

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No.2563/Mum/2023
(Assessment Year: 2019-20)

Lintas Employees Education Trust 16 th Floor, Express Towers, Nariman Point, Mumbai-400 021 (Appellant)	Vs.	Centralized Processing Centre, Income Tax Department Bengaluru-560500 (Respondent)
PAN No. AAATL0331P		

Assessee by : Shri Prakash Jotwani, AR
Revenue by : Shri Manoj Kumar Sinha, DR

Date of hearing: 09.11.2023
Date of pronouncement : 29.11.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA number 2563/MUM/2023 is filed by LINTAS EMPLOYEES EDUCATION TRUST, MUMBAI (The Assessee/Appellant) for Assessment Year 2019 – 20 against the appellate order passed by The National Faceless Appeal Centre (NFAC), Delhi (the learned CIT – A) dated 8/6/2023 wherein appeal filed by the assessee against the Assessment Order dated 11/05/2020 passed under section 143 (1) of The Income Tax Act, 1961 (The Act) by The Deputy Commissioner Of Income Tax, Central Processing Centre, Bangalore (The Learned AO), was allowed for statistical purposes.
02. Assessee is aggrieved with that appellate order and has preferred this appeal raising following grounds:-

"On the facts and circumstances of the case and in law:-

*GROUND NO.1: ADDITION IN AN INTIMATION ORDER
U/S. 143(1)*

1. The learned CIT(A) failed to take into consideration that the AO/CPC does not have any jurisdiction to make an adjustment in an Intimation Order u/s. 143(1), and that the same should have been a matter of scrutiny proceedings.

GROUND NO. 2: DIVIDEND INCOME of Rs. 17,65,600/-

1. The learned CIT(A) erred in setting aside the Assessment Order with a direction to verify the claim of the Appellant from the records, and if found correct then to allow the same.

2. The learned CIT(A) failed to take into consideration that the power given to him under the terms of section 251(1)(a) of the Act, relates to confirming, reducing, enhancing or annulling the assessment and does not have the power to set aside the assessment to the AO and leave it to him for his adjudication.

3. Without prejudice the learned CIT(A) failed to take into consideration that the Dividend income from Mutual Funds is exempt from tax u/s. 10(35) and therefore cannot be treated as taxable income under the head 'Profits and Gains of Business/Profession' and should have either allowed or rejected the claim.

*GROUND NO. 3: INTEREST FROM TAX FREE BONDS RS.
1,12,880/-*

1. The learned CIT(A) erred in not adjudicating this ground of appeal that was raised before the first appellate authority.

2. Without prejudice, the learned CIT(A) failed to take into consideration that the Interest from Tax Free Bonds is exempt from tax u/s. 10(15) and therefore cannot be treated as taxable income under the head 'Profits and Gains of Business/Profession'.

GROUND NO. 4: PROFIT ON REDEMPTION OF MUTUAL FUND Rs. 55,56,214/-

1. The learned CIT(A) erred in setting aside the Assessment Order with a direction to verify the claim of the Appellant from the records, and if found correct then to allow the same.

2. The learned CIT(A) failed to take into consideration that the power given to him under the terms of section 251(1)(a) of the Act, relates to confirming, reducing, enhancing or annulling the assessment and does not have the power to set aside the assessment to the AO and leave it to him for his adjudication.

3. Without prejudice the learned CIT(A) failed to take into consideration that the income arising from the redemption of Mutual Funds is computed in the following manner :-

LTCG (without indexation) : Rs. 55,56,214/-

LTC Loss (with indexation) : Rs. (9,47,467/-)

4. The learned CIT(A) failed to take into consideration the income/loss arising from the redemption of Mutual Funds has been correctly offered for tax under the head "Capital Gains" of Rs. (9,47,467/-) and therefore the addition made by the AO/CPC of Rs. 55,56,214/- to the head "Business Income" is incorrect and bad in law, since it only represented the profits in the books of accounts.

The Appellant craves leave to amend, add or alter the grounds of appeal."

03. Facts as stated in the orders of the lower authorities show that the assessee is an Association of Persons [AOP] created for the benefit of the employees of Lintas group. It filed its return of income declaring total income of Rs. 741,029 on 15/7/2019. In the return of income, the assessee has claimed exemption.
- i. under section 10 (35) of the act for dividend from mutual funds of Rs. 1,765,600/-,
 - ii. under section 10 (38) with respect to the long-term capital gain on consolidation of mutual funds of Rs. 5,556,214/- and
 - iii. interest from tax free bonds under section 10 (15) of Rs. 112,880.
04. Thus, total exemption under section 10 was claimed of ? 7,434,693/-. This exemption was disclosed in schedule EI in the return of income. The exempt income of interest was shown at serial number 1 of Rs. 112,880/-, at serial number 2 of dividend income of Rs. 1,765,600/-. With respect to the other exempt income capital gain arising from the merger or consolidation of mutual fund under section 47 of the act was disclosed at serial number 4 (1) of the return of income amounting to Rs. 5,064,439/-.
05. Return of income was processed on 11/5/2020 wherein the total of the above three sums were taken as profits and gains from business or profession at serial number 2 of income tax computation. Therefore, against the total income shown by the assessee of Rs. 741,029 at serial number nine of income tax computation of intimation under section 143 (1) of the Act, the learned central processing Centre determined such sum at Rs. 8,941,322. Thus, the exemption claimed of Rs. 7,434,693/- under section 10 was denied and treated as profits and gains of business or profession.



06. Assessee preferred an appeal before the learned CIT – A claiming the exemption. The learned CIT – A held that:-

- i. The mutual fund dividend received by the assessee is tax free in the hands of the investor until 31 March 2020. The same would be taxable on and after 1 April 2020 in the hands of the investor. Therefore, as the assessee received dividend from such mutual funds during the year under consideration i.e., financial year 2018 – 19, therefore the AO was directed to verify the claim of the appellant from original return/records that the aforesaid dividend received by the appellant on or before 31/3/2020 and if it is so, the same is to be allowed.
- ii. With respect to the long-term capital gain on redemption of investment in mutual fund of Rs 5,556,214/- claimed as long-term capital gain, he held that if the date of purchase of the mutual fund is prior to 31/1/2018 and are also sold on or before 31/1/2018 the same is exempt under section 10 (38) of the act. Further if the date of purchase of such mutual fund is on or before 31/1/2018 but sale is between 31/1/2018 – 1/4/2018, the exemption under section 10 (38) shall be allowed. However, if the date of purchase of such mutual fund is or before 31/1/2018 but are sold after 1/4/2018 then long-term capital gains up to 31/1/2018 would be exempt and after that be taxed at the rate of 10% in excess of Rs. 1 lakh. He therefore directed the AO to verify and grant exemption of mutual funds sold up to 31/1/2018 and if sale is after 31/1/2018 till 31st of March 2018, to tax it at the rate of 10% in excess of Rs. 1 lakh.



- iii. With respect to the exemption claimed under section 10 (15) of interest from tax free bonds no findings were given.
07. Assessee is aggrieved with the appellate order and is in appeal before us.
08. The learned authorized representative and the learned departmental representative made respective arguments.
09. We have heard the rival contentions, perused the intimation passed under section 143 (1) of the act and the order of the learned appellate authority. It is undisputed fact that return of income was filed by the assessee on 15/7/2019 claiming exemption of Rs 7,434,693/- which is also mentioned in schedule EI of the return of income filed by the assessee. The assessee has claimed interest on Tax Free Bonds of Rs. 120,880, dividend income of Rs 1,765,600, and capital gain arising from the merger consolidation of the mutual fund amounting to Rs 5,064,439/- as exempt income in the return of income. At the time of processing of the return of income, central processing Centre noted that a communication dated 9 January 2017 was sent on email id mentioned in the return of income about the proposed adjustment, which was not responded to by the assessee, therefore the adjustment was made. These facts are mentioned on page number 6 of 20 of the intimation under section 143 (1) of The Income Tax Act 1961 dated 11/5/2020. Therefore, it is apparent that the assessee was given an intimation of the proposed adjustment. But now we see what the proposed adjustment in the form of incorrect claim under section 143 (1) (a) to be made and what is the adjustment made. The schedule SI provides that there is an error description of the amount entered in the schedule SI is inconsistent with the corresponding amount referred to in schedule CG/ Sch OS. . The amount as stated by CPC in the income tax return is Rs Nil whereas the amount required to be computed of Rs 765,600/- and therefore there is a variation of Rs 765,600. However, intimation

made a variation of Rs. 7,434,693/-. Therefore, whatever was the information given for proposing the adjustment by the central processing Centre on 9 January 2020 and what is the adjustment that is made by the intimation dated 11/file/2020 are two different aspects. Therefore, it is apparent that the profits and gains from business or profession shown by the assessee at Rs Nil has been computed by the central processing Centre at Rs 7,434,693/- is without intimating the assessee about the proposed adjustment.

010. According to the provisions of section 143 (1) (a) of the act where the total income or loss is required to be computed adjustment prescribed in clause number (i) to (vi) can be made only after giving an intimation to the assessee for such adjustment either in writing or in electronic mode. We do not find any such intimation is given to the assessee of such adjustment holding that the claim of exemption made by the assessee is incorrect. Therefore, such adjustment is made in contravention of the provision of section 143 (1) of the Act and hence, it is not sustainable.
011. Even otherwise on the merits of the issue we find that exemptions claimed by the assessee of Rs 7,434,693/- is with respect to (1) dividend from mutual fund of Rs. 1,765,600/- which is exempt under section 10 (35) of the income tax act, (2) interest from tax free bond of Rs 112,880/- which is exempt under section 10 (15) of the Act and (3) the long-term capital gain on consolidation of mutual funds of Rs. 5,556,214/- which is exempt under section 10 (38) of the act. Therefore, even otherwise the impugned income in dispute is exempt which is confirmed by the Id. CIT (A) also.
012. Therefore, as the impugned adjustment is without intimation to the assessee and further the income is held to be exempt by the Id. CIT (A) , we do not find any reason to sustain the intimation passed u/s 143(1) of The Act . In view of this Ground no 1 is allowed.
013. Ground no 2,3 and 4 are with respect to the exemption of income which has bene examined by the Id. CIT (A) and are also supported



by the provision of law. However, in view of our decision in Ground no 1 , those grounds are academic in nature and not required to be disposed of .

014. In the result, Assessee's appeal is allowed.

Order pronounced in the open court on 29.11.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.11.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai