

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में

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

डॉ मनीष बोर्ड, लेखा सदस्य
के समक्ष

Before

DR. MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील संख्या: 131/कोल/2022

निर्धारण वर्ष: 2018-19

I.T.A. No.: 131/Kol/2022

Assessment Year: 2018-19

Reliance Traders & Investors Pvt. Ltd.....Appellant
[PAN: AABCR 4163 R]

Vs.

ITO, Ward-8(3), Kolkata.....Respondent

Appearances by:

Sh. Soumitra Choudhury, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : September 12th, 2022

Date of pronouncing the order : September 28th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. "CIT(A)"] dated

07.01.2022 arising out of the assessment order framed u/s 143(1) of the Act dated 22.10.2019.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 07.01.2022 is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, that while issuing intimation u/s. 143(1) could not deny the intra head adjustment at Rs.34,06,173/- as per profit & loss account, claimed by the assessee as the same does not come within the ambit of 'an incorrect claim apparent from any information in the return', therefore, enhanced the gross total income made by the CPC was without jurisdiction which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case that while processing the return u/s. 143(1) of the I.T. Act, the A.O. (CPC) was wrong in not intra head adjustment on rental income already considered under head House Property Income amounting to Rs.46,667/-, and not intra head adjustment Profit on sale of fixed assets at Rs.33,59,506/-, which is already considered as income of capital gain, therefore, the total income under head business or profession has been increased from Rs.13,87,990/- to Rs.47,94,163/-, so, the A.O. (CPC)'s stand is double addition, therefore, this ground set aside to A.O. for verification which is completely arbitrary, unjustified and illegal.

4. For that the Ld. CIT(A) has no power to restore matter to file of A.O. for reconsideration and such action is beyond the powers confirmed upon the Ld. CIT(A) while dealing with appeal, so action of the CIT(A) to this extent being not justified is set aside, covered by Apex Court.

5. For that on the facts of the case, the A.O. has allowed T.D.S. amounting to Rs.37,524/- in place of T.D.S. claimed in the return amounting to Rs.40,774/-, therefore, may be directed to allow T.D.S. amounting to Rs.3,250 /-.

6. For that the charging interest u/s. 234B amounting to Rs.142,386/- and 234C amounting to Rs.37,396/- are mechanically wrong and illegal.

7. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. Brief facts of the case are that the assessee is a private limited company filed its return of income on 01.09.2018 declaring total income of Rs. 13,87,990/- arrived at after claiming set off of short term capital loss from sale of equity shares at Rs. 21,36,151/-. In the computation of income, from the net profit as per Profit & Loss account the assessee reduced the income from capital gain at Rs. 35,59,506/- and income from house property at Rs. 46,667/- to be considered separately. However, Centralised Processing Centre processed the return and issued intimation u/s 143(1)(a) of the Act computing total income at Rs. 47,94,163/- and the alleged addition was only on account of income from house property at Rs. 46,667/- and income from capital gain at Rs. 33,59,506/-. The assessee challenged the said additions before Id. CIT(A) but the claim of the assessee was allowed for statistical purposes by Id. CIT(A) directing the Id. AO to verify the factual position of the assessee's claim.

4. Aggrieved, the assessee is now in appeal before this Tribunal. Id. Counsel for the assessee stated that the alleged addition is uncalled for since the same has been duly offered to tax in the income tax return. The alleged addition occurred due to some technical error in filing the income tax return but the fact remains that the alleged addition of income from house property at Rs. 46,667/- and income from capital gain at Rs. 33,59,506/- stands duly disclosed in the income tax return and such kind of adjustment of denying the claim of the assessee cannot be made

in the processing made u/s 143(1a) of the Act and for this proposition reliance is placed on the decision of this Tribunal in the case of *Manas Flour Mills Pvt. Ltd. vs. ITO, Ward-7(1), Kolkata* in ITA No. 400/Kol/2021 order dated 16.05.2022.

5. Per contra, ld. D/R vehemently argued supporting the order of ld. CIT(A) and stated that the issue has been rightly restored to the file of ld. AO for necessary verification.

6. I have heard rival contentions and perused the records placed before me. The additions made by the Centralised Processing Centre in the intimation issued u/s 143(1a) of the Act at Rs. 34,06,173/- is in dispute before me. I find that the assessee filed its return on 01.09.2018. From perusal of the computation of income I note that under the head "Profits & Gains of Business & Profession" net profit as per profit & loss account shown at Rs. 15,73,140/-. Loss on sale of investment at Rs. 21,36,150/- has been added to such profit as a profit & loss account and income from house property at Rs. 46,667/- and capital gain at Rs. 33,59,506/- has been reduced from the profit as a profit & loss account to be considered separately. In the very same computation of income the assessee has separately disclosed income from house property at Rs. 46,667/- and also disclosed the gain and loss from sale of equity shares under the head "Income from Capital Gain". Since the assessee has duly offered the alleged sum to tax, Centralised Processing Centre are not justified in making such addition that too without giving any opportunity of hearing to the assessee.

7. I, therefore, under the given facts and circumstances of the case and after duly examining the computation of income and the income tax return filed by the assessee, find merit in the contentions of the ld. Counsel for the assessee and I am of the considered view that the additions/adjustments made by the Centralised Processing Centre is uncalled for. I, therefore, set aside the finding of ld. CIT(A) and delete the addition of Rs. 34,06,173/- made by the Centralised Processing Centre for denying the intra-head adjustment claimed in the income tax return. Thus, ground nos. 1, 2, 3 & 4 of the assessee's appeal are allowed.

8. As regards ground no. 5 for the short claim of tax deducted at source filed by the assessee amounting to Rs. 3,250/-, I deem it proper to restore the issue to ld. AO for carrying out necessary verification to examine the veracity of the claim of the assessee for TDS at Rs. 40,774/- as against the TDS at Rs. 37,524/- allowed by the Revenue authorities. Thus, ground no. 5 is allowed for statistical purposes.

9. Ground nos. 6 & 7 are consequential or general in nature which need no adjudication.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Kolkata, the 28th September, 2022.

Sd/-
[Manish Borad]
Accountant Member

Dated: 28.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Reliance Traders & Investors Pvt. Ltd., 2/1, Russell Street, Kankaria Centre, Kolkata-700 071.**
- 2. ITO, Ward-8(3), Kolkata.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata