

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 3178 & 3179/Mum/2022
(निर्धारणवर्ष /Assessment Year: 2017-18 & 2019-20)

Priti Milan Mehta 2302 Bldg No.5, Raheja Classique Road, New Link Road, Andheri(W) 400053	<u>बनाम/</u> Vs.	Deputy Commissioner Of Income Tax, CPC Centralized Processing Central, Income Tax Department, Bengaluru, Karnataka 560500
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAPH1095G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Hiro Rai/ Ritu Panjabi
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Minal Kamble Sr.DR.
सुनवाईकीतारीख/ Date of Hearing	:	31.01.2023
घोषणाकीतारीख / Date of Pronouncement	:	31 .01.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the combined orders dated 21.10.2022, passed by Ld.CIT(A),47

Mumbai, for the AY 2017-18 & 2019-20. In relation to adjustment of refund made vide intimation u/s 143(1).

2. Before us, the Ld. Counsel, submitted that in the return of income for the AY 2019-20 & 2017-18, refund was determined along with the interest u/s 244 A. However, the said refund have adjusted against a demand of Rs. 1,72,02,260/- which was on account of protective addition made in the assessment for AY 2008-09. For AY 2017-18 the refund was of Rs. 1,95,422/-; and for the AY 2019-20 the refund was Rs. 4,46,650/-. The Ld. CIT(A) has upheld the adjustment of the refund against the protective demand for AY 2008-09 on the ground that the issue as yet not been crystallized in the appellate proceedings. The Ld. Counsel informed that though the appeal for AY 2008-9 is pending before the Tribunal. However, as on date the addition is on protective basis and once, the addition has been made on protective basis, no demand can be enforced. Thus, no adjustment of protective demand can be made against the refund due to the assessee, because it tantamount to recovery of demand.

3. After hearing both the parties and on perusal of the record, we find that it not an dispute that the in the return of income filed for AY 2017-18 on 30.07.2017, refund was claimed and same was also issued by the CPC. However, the refund determined has been adjusted against the demand for AY 2008-09 which was an account protective addition made by the AO. In support the assessment order for AY 2008-09 has also been filed before us. The entire demand arising out of addition of Rs. 147,20,2660/- was purely on account of protective addition. Once the fate of protective addition is not determined and till it is converted into substantive addition, no demand can be enforced nor can be adjusted against any refund. In case if demand is crystallized, if at all, protective addition is converted into substantive, then AO has all the powers of recovery of demand. Accordingly, Assessing Officer is directed to verify and if the tax has been adjusted against the refund against the demand created out of protective addition for AY 2008-09, then same cannot be adjusted and refund has to granted.

4. **With this direction both the appeals of the Assessee are allowed.**

Orders pronounced in the open court on 31st Jan, 2023.

Sd/-
(S Rifaur Rahman)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 31.01.2023

Mrs. Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai