

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA
BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1323/Kol/2023
Assessment Year: 2020-21**

Oriental Carbon & Chemicals Ltd. 31, Duncan House, Netaji Subash Road, B.B.D. Bag, Kolkata- 700001. (PAN: AAACO3006F)	Vs.	DCIT, circle-11(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manish Tiwari, AR
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 01.02.2024
Date of Pronouncement : 07.02.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.Addl./JCIT(A)-12, Mumbai, vide order No. ITBA/APL/S/250/2023-24/1056836403(1) dated 06.10.2023 passed against the intimation issued by Asstt. Director of Income Tax, CPC, Bengaluru u/s.143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated.23.12.2021 for AY 2020-21.

2. Grounds of appeal taken by the assessee are reproduced as under:

"1. That on the facts and in the circumstances of the case, adjustments made in intimation u/s 143(1) are beyond the scope of said section.

2. (a) That on the facts and in circumstances of the case, the Ld. CIT(A) is unjustified in confirming the action of Ld. AO / CPC in respect of the addition / disallowance of Rs.2,18,98,590/- made by the Intimation order u/s 143(1) of the Income Tax Act, 1961 to the total income declared by the appellant without providing any reason for such addition / disallowance.

(b) That on the facts and in the circumstances of the case, the order has been passed in violation of first proviso to section 143(1) which entails necessary intimation to be given to appellant before making any adjustments.

(c) That on the facts and in circumstances of the case and in law, no prior intimation is given to the assessee of any proposed adjustments either in writing or in electronic mode with respect to the additions/ disallowances made in the intimation order u/s 143(1) of the Act. The said intimation order was issued to the assessee without appreciating the provisions of the law u/ s 143 of the Income Tax Act, 1961 and is therefore, bad in law.

3. (a) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding the action of AO, CPC in disallowing deduction u/s 43B amounting to Rs. 13,05,590/ - (Rs. 42,40,439 - Rs. 29,34,849).

(b) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in disallowing Rs. 20,186/- u/s 36 of the Act.

(c) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of AO, CPC in treating a sum of Rs. 2,05,72,813/ - as income of the appellant.

4. That on the facts and in circumstances of the case, the Ld. CIT(A) is prejudicial in not accepting the submissions made by the appellant and deliberately maintaining reticence by ignoring the explanations and submissions made by the appellant.”

3. Brief facts of the case are that assessee is a registered company engaged in the business of manufacturing Insoluble Sulphur, Sulphuric Acid and related Chemicals. Return of income was filed on 05.02.2021 reporting a total income of Rs.54,66,47,320/- under the normal provisions of the Act and at Rs.78,84,02,426/- under the Minimum Alternate Tax (MAT) provisions of the Act, claiming refund of Rs.91,25,741/-. Return of the assessee was processed by Central Processing Centre (CPC), Income tax Department, Bengaluru and an intimation was issued u/s. 143(1) of the Act dated 23.12.2021 raising a demand of Rs.2,31,06,120/-. An amount of Rs.2,28,98,589/- has been added to the total income of the assessee on account of disallowance of expenses/additions to income.

3.1. On a specific query by the Bench to the Ld. Counsel on the details of these additions, page 37 of the Intimation u/s. 143(1) was referred to which is titled as annexure - “Business & Profession”. In

