

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 9/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2019-20)

JC Biotech Private Limited,
Hyderabad
[PAN: AABCJ3804B]

Deputy Commissioner of
Income Tax,
Circle-2(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri A.V. Raghuram, AR
राजस्व द्वारा / Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 13/02/2024

घोषणा की तारीख/Pronouncement on: 27/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 12/12/2023 passed by the Addl/JCIT (Appeals)-12, Mumbai, in the case of JC Biotech Private Limited ("the assessee") for the assessment year 2019-20, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company and, during the year it made payments towards statutory outstanding liability, like gratuity to the tune of Rs. 22,60,000/- on 22/11/2018, leave encashment of Rs. 2,40,000/- on 22/11/2018 and leave encashment Rs 15,00,000/- on 30/03/2019. It filed its return of income for the assessment year 2019-20 admitting Income of Rs. 13,37,33,579/- under normal provision and profit

under section 115JB of the Income Tax Act, 1961 ('the Act') at Rs.14,41,84,141/-. Assessment was completed under section 143(1) of the Act by CPC, Bengaluru by taking the profit and gains from business of Rs. 13,77,33,579/- instead of Rs. 13,37,33,579/-, thereby making addition of Rs. 40,00,000/-. The Annexure to the intimation disclosed that amount disallowed under section 43B of the Act in any preceding previous year, but allowable during the previous year as per return of income is Rs. 41,16,519/-, but the same is restricted in intimation to Rs. 1,16,519/-. Hence disallowed the claim of the assessee of Rs. 40,00,000/- toward payment under section 43B of the Act.

3. Aggrieved by such a disallowance by way of intimation, assessee preferred appeal before the learned CIT(A). Learned CIT(A) observed that the assessee admitted inadvertently that it did not show any claim of payment under section 43B of the Act in the tax audit report and, therefore, the assessee itself is at fault for filling up the inaccurate particulars. By stating that the amended provisions of Finance Act, 2008, empower adjustments to be made *inter alia* on the basis of remarks indicated in the return of income or incorrect claim apparent from any information in the return of income, learned CIT(A) held that the scope of adjustment post amendment is widened and, therefore, the CPC rightly denied the assessee the deduction. Holding so, learned CIT(A) dismissed the appeal. Hence, this appeal.

4. Only grievance expressed before us by the assessee is that under proviso to section 143(1)(a) of the Act, no adjustment made under section 143(1)(a) of the Act shall be made unless a notice is given to the assessee of such adjustment. Here in this case, the response of the assessee was

not invited before making the adjustment and, therefore, the orders of the authorities are bad under law.

5. It is the argument of the learned DR that the assessee did not submit any response to the intimation and, therefore, the learned CIT(A) is right in rejecting the claim of the assessee.

6. We have gone through the record in the light of the submissions made on either side. On a careful perusal of the provision in question, we find that what all the provisos to section 143(1)(a) of the Act says that before making any adjustment and intimation either in writing or in electronic mode has to be given to the assessee, for receiving response a time of thirty days has to be allowed and it is only after considering the response if any, filed or the lapse of thirty days, such an adjustment has to be made. For ready reference, we deem it necessary to extract both the provisos to section 143(1)(a) of the Act hereunder,-

“Provided that no such adjustments shall be made unless an intimation is 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.”

7. It is, therefore, clear that no notice before giving an intimation under section 143(1)(a) of the Act is contemplated under the Act, but the adjustment is postponed till consideration of the response, if any, filed by the assessee or lapse of thirty days from the date of issuance of the intimation. It is not the case of the assessee that any response was given to the intimation under section 143(1)(a) of the Act within the thirty days time stipulated under the 2nd proviso to 143(1)(a) of the Act. It appears

that the assessee, without filing any such response pursuant to the intimation as contemplated under 2nd proviso, instituted the first appeal on 08/06/2020. Grievance of the assessee was ventilated well within thirty days, but before a wrong forum. No malafides are attributable to the assessee in this respect. But at the same time, the assessee did not take the plea of notice before passing the intimation so that the learned CIT(A) would have considered the same in its perspective.

8. In these circumstances, we are of the considered opinion that since law permits the assessee to put forth its case on receipt of intimation within thirty days thereof, and the assessee also ventilated its grievance within thirty days, but before a wrong forum, it would be in the interest of justice to set aside the impugned order and to restore the issue to the file of the learned Assessing Officer for considering the objections of the assessee as to the disallowance under section 43B of the Act, after affording an opportunity. We hold and order so. Grounds are answered accordingly.

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

Order pronounced in the open court on this the 27th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 27/02/2024

TNMM

Copy forwarded to:

1. JC Biotech Private Limited, 8-2-269/S/3/A, Plot No. 3, Sagar Society,
Road No. 2, Banjara Hills, Hyderabad.
2. The Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD