

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No. 256/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. CES Limited,
Hyderabad
[PAN No. AADCS4564P]

Dy. Commissioner of
Income Tax,
Circle-1(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 15/06/2023
घोषणा की तारीख/Pronouncement on: 21/06/2023

आदेश / ORDER

PER LALIET KUMAR, JM:

The present appeal is filed by the assessee against the order dated 06/03/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC)-Delhi, for the assessment year 2018-19, on the following grounds:

- 1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*

2. *The Ld. CIT(A) erred in dismissing the appeal.*
3. *The Ld. CIT(A) has grossly erred in holding that the A.O has correctly considered the total income of Rs. 7,09,32,640/- in the computation of income which is as per the intimation order u/s 143(1) dated 03-10-2019 even though the total income as per the return of income filed by the assessee is Rs. 5,87,68,680/-.*
4. *The Ld. CIT(A) has erred in holding that the A.O has not erred in considering the total income at Rs. 7,09,32,640/- and “Income from business and profession” at Rs. 7,00,94,868/- in the computation of income.*
5. *a. The Ld. CIT(A) grossly erred in appreciating the provisions of section 143(3) of the Income Of the Income Tax Act, 1961 (for short “the Act”), 1961 as per which the impugned assessment is required to be made in the appellant’s case.*
b. The Ld. CIT(A) ought to have appreciated that nowhere in the provisions of section 143(3) of the Act, there is a requirement on the part of the A.O to adopt the total income and the tax payable as per the intimation already made u/s.143(1) of the Act while determining the total income and tax payable in the scrutiny assessment completed u/s.143(3) r.w.s.143(3A) & 143(3B) of the Act.
6. *The Ld. CIT(A) ought to have appreciated that it is immaterial whether that the appellant has filed an appeal against the intimation u/s.143(1) of the Act for the assessment year under consideration or not.*
7. *The Ld. CIT(A) ought to have appreciated the fact that no addition was proposed or made in the assessment order passed u/s. 143(3) of the Act dated 11.03.2021.*
8. *The Ld. CIT(A) ought to have appreciated that the A.O having accepted the total income admitted by the assessee, erred in determining Income from Business and Profession of Rs. 7,00,94,868/- whereas per ROI filed, the Income from Business and Profession is Rs. 5,79,30,915/- only.*

9. *The Ld. CIT(A) ought to have appreciated that the A.O has wrongly considered the Total Income of Rs. 7,09,32,640/- in the computation of Income whereas the Total Income as per the return of income filed by the assessee is Rs. 5,87,68,680/- only.*

10. *The Ld. CIT(A) erred in not dismissing the A.O to grant the refund as claimed along with upto date interest.*

2. At the outset, learned AR had submitted that the AO had taken care in the scrutiny assessment for expenditure of personal nature and refund claim. However, AO had accepted the explanation offered by the assessee and no addition is made on the above two aspects.

3. Thereafter, the AO relying upon the intimation issued under section 143(1) of the Income Tax Act, 1961 (for short "the Act") had computed the tax liability of the assessee. While computing the income of the assessee, AO computed the income at Rs. 7,09,32,640/-. It was submitted by the learned AR that the assessee had preferred the appeal before the Ld.CIT(A) against the intimation received by the assessee on which hearings have been taken place and the order is awaited.

4. It was submitted that while accepting the ground in the present appeal, the AO was duty bound to consider the return of income and other documents filed by the assessee. Our attention was drawn to pg.75 of the paper book where the assessee on his own has disallowed the privilege leave and added back to the income of the assessee. Similarly, the

assessee has also drawn our attention to the payment made by the assessee towards ESI/PF contribution and submitted that all the deposits were made within the time permitted by the parent Act, namely, ESI/PF/Gratuity Act. It was submitted that the Ld.AO should have considered the above said explanation. However, without appreciating the above, the AO merely relying upon the intimation, has confirmed the addition to the above said amount.

