

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.49/GTY/2022
Assessment Year: 2018-19**

Dura Roof Private Limited. 3 rd floor, Bibekananda Complex, G S Road, ABC Opp. Rajib Bhawan, Guwahati, Kamrup, Assam – 781005. (PAN: AAFCD 3566 J)	Vs.	Assistant Director of Income Tax, CPC, Bengaluru
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Kishor Jain, FCA
Respondent by : Shri N. T. Sherpa, JCIT

Date of Hearing : 07.06.2023
Date of Pronouncement : 14.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order passed by Ld. CIT(A), Central, North-East Region, Guwahati vide Appeal No. Nil dated 31.08.2022 against the Intimation passed by ADIT, CPC, Bengaluru u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 12.01.2020 for AY 2018-19.

2. There is a delay of 46 days in filing the present appeal before the Tribunal for which petition for condonation of delay is placed on record. Impugned order of Ld. CIT(A) is dated 31.08.2022. In the petition for condonation of delay, assessee has stated that the year under consideration was subject to multiple proceedings which included

processing of return u/s. 143(1), thereafter, scrutiny assessment u/s. 143(3) and then yet another assessment u/s. 153A were made pursuant to search. Multiplicity of the event led to this delay of 46 days in filing the present appeal. The present appeal before us is against the intimation issued u/s. 143(1) of the Act after processing of return by the Centralised Processing Centre (CPC), Bengaluru, dated 12.01.2020 wherein an adjustment has been made of Rs.1,53,31,924/- by disallowing deduction claimed u/s. 80IC of the Act, for not furnishing audit report in Form 10CCB within the prescribed time limit.

4. From the perusal of the petition for condonation of delay, the facts narrated therein reveals that year under consideration i.e. AY 2018-19 was subjected to scrutiny assessment u/s. 143(3) for which an order was passed on 09.09.2021, making the same adjustment relating to deduction u/s. 80IC, as it was done in the intimation issued u/s. 143(1) of the Act. It is also revealed from the said condonation petition that another assessment has been done u/s. 153A r.w.s. 143(3) vide order dated 30.03.2022 for the same assessment year. On specific question by the Bench on the status of appeal against the assessment order passed u/s. 143(3) and also u/s. 153A of the Act to the Ld. Counsel for the assessee, it was submitted that first appeal against the assessment order passed u/s. 143(3) was disposed off by quashing the said assessment order, it being an abated year owing to search. In the first appeal against the order u/s. 153A, ld. Counsel submitted that matter is pending before the Ld. CIT(A).

5. We note that once an assessment order has been passed u/s. 143(3), the intimation u/s. 143(1) merges in the said assessment order and loses its standalone existence. In the present case before us, appeal is against the intimation u/s. 143(1) which merges into the assessment order passed u/s. 143(3) of the Act. The said assessment

order has been quashed in the first appeal, consequent to conduct of search, by holding it an abated year, as submitted by the Ld. Counsel which revives the intimation u/s. 143(1). However, yet another assessment is completed u/s. 153A for the same year for which the first appeal is pending before the Ld. CIT(A). Accordingly, the impugned intimation u/s. 143(1) again merges into the assessment order passed u/s. 153A since it is an abated year.

5.1. Chronology of events in this respect is important which is noted as under:

- | | | |
|-----|---|---|
| (a) | Intimation u/s. 143(1) | -12.01.2020 |
| (b) | Assessment order u/s. 143(3) | -19.04.2021 (Intimation merges) |
| (c) | Assessment order u/s. 153A
read with sec. 143(3) | - 30.03.2022 |
| (d) | CIT(A)'s order against 143(1)
Intimation | - 31.08.2022(impugned order) |
| (e) | CIT(A) order against 143(3) order | - disposed by quashing 143(3)
Order, being abated year |
| (f) | CIT(A) order against 153A assessment | - Pending |

6. Considering these facts, we find that the present appeal being against intimation u/s. 143(1) is rendered as infructuous owing to its merger into the assessment order passed u/s. 153A, it being abated year and pending before Ld. CIT(A). Accordingly, we dismiss the present appeal as infructuous after condoning the delay.

7. In the result, appeal of the assessee is dismissed as infructuous.

Order pronounced in the open Court on 14th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 14th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Central, North-East Region, Guwahati
 4. CIT,
 5. DR, ITAT, Gauhati Bench, Gauhati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata