

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1699/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2018-19)

Diya International 2501, Panchratna, Opera House, Mumbai-400004.	बनाम/ Vs.	National Faceless Appeal Centre Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFD5317L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dhaval Jariwala
Revenue by:	Ms. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/10/2022

घोषणा की तारीख /Date of Pronouncement: 23/11/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 25.04.2022 for AY. 2018-19.

2. The assessee has raised two (2) issues, the first issue is against the action of the CPC/AO making an addition of Rs.7,62,293/- which according to the assessee was exempt for tax as per the Section 10(38) of the Income Tax Act, 1961 (hereinafter "the Act").

3. At the outset, the Ld. AR of the assessee drew our attention to page no. 2 of the PB wherein it is noted that the assessee a partnership firm had filed its return of income declaring total income of Rs.2,33,62,340/-. However, according to Ld. AR, CPC erred in making an addition of Rs.7,62,293/- in its intimation order u/s 143(1) of the Act, which was erroneous. To demonstrate such an assertion, the Ld.



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AR submitted that assessee has shown in the profit and loss account the income received as Long Term Capital Gain (LTCG) on sale of shares to the tune of Rs.7,62,293/- and the Short Term Capital Gain (STCG) on sale of shares to the tune of Rs.2,25,150/- i.e. total of Rs.9,87,443/-. Thereafter, he drew our attention to the page no. 24 of the PB i.e, the return of income, the assessee had shown under the sub-heading “Business or Profession” the sum of Rs.9,87,443/- (which was reduced from the computation of income from business). Thereafter, the Ld. AR drew our attention to page no. 34 of the PB (return of income) wherein its shown that the assessee has offered under the sub-heading “From sale of equity share on which STT was paid” the Short Term Capital Gain (STCG) in its return of income of Rs.2,25,150/-. Thereafter, he drew our attention to page no. 50 of the PB wherein the assessee has shown under sub-heading ‘details of Exempt Income (EI)’ (income not to be included in the total income) wherein the sum of Rs.7,62,293/- has been shown in the return of income [which is the impugned exempt income as discussed supra]. According to the Ld. AR, in this factual back-ground, the CPC’s erroneous action need to be evaluated. The Ld. AR further submitted that the CPC while processing the assessee’s return of income erroneously took note of the amount reduced at page no. 24 of the return of income (computation of income from business or profession) at Rs.9,87,443/- (which was reduced by assessee from business income); and the CPC thereafter took note of the STCG offered by the assessee to the tune of Rs. 2,25,150/-; and thus, according to the CPC, there was variation of



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Rs.7,62,293/- which was not offered to tax which was nothing but the LTCG/exempt amount shown by the assessee in the return of income [which we discussed (supra)]. In this back-ground, the Ld. AR submitted that the CPC in its intimation order dated 07.06.2019 u/s 143(1) of the Act erroneously added Rs.7,62,293/-. Further, according to the Ld. AR aggrieved by the action of CPC, the assessee filed rectification application u/s 154 of the Act before the AO which was rejected but the AO did not even give copy of the order to the assessee. Thereafter, the AO passed the assessment order u/s 143(3) of the Act on 05.02.2021 for the purpose of examining expenditure of personal nature but no discussion was made by AO about this amount of Rs.7,62,293/-. However, according to Ld. AR in the demand notice the impugned addition of Rs. 7,62,293/- has been reiterated. Aggrieved therefore, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the issue regarding Rs.7,62,293/- by holding that an appeal does not lie before the Ld. CIT(A) against the action of CPC u/s 143(1) of the Act,. Aggrieved by the action of Ld. CIT(A), the assessee is before us. Taking into consideration the aforesaid discussion and having gone through the records as discussed (supra), we do not countenance this action of Ld. CIT(A) to have not adjudicated the issue merely on technicalities when the fact-in-issue/dispute is clear from the records (ROI). Regarding the issue of addition reiterated by AO which was made by CPC to the tune of Rs.7,62,293/-, we note that the assessee has clearly shown the amount of Rs.7,62,293/- as exempt income in its return of income as discussed



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(supra). Therefore, per-se it should not have been added. And the AO ought to have rectified the same when pointed out by the assessee in its rectification application u/s 154 of the Act. Be that as it may, for the interest of justice and fair play, we are inclined to set aside the impugned order of the Ld. CIT(A), and remand the issue back to the file of AO for the limited purpose of verifying as to whether the amount of Rs.7,62,293/- has been shown by assessee as **exempt income** in its return of income; And the AO to verify the facts discussed supra and if the AO finds the amount of Rs.7,62,293/- has been shown by assessee as **exempt income**, then AO to correct the mistake; and in such an event no addition of Rs.7,62,293/- is required and the AO should delete the same.

4. Next issue is regarding the addition of Rs.30,650/-. At the outset, the Ld. AR of the assessee drew our attention to Annexure 5, page no. 2 wherein the CPC has asked the assessee in respect of the amount of disallowance u/s 37 of the Act, since the assessee has shown in its return of income as disallowed Rs.1,56,715/-. But the CPC took note of the Form no. 3CD wherein an amount of Rs.1,87,365/- was disallowed. Therefore, CPC proposed an addition of Rs.30,650/- [difference of Rs.1,87,365/- and Rs.1,56,715/-] and asked the assessee to explain. The assessee pursuant to the same explained that the amount of Rs.30,650/- has already been disallowed, which is discernable at serial no. 4 of the return of income. But the same was added. According to Ld AR, the impugned action tantamount to



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double disallowance. We restore this issue also back to the file of the AO for the limited purpose of verifying as to whether the assessee has already disallowed the same as discussed supra; and if the assessee has already disallowed Rs.30,650/-, then double disallowance is not permissible and in such an event, the same to be deleted. Both the issues discussed (supra) are restored to AO for verification as discussed (supra) and the AO to decide in accordance to law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 23/11/2022.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :23 /11/2022.
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai