

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजूनाथा .जी, लेखा सदस्य एवं
श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1/Chny/2023
निर्धारण वर्ष /Assessment Year: 2020-21

M/s.Shriram Properties Ltd.,
No.31, 2nd Main Road,
Shriram House, T.Chowdaiah Road,
Sadashivanagar,
Bangalore-560 080.

v. The Asst. Director-
of Income Tax,
CPC,
Bangalore.

[PAN: AAFCS 5801 D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.5/Chny/2023
निर्धारण वर्ष /Assessment Year: 2019-20

The Dy. Commissioner-
of Income Tax,
Central Circle-1(4),
Chennai.

v. M/s.Shriram Properties Ltd.,
No.31, 2nd Main Road,
Shriram House,
T.Chowdaiah Road,
Sadashivanagar,
Bangalore-560 080.

(अपीलार्थी/Appellant)

[PAN: AAFCS 5801 D]
(प्रत्यर्थी/Respondent)

Assessee by

: Mr.S. Ananthan, FCA

Department by

: Mr.P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.05.2023

घोषणा की तारीख /Date of Pronouncement

: 28.06.2023

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आदेश / ORDER

PER MANJUNATHA. G, AM:

These cross-appeals filed by the assessee, and as well as the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 31.10.2022 & 04.11.2022, and pertains to assessment years 2019-20 & 2020-21 respectively. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. At the outset, we find that there is a delay of one-day in filing of the Revenue's appeal, for which, a petition for condonation of delay along with affidavit explaining the reasons has been filed. After considering relevant contents of the petition filed by the Revenue, we find that the delay in filing of the appeal is neither intentional nor for deriving any undue benefit, and thus, we condone the delay in filing of the appeal and admit the appeal for hearing.

3. The brief facts of the case are that the assessee is a limited company filed its return of income for AY 2020-21 declaring loss of Rs.87,37,008/-. The Asst. Director of Income Tax, CPC (AO) processed the return of income, and issued intimation u/s.143(1)(a) of the Income Tax Act, 1961 (in short "the Act"), and determined total income of Rs.4,99,78,000/- by making various additions, including additions towards expenditure of capital in

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nature u/s.37(1) of the Act, disallowance of penalty u/s.37(1) of the Act, disallowance of contribution to PF u/s.43B of the Act, etc. The assessee challenged the intimation issued u/s.143(1)(a) of the Act, before the First Appellate Authority, and the Ld.CIT(A) for the reasons stated in their appellate order dated 04.11.2022, partly allowed appeal filed by the assessee, where, the Ld.CIT(A) rejected legal ground taken by the assessee in light of proviso to Sec.143(1) of the Act, on the issue of non-issuance of show cause notice as required under said section before issuing intimation u/s.143(1)(a) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submits that intimation issued by the ADIT, CPC, u/s.143(1) of the Act dated 11.10.2021 is invalid, and consequently, additions made towards disallowance of various expenses are liable to be deleted, because, the AO did not issue mandatory show cause notice under first proviso to sec.143(1)(a) of the Act. The Ld.Counsel for the assessee referring to screen shot taken from ITBA portal submits that the AO did not issue show cause notice before issuing intimation making adjustment towards total income, without appreciating the fact that as per the first proviso to sec.143(1)(a) of the Act, the AO is required to issue show cause notice and intimate the assessee on proposed adjustment to total income. Since, the AO is failed to comply with mandatory requirement of the first proviso to s.143(1)(a) of the Act, intimation issued u/s.143(1) of the Act, is ab initio, and liable to be

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quashed. In this regard, he relied upon the decision of ITAT Ahmedabad Bench in the case of Arham Pumps v. DCIT, CPC, Bangalore, reported in 2022 (5) TMI 608 (ITAT Ahmedabad).

5. The Ld.DR, Mr.P.Sajit Kumar, JCIT, supporting the order of the Ld.CIT(A), submits that although, details with regard to communication proposing adjustments are not available, but fact remains that the said information cannot be extracted with CPC-2.0 Project was in transition phase for AY 2020-21, and thus, for this reason, the intimation issued u/s.143(1) of the Act, cannot be annulled. He further submits that the adjustment made by the AO towards various expenses as per the provisions of Sec.143(1)(a) of the Act, is mandatory in nature as per the relevant provisions of the Act, and further, said adjustment has been made on the basis of Tax Audit Report issued by the Auditor in terms of provisions of Sec.44AB of the Act, and thus, unless assessee produce a revised Tax Audit Report from the concerned Auditor, and rectified the so called mistakes, the assessee cannot argued that the Auditor has wrongly specified the amount of disallowance of expenses. Therefore, he submits that there is no error in the adjustment made by the AO while issuing intimation u/s.143(1) of the Act.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As per the provisions of Sec.143(1)(a) of the Act, and proviso provided therein, no adjustment shall be made unless an intimation is given to the assessee of

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such adjustments either in writing or electronic mode. From the proviso provided u/s.143(1)(a) of the Act, it is abundantly clear that before issuing intimation u/s.143(1) of the Act, the AO should issue show cause notice on proposed adjustment to total income. Unless, the AO communicates to the assessee on proposed adjustment as per the provisions of Sec.143(1)(a) of the Act, intimation issued u/s.143(1) of the Act, is unlawful, and thus, additions proposed in the said intimation cannot be sustained. This proposition is supported by the decision of the ITAT Ahmedabad Bench in the case of Araham Pumps (supra), where the Tribunal after considering relevant provisions to sec.143(1)(a) of the Act, and proviso, provided therein held as under:

7. Ongoing through the above section and proviso attached therein, the total income or loss shall be computed after making following adjustment mainly of any arithmetical error in the return. Incorrect claim, if such incorrect claim is apparent from any information in the return, etc. Thus, it is clear that a return can be processed u/s. 143(1) by making adjustments on six types of adjustments only, The first proviso to section 143(1)(a) make it very clear that no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. Apparently in the case of the assessee, no intimation had been given to the assessee for making any adjustment or disallowance either in writing or in electronic mode. Thus, the CPC center has not followed the first proviso to section 143(1)(a) of the Act. This position was not controverted by the Ld. DR also. Assuming a moment, if such an intimation is given to the assessee as per first proviso, then the second proviso stipulates that if any response is received from the assessee, the same should be considered before making any adjustment or disallowance, and also in a case where NO response is received, then within thirty days of the issue of such intimation, department is free to make such adjustment.

8. Ongoing through the above intimation made under section 143(1), CPC has not followed the above provisos by giving proper opportunity to the assessee to defend its case as per the first proviso to section 143(1)(a). Further, the NFAC order is also silent about the intimation to the assessee. Therefore, we find that intimation issued under section 143(1) dated 19.10.2019 is against first proviso to section 143(1)(a), and therefore, the entire 143(1) proceedings is invalid in law.

9. We also observe that the Ld. NAFC has not looked into this fundamental principle of "audi alterm partem", which has not been provided to the assessee as per the 1st proviso of section 143(1) of the Act, but proceeded with the case on merits and

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also confirmed the addition made by the CPC. The Ld. NAFC is thus erred in conducting the faceless appeal proceedings in a more mechanical manner without application of mind. We therefore hereby quash the intimation issued by the CPC and allow the appeal filed by the assessee.

7. In this case, there is no dispute whatsoever with regard to the fact that the AO has not issued a communication to the assessee as required under first proviso to sec.143(1)(a) of the Act, before making adjustment to total income u/s.143(1) of the Act. Further, when the Bench directed the Ld.DR present for the Revenue to verify the records and ascertain whether the AO has issued mandatory communication proposing the adjustment before issuing intimation u/s.143(1) of the Act, for which, the Ld.DR vide his written submissions dated 02.06.2023 stated that the details of communication proposing the adjustment are not available for extraction as the CPC-2.0 Project was in transition phase for AY 2020-21. From the above, it is clear that the details of communication issued by the AO as per the first proviso to Sec.143(1)(a) of the Act, is not available with the AO. Therefore, we are of the considered view that intimation issued u/s.143(1) of the Act, with various adjustments to total income cannot be sustained, and thus, the intimation issued u/s.143(1)(a) of the Act dated 11.10.2021 is held to be unsustainable in law, and thus, we direct the AO to delete additions made towards disallowance of various expenses in the said intimation.

8. The assessee has challenged the order of the Ld.CIT(A) on the issue of disallowance of various expenses. Since, the intimation issued u/s.143(1)(a) of the Act, is held to be invalid/unsustainable under the law,

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consequent additions made by the AO towards disallowance of various expenses becomes academic in nature, and thus, grounds raised by the assessee are dismissed as infructuous.

9. In the result, appeal filed by the assessee in ITA No.1/Chny/2023 for AY 2020-21 is allowed.

ITA No.5/Chny/2023 for AY 2019-20

10. The Revenue has raised the following grounds of appeal:

1. The order of the Id. Commissioner of IT. (Appeals) is erroneous on facts of the case and in law.

2.1. The learned CIT(A) erred in directing the AO to adopt the tax rate of 25% to the assessee company, without appreciating the fact that the gross receipts of the assess company for the F.Y. 2016-17 was more than 250 crores as such the assessee is not eligible for any concessional tax rate of 25%

2.2 The Id. CIT(A) erred in holding that the turnover of the assessee company was less than 250 crores for the F.Y.2016-17, without appreciating that the assessee's business turnover and other income turnover for the F.Y. 2016-17 was to the tune of Rs.173.30 crores and Rs.235.51 respectively and therefore the total turnover/gross receipts was more than 250 crores.