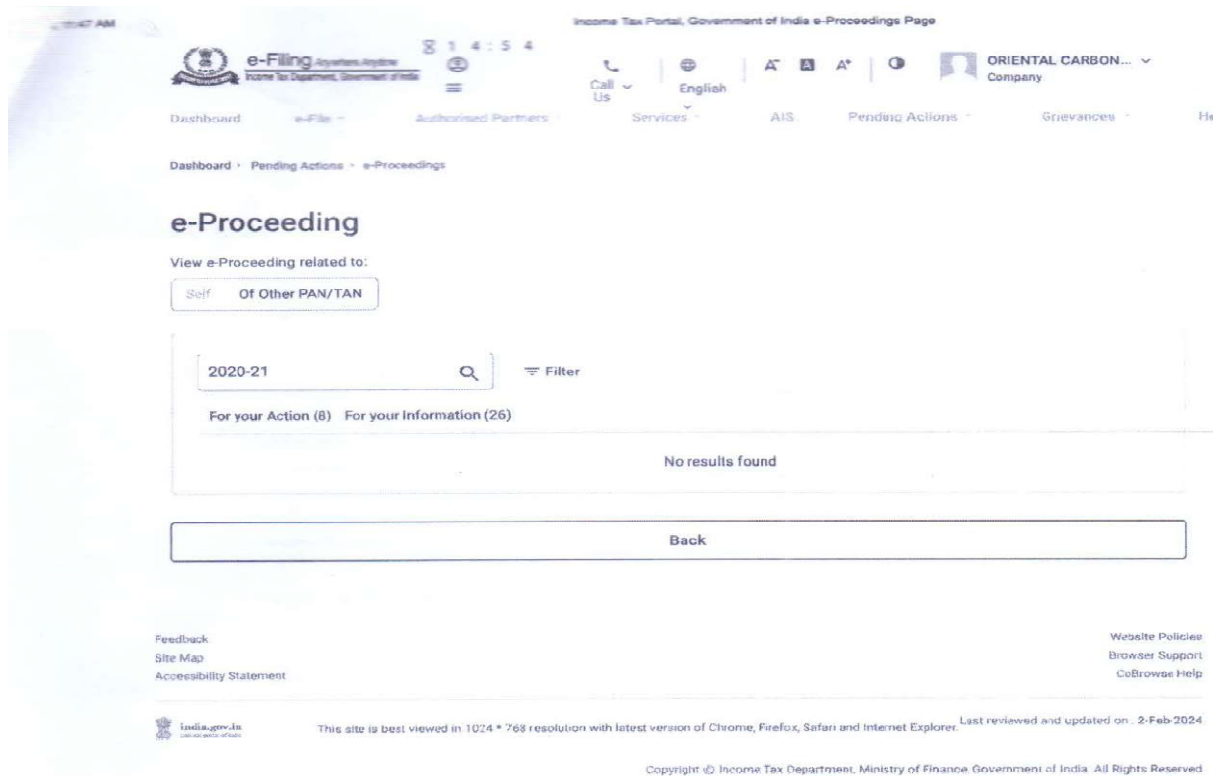
the said annexure at Sl. No. 24, amount as computed u/s. 143(1) of Rs.2,05,72,813/- is included under the sub head "Others", with the particulars as "*Any other income not included in Profit & Loss Account/any other expenses not allowable (including income from salary, commission, bonus and interest from firms in which individual/HUF/proprietary concern as a partner.)*" Further, in Sl. No. 32 against the particulars "*any amount disallowed u/s. 43B in any preceding previous year but allowable during the previous year (10h of Part A-01)*", the amount computed u/s. 143(1) is lesser by Rs.13,05,590/- as against provided by the tax payer in its return. Except for this, there is no other detail on the disallowance/addition made to the total income of the assessee while processing the return and issuing intimation u/s. 143(1) of the Act.

3.2. Aggrieved by this, assessee went in appeal before the Ld. CIT(A) and strongly contested that Intimation u/s. 143(1) has been issued in gross violation of first proviso to section 143(1)(a) which entails necessary intimation to be given to the assessee before making any adjustment. According to the assessee, no prior intimation was given on any proposed adjustment, either in writing or in electronic mode which makes the addition/disallowance made by way of adjustment to the total income u/s. 143(1) as bad in law. Assessee stated that it is impossible to decipher and determine the items which has been adjusted and to offer any explanation to counter such addition/disallowance made while processing the return. According to assessee, it is a regular dividend paying company and such an act on the part of the department, according to the assessee, is a surreptitious, leading to a fictitious demand.

3.3. Ld. CIT(A) after considering the submissions made by the assessee referred to the Memorandum to Finance Bill, 2008 as well as

Memorandum to Finance Bill, 2016 and observed that adjustment has been made on the basis of mismatch between the income tax return and tax audit report filed by the assessee. He thus, dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. The moot point raised before us is whether adjustment can be made by CPC u/s. 143(1)(a) of the Act while processing the return filed by the assessee without complying with the condition stipulated in first proviso to clause (a) of sub-section (1) of section 143. This fact called for specific evidence to be placed on record by the Ld. Counsel of the assessee to demonstrate that no communication or intimation was issued by the CPC, Bengaluru before making adjustment while processing the return of the assessee. In this respect, Ld. Counsel placed on record the copies of screen shots from the Income Tax e-proceedings Portal. The screen shorts of the same are extracted below for ease of reference:



11:46 AM

Income Tax Portal, Government of India View Filed Returns

e-Filing Anywhere Anytime
Income Tax Department, Government of India

Call Us English AIS Pending Actions Grievances Help

Dashboard e-File Authenticated Partners Services AIS Pending Actions Grievances Help

Dashboard > e-file > Income Tax Return > View Filed Returns

A.Y. 2020-21

Filing Type Original	ITR : ITR-6 Acknowledgement No : 241741811050221 Filed By : self	Filing Date : Feb 5, 2021 Filing Section : 139(1)
--------------------------------	--	--

