

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1176/Mum/2022  
(A.Y. 2017-18)**

M/s Camoron Finance & Investments, 139-140B, Crossing of Sahar Road And Western Express Highway, Ville Parle (E), Mumbai – 400057	Vs.	The ACIT, Circle 17(1) Room No. 117, 1 <sup>st</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AA AFC5210A		
Appellant	..	Respondent

Appellant by :	Jeshaan Jain & Punit Patel
Respondent by :	Love Kumar

Date of Hearing	12.09.2022
Date of Pronouncement	20.09.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and law, the Commissioner of Income-tax NFAC (“CIT (A)”) erred in dismissing the appeal in limini on the ground that delay in filing appeal cannot be condoned.

2. *The Appellant therefore prays that the order passed by CIT(A) be considered in violation of Principle of Natural Justice and accordingly be set aside.*

*WITHOUT PREJUDICE TO GROUND I*

*GROUND II:*

1. *On the facts and circumstance of the case and law, the CPC erred in not granting the statutory time limit in terms of second proviso to section 143(1)(a) of the Act to file response against the proposed adjustment u/s 143(1)(a) of the Act and thus violating the principles of natural justice.*
2. *The Appellant received communication of proposed adjustment u/s 143(1)(a) of the Act on March 17, 2019. However, the CPC, before completion of period 30 days, issued an intimation u/s. 143(1) of the Act dated March 28, 2019*
3. *The Appellant prays that intimation u/s 143(1) be set aside.*

*WITHOUT PREJUDICE TO GROUND I and II*

*GROUND III:*

1. *On the facts and circumstance of the case and law, the CPC erred in restricting the amount of reduction from 'Income from Business and Profession' being income."*
2. The fact in brief is that return of income declaring total income of Rs.9,39,73,080/- was filed on 27.10.2017 u/s 139 of the Act. The CPC Bangluru vide letter dated 17.03.2019 communicated the proposed adjustment to be made u/s 143(1)(a) of the Act as annexed in Part A(i) to (vi) of the said communication made to the assessee. It is categorically mentioned in the communication that if no response is received within 30 days of issuing of this intimation the return of income will be process after making necessary adjustment u/s 143(1)(a) of the Act without providing any further opportunity in this matter. However, the CPC has passed the order u/s 143(1) of the Act on 28.03.2019 at a total incoe of Rs.10,72,75,320/- after making the proposed adjustments much before

the time limit of 30 days given to the assessee for giving response pertaining to the proposed adjustment.

3. Aggrieved, the assessee filed appeal before the Id. CIT(A). However, the Id. CIT(A) has dismissed the appeal of the assessee by rejecting its request for condonaton of 124 days in filing the appeal.

In this regard, we have gone through affidavit regarding condonation of delay filed by the assessee wherein it is categorically mentioned that the assessee was in receipt of notice dated 17.03.2019 from the Deputy Commissioner of Income Tax, CPC intimating proposed adjustment in computing income for assessment year 2017-18 and granting a period of 30 days for filing response to the proposed adjustment. That before the expiry of the 30 days period, the CPC passed intimation u/s 143(1) of the Act on March 28, 2009 after making the adjustment which was proposed in the notice dated 17.03.2019. Thereafter the assessee filed rectification request u/s 154 of the Act on 13.04.2019, requesting the CPC to rectify the mistake (adjustment proposed in the notice dated March 17, 2019 in the intimation u/s 143(1) dated March 28, 2019. The CPC passed order u/s 154 of the Act on July 30, 2019, however, the adjustment proposed in the notice dated 17.03.2019 were sustained by the CPC in the rectification order.

4. Heard both the sides and perused the material on record. During the course of appellate proceedings the Id. Counsel has vehemently contended that the order passed u/s 143(1)(a) is not valid because the notice of proposed adjustment issued u/s 143(1)(a) of the Act provide a period of 30 days to the assessee to make response to the proposed adjustment u/s 143(1)(a). However, unlawfully the CPC has passed the order u/s 143(1) before 30 days on 28.03.2019 without granting the time

limit of 30 days as prescribed by the AO/CPC in the communication dated 17.03.2019 as per which the assessee was supposed to make response to the proposed adjustment. The ld. Counsel submitted that the order passed u/s 143(1) is not valid.

On the other hand the ld. D.R. relied on the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above it is undisputed fact that communication of proposed adjustment to be made u/s 143(1)(a)(ii) of the Act dated 17.03.2019 was issued by the CPC, Bangluru and duly served upon the assessee. We have perused the aforesaid communication of proposed adjustment u/s 143(1)(a) of the Act dated 17.03.2019 placed at page no. 163 of the paper book wherein at note no. 4 it is categorically mentioned that in case no response is received within 30 days of issue of this intimation, return of income will be processed after making necessary adjustment u/s 143(1)(a) of the Act without providing any further opportunity in this matter. However, on perusal of the intimation order passed u/s 143(1) of the Act it is noticed that impugned order was passed on 28.03.2019 itself before the 30 days period was given to the assessee to make response vide communication issued on 17.03.2019. In this regard we have gone through the provision of Sec. 143(1) of the Act and noticed that under the proviso of this section it is clearly mentioned that response received from the assessee if any shall be considered before making any adjustment and in a case where no response is received within 30 days of the issue of such intimation such adjustment shall be made. The relevant provision of Sec. 143(1) is reproduced as under:

**143.** (1) 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 [sections 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:]”

In view of the aforesaid provision of Sec. 143(1) it is clear that giving of 30 days of time limit is mandatory to the assessee for providing response to the proposed adjustment. However, in the case of the assessee communication for proposed adjustment, dated 17.03.2019 was issued wherein the assessee was asked to provide its response within the 30 days, however, the impugned order u/s 143(1) was passed even much before 30 days on 28.03.2019 which demonstrate that the impugned order was not passed according to the provisions of Sec. 143(1) as

discussed supra in this order. Therefore, we set aside the order passed u/s 143(1) and allowed the appeal of the assessee.

Since, we have set aside the order passed u/s 143(1), therefore, other ground of appeal filed by the assessee become infructuous and same are not required any adjudication, accordingly the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.09.2022

Sd/-

(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 20.09.2022

PS: Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,  
सत्यापित प्रति // True Copy //

(Asst. Registrar)  
ITAT, Mumbai