much more than the total amount reduced from the Business Profit. The explanation of the appellant cannot be accepted. The exempt income which has been reduced from the Schedule of Business Income (BI) is only Rs. 9,65,342. The exempt income shown in the schedule of Exempt Income (EI) in the form of "Dividend income of Rs. 2,69,126 and Others, including exempt income of minor child of Rs. 12,34,504 has nothing to do with the "Income credited to P & L account considered under other heads or chargeable u/s 115 BBF" in the form of Other Income of Rs 1,01,24,337 The appellant has reduced only Rs. 9,65,342 from the profit & loss account on account of exempt income. The appellant could not correlate the Capital Gains income which has been reduced from the business with any of the incomes shown by him in the Exempt Income (EI) Schedule. The appellant has shown only Rs 2,79,081 in the schedule of Capital Gains and the remaining amount of Rs 98,45,256 has not been shown by the appellant. The addition made by the Assessing Officer do not suffer from any infirmity. Therefore, the Ground of Appeal 3 is hereby dismissed.

5. As the issues involved in the present appeal is related the adjustments made u/s. 143(1)(a) after issuance of notice u/s. 143(2) of the Act and all the grounds are inextricably interlinked or in fact interwoven, therefore, all the grounds are considered together and decided as such.

6. During the course of hearing of the appeal the Id. AR of the assessee submitted that the entire proceedings leading to the order dated 17.06.2022 were without jurisdiction, since the same were initiated and concluded

during pendency of regular assessment proceedings u/s 143(2)&(3). Further, the computation order dated 25.03.2019 merged with the final assessment order dated 20.12.2019, where in no addition on the ground of LTCCG was made. Thus, it is to be noted that notice u/s 143(2) for scrutiny assessment (for the assessment year appeal) was issued in the name of assessee on 13.08.2018 which date is prior to the date notice u/s 143(1)(a) issued on 26.11.2018 which has culminated in the impugned order. The notice was therefore without jurisdiction. The Hon'ble Supreme Court in Vodafone Idea v. CIT, (2020) 19 SCC 12 cited with approval the decision of the Hon'ble Gujarat High in the case of Gujarat Poly-Ax Electronics Ltd. v. CIT, 1996 SCC OnLine Guj 147: (1996) 222 140, that "exercise of powers under Section 143(1) is not made permissible after issuance notice under Section 143(2) of the Act. ... we are of the opinion that after issuance of notice Section 143(2) of the Act, it is not open for the assessing officer to make adjustment or to order under Section 143(1) of the Act but he has to make assessment in accordance with i.e. under Section 143(3) of the Act.". (Para 10.1.2 @ Pg. 34). Vide notice dated 24.10.2019, assessee was intimated that the case was taken up for complete scrutiny. Details sought during scrutiny assessment were furnished and assessment proceedings 143(3) were completed by Id. ACIT Circle-7, Jaipur in physical mode vide

order dated 20.12.2019 (i.e. jurisdictional AO), whereby addition of Rs.1,37,53,473/- was made on account difference in professional receipts as per ITR vis-à-vis ITS Data (APB 36-48). Basically, difference arose for the reason that assessee always followed cash system of accounting, whereas the clients of the assessee deducted tax at source on accrual basis without the actual payment having been received by the assessee till 31" March of the relevant year. It is the settled principle of Income Tax Law the order passed in terms of intimation u/s 143(1), being a summary assessment order gets merged into the order passed u/s 143(3). In the case of C.E.SC. Ltd. v. Deputy Commissioner Income-Tax, (2003) 262 ITR 243, the Hon'ble Calcutta High Court has held that "the only which remained operative is the one passed under section 143(3) of the Act. The order passed under section 143(1)(a) ceased to be operative and merged in the final order." It is further submitted that the nature of exercise of power under sub-section (1) is completely different from the exercise of power under sub-sections (2) and (3). This is for the most logical reason that order u/s 143(1) is issued without detailed scrutiny and without confronting the findings in summary order to the assessee, whereas order u/s 143(3) is passed after obtaining all the necessary details / information from the assessee. Reference in this regard may be made to the aforesaid

decision of the Hon'ble Supreme Court in the case of Vodafone, wherein it was held as follows:

16. The nature of exercise of power under sub-section (1) as against that under sub-sections (2) and (3) is thus completely different. In the former case, the matter is processed, only to check whether any apparent inconsistencies are evident on the face of the return and connected material which may call for any adjustment while in the latter case, the matter is scrutinised after taking into account such evidence as the assessee may produce. The exercise in the latter case is to ensure that there is no understating of income or overstating of loss or underpayment of the tax in any manner. In other words, the veracity of the return is checked threadbare rather than considering mere apparent inconsistencies from the return. Thus, the nature of power under these two provisions, as found by this Court in CIT v. Gujarat Electricity Board [CIT v. Gujarat Electricity Board, (2020) 18 SCC 813] continues to bear the same distinction.

7. During the proceedings before CIT(A), detailed submission were made before Id. CIT(A) (APB 49-54) and as a matter of evidence the necessary copy of assessment order passed u/s 143(3) was also submitted to Id.CIT(A) (APB 36-48). It was also submitted before Id.CIT(A) that assessee was issued notice for recovery of outstanding demand on 25.02.2020 for A.Y. 2017-18, which demand only pertained in respect to the order passed u/s 143(3) (APB 55-56). Moreover, no demand appears payable as of now and at the time of passing the order in appeal under challenge, on the income tax portal of the assessee pertaining to intimation u/s 143(1) (APB 57). It is thus assumed that the Id. AO having taken cognizance of the fact of issuance of notice u/s 143(2) acted upon removing the demand created u/s 143(1) which is a positive act on the part

of the Id. AO and as such this has been an act of fair recognition of the theory of merger having proper legal mandate and authority. However, Id. CIT(A), while adjudicating the appeal totally skipped the issue raised before him in respect to the merger of the 143(1) order dated 25.03.2019 into the subsequent order dated 20.12.2019 passed u/s 143(3). The Id. AR of the assessee further submitted that no soon the proceedings u/s 143(2) are commenced the impact and effect of intimation u/s 143(1) totally vanishes and such an intimation becomes nonest. Based on these set of arguments the Id. AR of the assessee submitted that on this score along the order in appeal deserve to be set a side and be declared having merged into the order u/s. 143(3) passed in the case of the assessee. As the issue was technical and of verification of facts, the Id. DR was directed to submit the status report in the matter. The Id. DR filed a copy of the letter dated 23.08.2022 written by the Id. AO explaining the status of the intimation as per records same is extracted here in below :



भारत सरकार
कार्यालय

उप आयकर आयुक्त, वृत्त - 7, जयपुर

सी-95, बाबा सिद्धनाथ भवन, लाल कोठी, जयपुर

No. DCIT/C-7/JPR/2022-23/ 189
The Commissioner of Income-tax (DR-II),
Income Tax Appellate Tribunal,
G-4, Rajmahal Residency Area, C-Scheme,
Jaipur - 302006

Date: 23/08/2022

Sir,

Sub:- Status of Application u/s 154 of the Act of Sh. Paras Kuhad
(ACWPK8738R) for A.Y. 2017-18 - reg. -

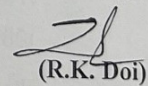
Kindly refer to your letter number 245 dated 17/08/2022 on the subject cited above.

In this connection, the desired clarification sought for by you is as under:-

1. As per the records / system, no order u/s 154 has been passed on the application of the assessee dated 23/04/2019.
2. As per system, demand of Rs. 70,13,180/- is reflecting u/s 143(3) for the A.Y. 2017-18. No demand is reflecting u/s 143(1) dated 25/03/2019 on the system. Copy of the Demand Status Report is enclosed. It is further submitted that the intimation u/s 143(1) dated 09/06/2018 is reflecting on system however, the intimation u/s 143(1) dated 25/03/2019 is also not reflecting on the system.
3. Vide intimation u/s 143(1) dated 25/03/2019, the CPC has taken total income at Rs. 10,57,02,690/- (Rs. 6,19,02,760/- as per ITR).
The AO in the order u/s 143(3) dated 20/12/2019 has also taken the returned income at Rs. 6,19,02,760/-. It is to submit that the contents / facts of rectification application dated 23/04/2019 have not been discussed by the AO in the assessment order. The copies of relevant documents / order are enclosed.

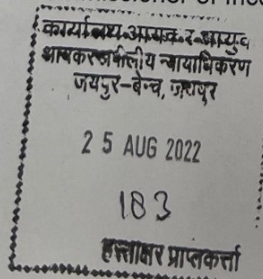
Encl.:- As above


Yours faithfully,


(R.K. Doi)

Dy. Commissioner of Income Tax,
Circle - 7, Jaipur

Copy to the Jt. Commissioner of Income-tax, Range-7, Jaipur for information.




Dy. Commissioner of Income Tax,
Circle - 7, Jaipur

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8. Since, the very basis being the intimation dated 25.03.2019 is not reflected on the system and the consequent demand or adjustment already merged into the order of the AO passed u/s. 143(3) of the Act. There cannot remain any grievance on account of intimation dated 25.03.2019. Even the Id. AO has submitted a factual report and submitted that the intimation u/s. 143(1) dated 25.03.2019 is not reflected in to the online system and consequent demand there upon also. Thus, once the intimation which the very cause of the grievance of the assessee is not reflected and existed on records the consequent grievance also not existed and thus the appeal of the assessee becomes infructuous.

9. Since, we have considered the appeal of the assessee on technical aspects without going into the merits of the issue appeal of the assessee is allowed in terms of the observations made above.

10. In the results the appeal of the assessee is allowed.

Order pronounced in the open court on 26/09/2022

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/09/2022

*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Paras Kuhad, Jaipur
2. प्रत्यर्धी / The Respondent- The DCIT, Circle-7, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 260/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar