IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.48/Asr/2022
Assessment Year: 2017-18

Baldev Singh H.No. 172, VPO Usmaan Khera, Abohar. [PAN: DEAPS7954Q] **(Appellant)**	**Vs.**	Dy. CIT, (CPC), Banglore. Jurisdictional AO Income Tax Officer, Ward-3(2), Ferozpur. **(Respondent)**

Appellant by	**Sh. Sudhir Sehgal, Adv.**
Respondent by	**Sh. S.M. Surendra Nath, Sr.DR**

Date of Hearing	**11.10.2022**
Date of Pronouncement	**11.11.2022**

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the ld. Commissioner of Income Tax(Appeals), NFAC,Delhi, [in brevity the CIT(A)] bearing appeal No.DIN& Order No. ITBA/NFAC/S/250/2021-22/1037322494(1),

date of order 29.11.2021, the order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2017-18.The impugned order is emanated from the order of the ld. Dy. Commissioner of Income Tax,(CPC), Bangaluru, (in brevity the AO) order passed u/s 143(1)of the Act date of order 11.12.2018.

2. The assessee has filed an application for condonation of delay of 35 days wherein, assessee has stated that the Hon'ble Supreme Court vide order dated 10th January 2022 extended the period of limitation for the purposes of limitation by excluding the period from 15.03.2020 till 28.02.2022, therefore, the delay of 35 days is condoned.

3. The assessee has taken the following grounds which are reproduced as below:

> *"1. That the Ld. CIT(A), NFAC erred on facts and law in confirming the addition of Rs.8,86,320/- made by the DCIT,CPC, Bengaluru while processing the return u/s 143(1) vide order dated 11.12.2018 and computing the income at Rs. 15,88,137/- as against the return of income filed at Rs. 703420/-.*
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> *2. That the Ld. CIT(A), NFAC erred on facts and law in confirming the addition of Rs.8,86,320/- made by the DCIT, CPC, Bengaluru while processing the return u/s 143(1) vide order dated 11.12.2018*

while rejecting the contention of the assessee that the amount of Rs. 8,86,320/-, being the gross receipt of cleaning of solar modules cannot be charged to tax as income and only the profits embedded in the gross receipts are liable to be charged to tax on account of principle of law as settled by the Hon'ble Gujrat High Court in the case of CIT vs President Industries 258 ITR 654.

3. That the Ld. CIT(A), NFAC erred on facts and law in confirming the addition of Rs.8,86,320/- made by the DCIT, CPC, Bengaluru while processing the return u/s 143(1) vide order dated 11.12.2018 while rejecting the contention of the assessee that the amount of Rs. 8,86,320/-, being the gross receipts of cleaning of solar modules, cannot be charged tax as income as it involves expenses for employing the labour for cleaning the solar modules and it is settled Principle of law that only the profits embedded in the gross receipts are liable to charge to tax.

4. That the Ld. CIT(A), NFAC erred on facts and law in confirming the addition of Rs.8,86,320/- made by the DCIT, CPC, Bengaluru while processing the return u/s 143(1) vide order dated 11.12.2018 while rejecting the contention of the assessee that the amount of Rs. 8,86,320/-, being the gross receipt of cleaning of solar modules, cannot be charged tax as income and only 6% to 8% of the gross receipts can only be charged to tax while recording the finding that

the assessee has not discharged the burden of proof explaining the circumstances for omission to record receipts/claim of tax credit and to record the expenditure.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

4. Brief fact of the case is that the assessee is an individual and filed its return of income on 28.03.2018 declaring rental income and interest income for an amount of Rs. 6,95,907/-. The return was processed u/s 143(1) and determining total income of Rs.15,80,620/- by making addition of Rs.8,86,320/- which was reflected in Form 26AS of the assessee. The assessee was erred to take the income from M/s Solairedirect Energy India Ltd. amount of Rs.2,48,906/-. The TDS was deducted on the on the income amount of Rs.2490/-. The assessee had not included this income, received from party in total income and had not claimed the TDS in the return of income. The income is in the nature of business. The ld. AO had calculated the turnover of this income amount of Rs.8,86,320/- by method of back calculation and added back with the total income during the processing of the return U/ 143(1) of the Act. The assessee filed an appeal before the ld. CIT (A)

against the order of ld. AO. The ld. CIT(A) accepted the income and upheld the order of the ld. AO. Aggrieved assessee filed an appeal before us.

5. The moot point of the appeal is agitated by the assessee which is as follow;

i). The legal issue, related to the jurisdiction of the ld. AO for adjustment of the income in processing of return u/s 143(1) and

ii). The factual issue for addition of total turnover of business by a back calculation with the total income of the assessee.

5.1 The plea of the counsel of the assessee is that only the net profit @ 8% will be added as per the provision of section 44AD of the Act.

5.2 The ld. Counsel for the assessee Mr. Sudhir Sehgal, vehemently argued and submitted written submission and the brief note which are kept in the record. During the argument Mr. Sehgal first mentioned the jurisdiction of ld. AO for adjustment of income derived from 26AS without giving reasonable opportunity to the asessessee. Mr. Sehgal relied on the judgment of different Hon'ble High Courts and Tribunals. He further argued that the issue was agitated before the ld. CIT(A). He pointed out the relevant paragraph of the order of the ld. CIT(A) which is extracted here paragraph 7.2 of the CIT(A) order:

"7.2 The solitary issue for adjudication is whether the adjustment made in the intimation u/s 143(1) as per the data present in 26AS is justified. It is an admitted fact that the appellant had not included either the income by way of contract receipts or the tax credit thereof as appearing in Form 26AS. Appellant also failed to substantiate how the omission of contract receipts had been occasioned despite the fact that Form 26AS had shown the receipt of contract income. Therefore, the question of determining the income on a presumptive basis under section 44AD either at 6% or 8% as the case may be, as claimed by the appellant does not arise at this stage, in the absence of discharge of the burden of proof by the assessee explaining the circumstances under which the omission to record receipts and claim tax credit with simultaneous omission to record the expenditure as well. Therefore, the adjustment made as per the intimation u/s 143(1), which is sanctioned as per law does not call for any interference. Besides, since the issue is fact based, the adjudication on the relevance of the judicial precedents relied upon by the appellant, does not arise."

5.3 The ld. Counsel, during his argument and relied on the judgment of **Bajaj Auto Finance Ltd. vs. CIT (2018) 93 taxmann.com 63 (Bombay HC)**; and **Anita Seth vs. DCIT (Kolkata Trib) ITA No.109/Kol/2022**. The ld. Counsel respectfully relied on following paragraph of theorder of ITAT-Kolkata;

"5. We have heard both the parties and perused the record. The question is limited as to whether the CPC u/s. 143(1)(a) of the Act can make any adjustment/addition in the aforesaid facts and circumstances. According to us, the CPC could not have made the adjustment since the question of fact arises on the factual matrix of this case as noted above. The assessee's contention is that the amount of Rs. 31,21,167/- is included in the turnover of Rs. 52,81,344/-. Therefore, merely based on TDS entries given in Form 26AS for deduction of tax u/s. 194J, the adjustment could not have been made without conducting any enquiry, more particularly when the man power supply is not covered as a profession within the meaning of section 44AA of the Act read with relevant notifications. We find force in the contention of the Ld. AR that this particular issue could not have been decided by the CPC u/s. 143(1)(a) of the Act. In case, if the department finds that there is an anomaly, then it has liberty to do so by conducting scrutiny assessment under the provisions of law or to re-open the assessment u/s. 147 of the Act. Thus, we find that CPC had no jurisdiction to make impugned adjustment within the meaning of section 143(1)(a) of the Act. Accordingly, the adjustment made by the CPC stands deleted."

5.4 The assessee further relied on the instruction of the **CBDT** related to processing of return u/s 143(1), **Instruction 1814 dated 04.04.1989** the specific point no. 3 is inserted as below:

> *"3. For the purposes of computing the tax or interest payable by or refundable to the assessee the following adjustments are required to be made, under the proviso to sub-clause (a) of sub-section (1) of section 143 to the income or loss declared in the return :—*
>
> *i. Any arithmetical error in the return, accounts or documents accompanying it shall be rectified.*
>
> *ii. Any loss carried forward, deduction allowance or relief which on the basis of the information available in such return, accounts or documents is prima facie admissible but which is not claimed in the return, shall be allowed.*
>
> *iii. Any loss carried forward deduction, allowance or relief claimed in the return, which of the information available in such return account or documents is prima facie inadmissible, shall be disallowed.*
>
> *This circular seeks to explain the ambit and scope of adjustments required to be made under theaforesaid provision."*

6. The ld. Sr. DR vehemently argued and relied on the order of the revenue authorities.

7. We heard the rival submissions and considered the documents available in the records. The jurisdiction of the assessing authority for processing of return u/s 143(1) is only restricted for certain conditions which is designated in the **CBDT Instruction no. 1814 dated 04.04.1989**. The Act is very clear in this issue, there is no such any ambiguity in the Act related to processing u/s 143(1). The income which was reflected in the 26AS is a gross turnover. So, the addition made on basis of the reflection in 26AS without allowing reasonable opportunity to the assessee. But the ld. AO *suo motu* added back the amount which is violation of the natural justice. After respectfully considered the catena of judgment as mentioned above, the addition amount of Rs.8,86,320/- is arbitrary and bad in law. The ld. AO had acted beyond the jurisdiction related to this addition. Here, the order passed u/s 143(1) is bad in law. So the addition made by the ld. AO amount of Rs.8,86,320/- is liable to be quashed.

7.1 In the point of factual ground the issue is only retain for academic purpose and is consequential in nature. It is need not to be adjudicated in this stage as the entire order u/s 143(1) itself bad and erroneous.

8. In the result, the appeal bearing **ITA No. 48/Asr/2022** is allowed.

Order pronounced in the open court on 11.11.2022

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV
Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By Order