5. On appeal, Ld.CIT(A) has confirmed the same and our attention was drawn to paragraph 4.4 and 4.5 to the following effect:

"4.4 This case was selected under complete scrutiny on following issues (i) expenditure of personal nature and (ii) refund claim. In the impugned assessment order dated 11.03.2021, the AO has stated that explanation of the assessee on the above issues is accepted. Thus the claim of the assessee that in the assessment order, the A.O had mentioned the income returned as Rs.5,87,68,680/- only and there can be no doubt about the income admitted 'as Rs.5,87,68,680/- is factually wrong. The AO has nowhere stated as claimed 'by the assessee. What he has stated is "explanation of the assessee on the above issues is accepted." The AO, in the assessment order, has also nowhere stated that he accepts the-return of income filed by the assessee. The AO then issued the computation sheet and demand notice determining the income at Rs. 7,09,32,640/-. This income taken by the AO is as per 'the intimation order u/s. 143(1) dated 3.10.2019. Against the said intimation, the assessee has also filed appeal before the CIT(A).

4.5 It is noted that in the computation sheet,' the AO has correctly stated "Income from business, and profession" at Rs.7,00,94,868/- which is as per the intimation order u/s. 143(1) dated 3.10.2019 even though as per ROI filed, it is Rs.5,79,30,915/-. Further, the AO has correctly

considered the Total Income of Rs. 7,09,32,640/- in the computation of income, which is as per the intimation order u/s. 143(1) dated 3.10.2019 even though total income as per the return of income filed by the assessee is Rs.5,87,68,680/-. Therefore, I am of the view that the AO has not erred in considering the Total Income at Rs. 7,09,32,640/- and "Income from business and profession" at Rs.7,00,94,868/- in the computation of income. These grounds are, accordingly, dismissed."

It was submitted by the learned AR that the matter may kindly be remitted back to the AO for reconciliation.

6. Per contra, learned DR has submitted that the appeal of the assessee is not maintainable as it is basically appeal against the order passed under section 143(1) of the Act as there is no grievance of the assessee with respect to order passed by the AO in scrutiny assessment had merely followed the computation arrived at the stage of 143(1). It was submitted that there was no scope for the AO to deviate from the findings/computation done by the CPC while issuing notice under section 143(1) of the Act.

7. We have heard the rival contentions of the parties and perused the material available on record. Admittedly, the AO has examined the case of the assessee under scrutiny assessment for two limited issues i.e., for expenditure of personal nature and refund claim. The AO is duty bound to restrict to the claim of the assessee unless he after taking the approval from the competent authority made the limited scrutiny assessment to fulfilled assessment. That has not

been done, therefore, AO was duty bound to restrict to its findings only to the issue under consideration before him. Admittedly, no addition has been made in the hands of the assessee on the above two counts.

7.1. Assessee preferred appeal before the Ld. CIT(A) and Ld. CIT(A) had dismissed the appeal of the assessee for the reasons stated above. In our view once the appeal of the assessee against intimation under section 143(1) of the Act is pending adjudication before the NFAC, then it is required in the subsequent appellate proceedings for CIT(A) to wait for the outcome of the earlier appeal pending against intimation under section 143(1)(a) of the Act. As the case may be, the present order has been passed without waiting for the outcome of the appeal of the assessee filed against order under section 143(1) of the Act.

7.2. In the light of the above, we are of the opinion that the matter be remanded back to the file of Ld.CIT(A) with a direction to consider the record of other pending appeals and other material and to give a finding on various other aspects including with respect to expenditure disallowed by the assessee and added by AO towards the privileged leaves and disallowance of expenses incurred towards deposit of assessee's contribution under ESI/PF/Gratuity Act. In view of the above, we restore the matter to the file of the Ld.CIT(A) with a direction to pass reasoned order on the above said aspects, on the basis of information available on record and

also on the basis of the material filed by the assessee. Needless to say while doing so, the Ld.CIT(A) shall be bound by the jurisdiction of the decision of the Hon'ble Supreme Court rendered in the case of Checkmate Services Pvt. Ltd., Vs. CIT, Civil Appeal No. 2833/2016 by order dated 12/10/2022. CIT(A) shall also provide sufficient opportunities to the assessee and shall also call for remand report on the above said issue from AO.

Grounds are accordingly treated as allowed for statistical purposes.

8. In the result, appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 21st day of June, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad,
Dated: 21/06/2023

TNMM

Copy forwarded to:

- 1. M/s. CES Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.*
- 2. Dy. Commissioner of Income Tax, Circle-1(1), Hyderabad.*
- 3. DR, ITAT, Hyderabad.*
- 4. GUARD FILE*

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ASSISTANT REGISTRAR
ITAT, HYDERABAD