Processed with demand due
Dec 23, 2021

Date of order : Thu Dec 23 13:24:23 IST 2021
Date of SMS : Thu Dec 23 18:13:08 IST 2021
Date of Email : Thu Dec 23 18:13:04 IST 2021
Email ID : mayanksaraogi@occlindia.com

Details of Speed post :
Pay now

Download Intimation Order

Under Processing
Dec 16, 2021

Under Processing
Oct 26, 2021

Under Processing
Sep 14, 2021

Back

Feedback
Site Map
Accessibility Statement

Website Policies
Browser Support
CoBrowse Help



This site is best viewed in 1024 * 768 resolution with latest version of Chrome, Firefox, Safari and Internet Explorer

Last reviewed and updated on : 2-Feb-2024

Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved

5. With the support of the above screen shots from the e-portal of the Income Tax Department, Ld. Counsel evidently demonstrated that no such intimation or notice was issued by CPC, Bengaluru as required under first proviso to section 143(1)(a) before making the impugned adjustments.

6. Per contra, Ld. Sr. DR placed reliance on the order of Ld. CIT(A).

7. To deal with the issue raised by the assessee in this present appeal, section 143(1)(a) of the Act is reproduced below:

“Assessment

143 (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely:-

- (i) Any arithmetical error in the return;*
- (ii) An incorrect claim, if such incorrect claim is apparent from any information in the return;*
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
- (iv) disallowance of expenditure [or increase in income] indicated the audit report but not taken into account in computing the total income in the return;*
- (v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading “C.-Deductions in respect of certain incomes”, if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

Provided that no such adjustments shall be made unless an intimation given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018.”

[emphasis supplied by us by bold and underline]

7.1. From the above section, it is noted that total income or loss of the assessee shall be computed after making the adjustments listed therein. However, before making the adjustments, an intimation is to be given to the assessee in respect of such adjustments either in writing or in electronic mode, as contained in the 1st proviso. Ld.

Counsel submitted that in the present case, no intimation has been given to the assessee for making the adjustment/disallowance either in writing or in electronic mode. According to Ld. Counsel, there is an absolute failure on the part of the CPC by not following the condition prescribed in proviso to sec. 143(1)(a).

7.2. In support of his contention, Ld. Counsel placed on record, e-proceeding downloaded from the income tax portal account of the assessee for the year under consideration as extracted above. Ld. Counsel demonstrated from this e-proceeding download that there is no evidence of issue of intimation/notice as required in 1st proviso to sec. 143(1)(a) of the Act.

8. We have heard the rival contentions and perused the material available on record and have gone through various references made by both the parties in the course of their arguments. We do find force in the submissions made by the Ld. Counsel for the assessee in respect of any adjustment which is proposed to be made, a prior intimation is required to be served on the assessee, either in writing or electronically, as contained in 1st proviso to section 143(1)(a) of the Act. Ld. Counsel has evidently demonstrated before us, the failure on the part of CPC to issue such prior intimation to the assessee before making an adjustment. Thus, the only aspect which emerges in the appeal is whether the adjustment has been made in compliance to 1st proviso to sec. 143(1)(a) of the Act.

9. Considering the facts on record and the perusal of the provisions contained in sec. 143(1)(a) of the Act, we find that on this aspect, the revenue fails. This position has not been controverted by Ld. Sr. DR also. Even if we assume for a moment that such an intimation was given to the assessee in accordance with the 1st

proviso, then the second proviso stipulates that if any response is received from the assessee then, the same should be considered before making any adjustment or disallowance. In case, where there is no response received from the assessee then, within thirty days of the issue of such intimation, department is free to make such adjustment or disallowance. The documentary evidence placed on record and the e-proceedings downloaded from the Income Tax portal, nowhere suggests that such a process has been followed. Thus, we find that the impugned intimation issued u/s. 143(1)(a) of the Act, dated 30.11.2021 is not in compliance with the provisos to section 143(1)(a) of the Act and thus, the impugned intimation is invalid under the Act.

9.1. This issue has been dealt with Coordinate Bench of ITAT, Kolkata in the case of ITO (Exemption) Vs. Camellia Educate Trust (2023) 152 taxmann.com 304 (Kol-Trib,) (undersigned Accountant Member is the author).

9.2. Considering the above discussion, factual matrix, documentary evidence placed on record and the applicable provisions of law, we allow the grounds of appeal raised by the assessee. Accordingly, appeal by the assessee is allowed.

10. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 07th February, 2024

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 07th February, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. Addl/JCIT(A)-12, Mumbai.
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata