

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.55/Del./2023  
(ASSESSMENT YEAR : 2017-18)**

The India Termit Corporation Limited, vs. JCIT, Spl. Range 9,  
Unit No.212, 2<sup>nd</sup> Floor, Delhi.  
World Mark 2, Aerocity,  
New Delhi – 110 037.

**(PAN : AA ACT7462Q)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vipin Jain, FCA  
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 09.08.2023  
Date of Order : 11.08.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.  
CIT(Appeals)/NFAC dated 15.12.2022 pertaining to the assessment year  
2017-18.

2. The assessee has taken the following grounds of appeal :-

“1. That the CPC order No. CPC/1718/A6/1882324652 dated 6.3.2019, (copy not provided despite repeated request) and the rectification order dated 21.05.2019 ix]» 154 of the Act, having been passed subsequent to notices dated 30.08.2018 and 27.09.2018, issued u/s 143(2) of the Income Tax Act, 1961, are bad in law in view of the law explained by The Hon'ble Supreme Court of India, in "Commissioner Of

Income-Tax vs Gujarat Electricity Board, 260 ITR 84 SC", both the orders are liable to be quashed.

2. That the CPC order No. CPC/1718/A6/1882324652 dated 6.3.2019, and the rectification order dated 21.05.2019 u/s 154 are bad in law, being passed without providing the assessee company any opportunity of being heard and in violation of the Principles of natural justice.

3. That Rs 73,36,334 added to income are not mistakes apparent from record which could be rectified u/s 154 of the I Tax Act, 1961. Addition made to income is bad in law and is required to be deleted.

Exempt income:	
Dividend on investment	Rs.2,52,946
Profit on sale of fixed assets	Rs.6,00,590
Share of profit from partnership firm	Rs.1,27,077
Interest from AOP	Rs.3,29,863
Delay in deposit of Employees contribution on ESI & PF	Rs.31,03,780
Gratuity amount	Rs.28,91,995
43B	Rs. 30,283
Total	Rs.73,36,534

4. That Rs 73,36,534 added to income are not also prima facie adjustments that could be added to income u/s 143(1) of the I Tax Act, 1961. Addition made to income is bad in law and is required to be deleted.”

3. In this case, CPC, Bangalore determined the assessee’s income vide order dated 21.05.2019. Assessee appealed before the NFAC and the grounds raised noted by the NFAC are as under :-

“6.1 In the grounds of appeal, the appellant contested that the CPC Bangalore erred in determining the income of the appellant company by making variance aggregating Rs.73,36,334/- in the income declared in the return filed as under :-

Exempt Income :	
Dividend on investment	Rs.2,52,946
Profit on sale of fixed assets	Rs.6,00,590
Share of profit from partnership firm	Rs.1,27,077
(1,26,203 + 874)	
Interest from AOP	Rs.3,29,863
	Rs.13,10,476

Delay in deposit of employee Contribution on ESI & PF	Rs.31,03,780
Gratuity amount	Rs.28,91,995
43B	Rs. 30,283
Total	Rs.73,36,534'

4. Considering the submissions of the assessee, NFAC remanded the issue to the file of AO to give an opportunity to the assessee and thereafter make the adjustments. The concluding part of the CIT(A)/NFAC order is as under :-

“7.2 In the written submission with respect to the remaining additions of -Dividend on investment - Rs.2,52,946/-, Profit on sale of fixed assets - Rs.6,00,590/-, Share of profit from partnership firm - Rs.1,27,077/-, Interest from AOP - Rs.3,29,863/-, Gratuity amount - Rs.28,91,995/- and 438 - Rs.30,283/- the appellant stated that CPC Bangalore did not give opportunity to the assessee before making the said adjustments and filed the ledger copies of the relevant accounts.

The assessee further stated that it was not given a copy of the intimation u/s.143(1) in spite of specifically asking for the same.

Hence, the AO is directed to verify the ITR and relevant details and then decide these adjustments as per the facts and law.”

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. At the outset, Id. Counsel of the assessee submitted that he will not be contesting the disallowance on account of delay in deposit of employees contribution towards ESI/PF amounting to Rs.31,03,780/-. Hence this addition is sustained.

7. For rest of the additions, Id. Counsel for the assessee submitted that Id. CIT (A) has no power to remand/set aside the matter to the file of AO.

Hence, he submitted that this order of the Id. CIT (A) setting aside the issues to the file of AO is not sustainable.

8. Per contra, Id. DR for the Revenue relied upon the orders of the authorities below.

9. Upon careful consideration, we note that section 251 of the Income-tax Act, 1961 (for short 'the Act') does not give any power to the Id. CIT (A) to set aside the issue to the AO. Hence, the pleading of the Id. CIT (A) is cogent and accordingly we hold that the matters remanded by Id. CIT (A) to the file of AO except the issue on account of delay in deposit of employee's contribution on PF/ESI be set aside.

10. In the result, this appeal of the assessee stands partly allowed for statistical purposes.

**Order pronounced in the open court on this 11<sup>th</sup> day of August, 2022.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 11<sup>th</sup> day of August, 2022**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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