

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.126/DEL/2023
Assessment Year 2020-21

Jhajjar Power Limited Admin Building Khanpur Jharli (154) Jhajjar, Haryana.	Vs.	Deputy Commissioner of Income Tax Circle-Rohtak Haryana
TAN/PAN: AACJ0468L		
(Appellant)		(Respondent)

Appellant by:	Shri Biren Shah, CA		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	26	07	2023
Date of pronouncement:	26	07	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi (‘CIT(A)’ in short) dated 28.11.2022 arising from the intimation order dated 20.12.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2020-21.

2. As per the grounds of appeal, the assessee has challenged the adjustment carried out by CPC-Bengaluru on account of Income Computation And Disclosure Standards (ICDS) notified under Section 145(2) of the Act amounting to Rs.18,73,20,368/- while drawing intimation under Section 143(1) of the Act.

3. The Assessee-company filed its return of income on 15.02.2021 for Assessment Year 2020-21 in question declaring total income at Nil. The CPC, however assessed the taxable income at Rs.18,73,76,940/- while processing the return of income under Section 143(1) of the Act which included Rs.18,73,20,368/- on account of ICDS adjustments which is under challenge in the present appeal.

4. When the matter was called for hearing, the Id. counsel for the assessee, at the outset, adverted to Form 3CD of the Tax Audit Report and submitted that the assessee has reportedly carried out certain ICDS Adjustment as pointed out in Row No. 13(e) of Form 3CD. As per the ICDS Adjustments reported in Tax Audit Report, the Assessing Officer-CPC took the ICDS adjustment at Rs.44,28,03,658/- instead of correct figure of Rs.25,54,83,290/- i.e. difference between aggregate increase of Rs.46,06,53,657/- and decrease of Rs.20,51,70,367/-. In effect, the assessee itself has increased the taxable income to the extent of Rs.25,54,83,290/- only on account of such ICDS adjustments as reported in the Tax Audit Report.

4.1 Elaborating further, the Id. counsel points out that owing to such ICDS adjustments while drawing the intimation under Section 143(1) by CPC Bengaluru, the decrease in profit on account of ICDS adjustments to the tune of Rs.20,51,70,367/- has not been taken into account at all and also increase in profit to the extent of Rs.1,78,50,000/- has been omitted to be considered. This has resulted in artificial increase in taxable income to the extent

of Rs.18,73,20,367/- [Rs.20,51,70,367 (-) Rs.1,78,50,000].

4.2 The Id. counsel referred to provision of Section 145(2) of the Act which entitles the assessee to make adjustment on account of notified ICDS. The Tax Audit Report has been prepared after taking note of permissible adjustments in consonance with Section 145(2) of the Act. The Id. counsel submitted that on account of ICDS adjustment, the taxable profit, in effect, has stood increased but however, the CPC has unilaterally taken into account only the increase in profit on account of such adjustment and has omitted to look at corresponding decrease in the profits on account of similar adjustments on identical premises. The Id. counsel next submits that while making such adjustments, no opportunity whatsoever has been given to the assessee which is statutorily mandated as per the 1st proviso to Section 143(1)(a) of the Act. The adjustments carried out without giving opportunity has offended the enacted law of Section 143(1) as well as sacrosanct principles of natural justice.

5. The Id. CIT (DR), on the other, submitted that the assessee, having filed rectification application under Section 154 of the Act, is entitled to suitable remedy available therein in accordance with law and therefore, the present appeal of the assessee is a futile exercise and should not be entertained.

6. We have carefully considered the rival submissions. The quantification of adjustments on account of ICDS read with Section 145(2) of the Act resulting both towards increase and decrease in profits, while drawing intimation under Section 143(1)

is in controversy. The assessee contends that no opportunity has been given while making incorrect quantification of adjustments. The assessee further contends that such adjustments are not permissible under Section 143(1)(a) of the Act.

7. Making available of opportunity to assessee is indispensable under Section 143(1) of the Act. In the absence of opportunity, the adjustment under Section 143(1)(a) is vitiated and runs contrary to statutory mandate of law. Under these circumstances, we are not in a position to comment on the permissibility or otherwise of such adjustments and quantification thereof in the proceedings under Section 143(1a) of the Act.

8. Having regard to the facts and circumstances, we set aside the intimation in question and restore the matter back to the file of the Assessing Officer. The Assessing Officer shall give proper opportunity to the assessee in the matter and take into account the submissions / defense raised by the assessee in this regard and shall assess the taxable income afresh in accordance with law. It shall be open to the assessee to raise such arguments as may be advised, before the Assessing Officer in this regard.

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

Order dictated and pronounced in the open Court on 26/07/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /07/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**