

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.939 & 940/PUN/2023  
Assessment Year 2017-18

Jayashree Virendrasingh Thakur, 25B, Vishwas Garden, Opp. Indraprasth Suncity Road, Sinhgad Road, Anand Nagar, Pune 411 051, Maharashtra PAN : AIDPT8072A	Vs.	ITO, Ward-6(1), Pune
Appellant		Respondent

Assessee by Shri Pramod Shingte  
Revenue by Shri Ramnath P. Murkunde

Date of hearing 21-09-2023  
Date of pronouncement 22-09-2023

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee relating to the assessment year 2017-18 are directed against the common order passed by the CIT(A) in NFAC on 28-07-2013. Whereas one appeal has emanated from the Intimation issued u/s.143(1) and the second from the second rectification order passed by the AO *qua* such an Intimation. We have clubbed these appeals for disposal on account of commonness of the issue.

2. Briefly stated, the facts anent to ITA No.940/PUN/2023 are that the assessee filed original return declaring total income at

Rs.10,23,024/-. In the computation of total income, the assessee declared, *inter alia*, 'Income from business' at Rs.13,70,000/- u/s.44AD at a rate higher than 6% of gross receipts amounting to Rs.1,38,78,040/-. Intimation u/s.143(1) was issued invoking clause (a)(vi) of the Act determining total income at Rs.79,32,800/-. The reason for such adjustment has been given as the: "inconsistency in the amounts shown in Sr.No.E3 44ADA (Profits and gains of profession on presumptive basis) of Schedule BP and receipts available in Form 26AS against sec.194J (Fees for professional or technical services)". The assessee filed an appeal before the Id.CIT(A) urging that the addition in the intimation was unwarranted because the assessee had shown income in terms of section 44AD, being, special provision for computing profits and gains from business of trading in certain goods. The Id. CIT(A) did not concur.

3. ITA No.939/PUN/2023 is a connected matter inasmuch as the assessee filed rectification application against the above referred intimation u/s.143(1) contending that she filed the return computing income u/s.44AD and the intimation u/s.143(1) wrongly took note of section 44ADA, which was incorrect. The AO got convinced and passed the rectification order accordingly. Thereafter, again a rectification order was passed *suo motu* by the AO on 22-01-2021

rectifying the original rectification order by holding that the total receipts of the assessee were professional receipts and hence covered u/s.44ADA and not u/s.44AD. That is how, he rectified the original rectification order passed u/s 154. The assessee filed appeal before the Id. CIT(A). Both the appeals, namely, the one against intimation u/s.143(1) and the other against rectification order passed u/s.154 came to be dismissed.

4. We have heard the rival submissions and gone through the relevant material on record. Admittedly, the assessee filed the return declaring total income at Rs.10,23,024/-. In the computation of income, a sum of Rs.1,38,78,040/- was declared as gross receipts. Section 44AD was applied for computing income at Rs.13,70,000/-, which is higher than the stipulated minimum rate of 6% on the gross receipts. The return was processed u/s.143(1)(a) making the addition by taking note of the provisions of section 143(1)(a)(vi) of the Act. At this stage, it would be relevant to mention that sub-clause (vi) of section 143(1)(a) provides for making adjustment on the ground that income appearing in Form No.26AS etc. was not included in computing the total income in the return. This provision was inserted w.e.f. 01-04-2017 and remained in force only for one year. Third proviso to section 143(1)(a) mandates that no adjustment shall be made under the sub-clause (vi) in relation to a

return furnished for the assessment year commencing on or after 01-04-2018. This shows that the sub-clause (vi) was applicable only for the year under consideration. In this regard, it would be fruitful to note that the CBDT issued Instruction No.10/2017, dated 15-11-2017 in the context of processing of income-tax returns u/s.143(1)(a)(vi). Para 3.2 of the Instruction provides that: “if the receipts under these heads are completely omitted from the return, then the provisions of section 143(1)(a)(vi) shall be applicable”. It is observed that the total receipts as per Form No.26AS amounted to Rs.1,38,19,548/-, as has been mentioned in the Intimation u/s.143(1). The assessee declared gross receipts at Rs.1,38,78,040/- in the computation of total income. It is unambiguous that the amount of gross receipts declared by the assessee is neither ‘completely omitted’ nor understated *vis-à-vis* the amount given in Form No.26AS. It is not the case of the Revenue that a sum of Rs.1,38,78,040/- declared by the assessee represents receipts different from those taken note of in Form No.26AS.

5. Proceeding further, para 3.2 of the Instruction further provides that: “wherever in the return Form, presumptive income under both Sec.44AD and 44AE is disclosed, it will be difficult to correlate the receipts in the return with the information in the three Forms. Hence, any likely difference in the receipts under these items in the

return with the receipts in the three Forms under this scenario would be excluded from the purview of Sec.143(1)(a)(vi).” It is glaring from the above that if income has been declared by an assessee under the presumptive income scheme, *inter alia*, u/s.44AD, as was also declared by the assessee, then the difference in the receipts in the return with the receipts in the requisite Form (26AS in our case) should be excluded from the purview of section 143(1)(a)(vi). This shows that the *per se* difference in the amount of receipts shown and as per the requisite Form should not be subjected for addition in terms of clause (vi) of section 143(1)(a). However, an exception has been carved out to this in the same para providing that: “where the presumptive income from business either u/s.44AD or profession u/s.44ADA alone are reported in the return and the gross receipts from presumptive business or profession shown in the return is less than the gross receipts as per the three Forms, intimation proposing adjustment would be issued”. Main part of the para applies to the case under consideration but not the exception because the gross receipts from the presumptive business shown by the assessee u/s.44AD are more than gross receipts in Form No.26AS. To sum up, the position is that the assessee filed return declaring total income u/s.44AD; the gross receipts for the application of section 44AD exceeded the amount as per Form

No.26AS; and the AO issued intimation by invoking clause (vi) of section 143(1)(a). In such circumstances, the Intimation, making adjustment by invoking clause (vi) of section 143(1)(a), is evidently debarred as violating the prescription of Instruction No.10/2017, which is binding on the Departmental Officers. We, therefore, hold that the Id. CIT(A) was not justified in confirming the disallowance contrary to the mandate and ambit of section 143(1)(a)(vi) of the Act. The impugned order is overturned to this extent.

6. Once it is held that the adjustment could not have been made in terms of section 143(1)(a)(vi) to the returned income in respect of presumptive income declared u/s.44AD, naturally, there was no reason to rectify the already and correctly rectified Intimation for reaching a fresh conclusion that the adjustment made in the original Intimation u/s.143(1) was correct and the rectification order was not passed correctly. We, therefore, set-aside the impugned order.

7. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 22<sup>nd</sup> September, 2023.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 22<sup>nd</sup> September, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-09-2023	Sr.PS
2.	Draft placed before author	21-09-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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