2.3 The Ld. CIT(A) erred in assuming that, only the business receipts are to be considered for the purpose of "rates of tax" whereas Part 1 to chapter II of Finance Act 2019, specifies "total turnover" or "Gross receipts" shall not exceed 250 crores for the purpose of availing of concessional tax rates, and in this case the gross receipts had exceeded 250 crores, for the F.Y. 2016-17 and therefore the assessee is not eligible for the concessional taxation of 25%.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.

11. The only issue that came up for our consideration from Revenue's appeal for AY 2019-20 is rate of tax applicable for domestic companies whether it is 25% or 30%. The rate of tax applicable for domestic companies for AY 2019-20 is 25% if gross turnover is up to Rs.250 Crs. in the previous year. Further, if gross turnover exceeds Rs.250 Crs. in the

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previous year, then, 30% rate of tax is applicable. The assessee has computed tax liability by applying rate of tax @25% on the ground that its turnover / gross receipts from business for AY 2017-18 is less than Rs.250 Crs. The AO computed tax liability of the assessee by applying rate of tax @30% on the ground that gross receipts/turnover of the assessee for AY 2017-18 was more than Rs.250 Crs. The Ld.CIT(A) after considering relevant details filed by the assessee, including financial statements for AY 2017-18 observed that if you exclude other income, gross turnover/gross receipts from the business of the assessee for AY 2017-18, was less than at Rs.250 Crs., and thus, the assessee has rightly adopted concessional rate of tax @25%. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

11.1 The CIT-DR referring to financial statements of the assessee for AY 2017-18 submits that as per declared financial results, the turnover of the assessee was more than Rs.250 Crs., which is evident from financial statement of the assessee's business turnover was to the tune of Rs.173.30 Crs. and further, a sum of Rs.235.51 Crs. was reported under 'other income'. He further referring to the provisions of Part-1, Chapter-2 of Finance Act, 2019 submitted that for the purpose of applying 25% concessional rate of tax, the Act specifies total turnover or gross receipts shall not exceed Rs.250 Crs. In this case, if you consider gross receipts of the assessee, including other income, it exceeds Rs.250 Crs., and thus, the

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assessee ought to have paid 30% tax. The Ld.CIT(A) without appreciating the relevant facts, directed the AO to adopt 25% concessional rate of tax.

11.2 The Ld.Counsel for the assessee, on the other hand, supporting the order of the Ld.CIT(A) submitted that there is no dispute with regard to the fact that the Revenue from operations for AY 2017-18 was at Rs.173.30 Crs. It was also not in dispute that the assessee has reported 'other income' of Rs.235.50 Crs. and said, other income includes income from guarantee commission, fair value gain on financial instruments, and gain on extinguishment of financial liability, and if you exclude these three items from other income, then, the total receipts as considered by the AO, including other income does not exceed Rs.250 Crs., and thus, the question of turnover being in excess of Rs.250 Crs. for applying higher rate of tax does not arise. He further submitted that other income reported by the assessee cannot be considered as turnover or gross receipts from the business, because, those items of income are not directly linked to business activity of the assessee. Further, three items of other income was arises for the year under consideration is an account of re-statement of existing liabilities in the books of accounts for migrating to IND-AS standards and the same are notional in nature. Therefore, those items of income cannot be considered for the purpose of computing gross turnover/gross receipts. Therefore, he submitted that the Ld.CIT(A) has rightly excluded other income for the purpose of computing gross turnover/ gross receipts and

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direct the AO to apply concessional rate of tax @25% and their orders should be upheld.

11.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that as per audited financials of the assessee for AY 2017-18, the assessee has reported gross Revenue from operations at Rs.173.30 Crs. which is less than the prescribed limit for applying concessional rate of tax. Further, other income reported by the assessee does not constitutes gross turnover/ gross receipts generated from main business activity of the assessee. Therefore, for the purpose of computing turnover, those items of other income cannot be considered. We further noted that out of other income, three major items i.e. income from guarantee commission, fair value gain on financial instrument and gain on extinguishment of financial liability are notional incomes credited to P &L A/c for re-statement of existing income and liabilities while adopting IND-AS standards, and thus, same cannot be considered as gross receipts or other income generated from business. If you exclude those three items, then the gross turnover/ gross receipts of the assessee, including other income does not exceed Rs.250 Crs. Therefore, we are of the considered view that the assessee has rightly computed tax liability by adopting 25% concessional rate of tax. The Ld.CIT(A) after considering relevant facts has rightly directed the AO to adopt concessional rate of tax, and thus, we are

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inclined to uphold the findings of the Ld.CIT(A), and dismiss the appeal filed by the Revenue.

12. In the result, appeal filed by the Revenue in ITA No.5/Chny/2023 is dismissed.

13. In the result, appeal filed by the assessee in ITA No.1/Chny/2023 for AY 2020-21 is allowed and appeal filed by the Revenue in ITA No.5/Chny/2023 is dismissed.

Order pronounced on the 28th day of June, 2023, in Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF