

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1250/KOL/2023
Assessment Year: 2018-2019**

***Koomber Properties & Leasing
Co. Pvt. Ltd.,.....Appellant
"Camellia House".
14, Gurusaday Road,
Kolkata-700019
[PAN:AABCK3342D]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
CPC, Bangalore,
Income Tax Department,
Bangalore-560500, Karnataka
Appearances by:***

*Shri Soumik Roy and Shri Tanmay Dutta, A.Rs., appeared
on behalf of the assessee*

*Shri B.K. Singh, JCIT, Sr. D.R., appeared on behalf of
the Revenue*

**Date of concluding the hearing : March 18, 2024
Date of pronouncing the order : March 19, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals) dated 04.10.2023 passed for A.Y. 2018-19.

2. The assessee has taken four grounds of appeal, out of which Ground No. 4 is a general ground, which does not call for recording of any finding.

3. In Grounds No. 1 to 3, only one issue has been agitated by the assessee, wherein it has pleaded that ld. CIT(Appeals) has erred in confirming the addition of Rs.60,46,000/- made by adjustment in the intimation under section 143(1) of the Income Tax Act by the CPC, Bangalore.

4. With the assistance of ld. Representatives, we have gone through the record carefully. We find that against the adjustment, the assessee has filed written submission before the ld. 1st Appellate Authority and such written submission has been briefly reproduced by the ld. CIT(Appeals), but in order to understand the facts, we deem it appropriate to take note of this submission, which is placed at pages no. 107 to 110 of the paper book, which reads as under:-

*KOOMBER PROPERTIES LEASING CO. PVT. LTD.
"Camellia House" 14, Gurusaday Road, Kolkata-700019
Telephone: 2287-3067/8737/1816
Fax No.: (033) 2287-2577/7089
KPLC/IT/2018-19
August 24, 2023*

*The Joint Commissioner of Income Tax (A)-I
Coimbatore*

*Dear Sir,
PAN: AABCK3342D
ASSESSMENT YEAR 2018-19*

*DIN: ITBA/APL/F/APL 1/2023-24/1055203146(1),
DATED 17/08/2023*

APPEAL NO, CIT(A), Kolkata-4/10179/2019-20

This has reference to your notice under section 250 of the Income Tax Act, 1961 (the Act), dated 17.08.2023, informing us that the appeal has been assigned to Joint Commissioner of Income Tax (Appeals)-I, Coimbatore, as per E-appeal scheme, and providing opportunity of being re-heard and to file written submissions on the grounds of appeal.

This appeal was e-filed by the appellant on 14.10.2019 against the Intimation u/s 143(1) of the Act, dated 16.07.2019, by the Dy. Commissioner of Income Tax, CPC, Bangalore. Thereafter, in compliance to notice under section 250 of the Act, dated 01.01.2021, from CIT(Appeals), NFAC, Delhi, bearing DIN: ITBA/NFAC/F/APL-1/2020-21/1029421754(1), your appellant filed its written submissions with annexures on 11.01.2021. The appeal, however, remained undisposed till then.

Your appellant, in response to your notice is making the submissions as follows:

The appellant is a company engaged in the business of Leasing of immovable and movable properties and had income from Lease Rent during the previous year ended 31.03.2018. Besides these, it had interest income from fixed deposits with Banks and other deposits and gain on sale of investments.

The appellant filed its return of income on 05.10.2018 within the extended due date declaring a total income of Rs.1,08,02,160/- under the following heads of income:

- | | | |
|---------------------------------|---|-------------------------|
| (a) Income from Business | : | Rs .49,62,457/- |
| (b) Capital gains - Short Term: | | Rs. 22,10,705/- |
| (c) Income from Other Sources: | | Rs.36,29,000/- |
| (d) Total Income | ; | <u>Rs.1,08,02,162/-</u> |

R/Off to : Rs.1,08,02,160/-

The tax liability thereon after adjustment of MAT credit available and interest was Rs.25,09,840/- which was fully met.

The DCIT, CPC, Bangalore (Assessing Officer) sent a communication dated 17.03.2019 proposing adjustment of Rs.60,46,000/- to the returned income as according to him, there were arithmetical errors in the return filed. The appellant filed its response on 10.04.2019 explaining that there had been no arithmetical error as alleged by the Assessing Officer in his communication.

The appellant received the Intimation u/s 143(1) of the Income Tax Act 1961 (the Act), dated 16.07.2019 on 23.09.2019 wherein the income from business computed by the Assessing Officer stood

increased by Rs.60,46,000/- from Rs.49,62,457/- to Rs.1,10,08,457/-. Consequently, the total income computed under section 143(l)(a) of the Act stood increased from Rs.1,08,62,160/- to Rs.1,68,48,160/- and a demand of Rs.20,46,000/- inclusive of interest was raised.

The appellant being aggrieved filed a grievance petition through e-nivaran again explaining as to why the adjustment of Rs.60,46,000/- made to the returned income was erroneous. It requested the Assessing Officer to rectify under section 154 of the Act, as the mistakes were apparent from record, the income computed in the Intimation u/s 143(1) of the Act and to vacate the demand.

The Assessing Officer did not rectify the Intimation requested for and instead sent a communication received on 11.10.2019 justifying the adjustment made, as because according to him the appellant did not respond to his earlier communication within a month, which is incorrect. Even otherwise, the appellant could not be subjected to tax on an income which is not its real income and adjustment was only due to the automated processing system applied.

The appellant, therefore, is preferring this appeal against the above said Intimation under section 143(1) of the Act dated 16.07.2019.

The appellant has taken the following Grounds of Appeal:

- (1) That on the facts and in the circumstances of the case, and in law, the Learned Assessing Officer (DCIT, CPC, Bangalore) erred in increasing the income of the appellant from business by Rs.6046000 and computing the same at Rs.11008457 in the Intimation under section 143(l)(a) of the Act as against Rs.4962457 declared in the return of income.*
- (2) That on the facts and in the circumstances of the case and in law, the Learned Assessing Officer erred in consequently increasing the total income of the appellant by Rs.6046000 and computing the same at Rs.16848160 in the Intimation under section 143(l)(a) of the Act as against Rs.10802160 declared in the return of income.*
- (3) That on the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in charging interest in the Intimation under section 143(l)(a) of the Act under the provisions of Section 234A in the sum of Rs.16569, Section 234B in the sum of Rs.279104 and Section 234C in the sum of Rs.93408.*
- (4) That the appellant craves leave to add, alter modify the grounds mentioned herein above.*

Ground Nos. 1 and 2 are related to the addition of Rs.60,46,000/- to the appellant's income from business by way of adjustment in the Intimation under section 143(1) of the Income Tax Act, 1961 (the Act), dated 16.07.2019.

We submit that the addition had been made erroneously as because instead of deducting the loss of Rs.30,23,000/- indicated as (-)30,23,000/- and entered in serial 2(x)(1) – Gain arising on financial assets designated at fair value- under 'other income' of Part A-P and L – IndAS in the return of income, the Assessing Officer added back this amount of Rs.30,23,000/- leading to a total addition of Rs.60,46,600/-. Should the Assessing Officer considered (-)30,23,000/- the addition of Rs.60,46,000/- would not have arisen at all. We are enclosing pages 22 - 26 of the return of income. Your Honour would find that at page 23, in serial no.2(x)(l) under 'Other Income', the figure had been given as (-) 30,23,000/-.

Your appellant, we submit, received a communication of proposed adjustment dated 17.03.2019 from the Dy. Commissioner of Income Tax, CPC, Bangalore (Assessing Officer) seeking response from the appellant. In such communication the proposed adjustment to total income were mentioned in Part A thereof. The errors alleged was that ~ Schedule - Part A - P and L - IndAS, the break-up of 'Any other Income' at sera no 2(x) is not consistent with the total of SI. No. 2(x) (xa+xb+xc+xd), the variance being Rs.60,46,000/-.

For the above, other consequential errors, according to the Assessment officer, were in serial no.4 - Total of credits to Profit and Loss Account, SI. No. 45 - Profit before taxes and SI. No. 2(xi) - Total of other Income, the variance being the same amount of Rs.60,46,000/-.

The Assessing Officer's communication was responded to by the appellant on 10.04.2019, explaining each point of arithmetical error alleged by the Assessing Officer. These, it appears, were not considered and an addition of Rs.60,46,000/- was made to the appellant's Income from Business in the Intimation, leading to consequential increase in total income by the same amount. Copy of the Assessing Officer's communication and our response are enclosed.

We submit that the amount of (-)Rs.30,23,000/- had been disclosed in Note 17 of the audited IndAS financial statements. This is being reproduced as follows and a copy of such Note 17 is enclosed.

17. Other Income

	<i>For the year ended 31st March, 2018</i>	<i>For the year ended 31st March 2017</i>
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<i>Interest income (Gross)</i>	3,570	4,593
<i>On Fixed Deposit</i>	59	109
<i>On Security Deposit</i>	-	102
<i>Dividend on other investments</i>	(3,023)	5,879
<i>Net gain/(loss) arising on financial assets designated as at Fair Value through profit and loss</i>	1,210	233
<i>Gain on disposal of investments carried at fair value through profit or loss</i>	-	1
<i>Miscellaneous Income</i>		
	1816	10,917

We further submit that the negative figure of (3023) thousand as given in Note 17 herein above had been inserted as (-)30,23,000 in the serial 2 (x) 1 of Schedule- Part A – P and L – IndAS, in the return of income and the total other income of Rs.18,16,000/- of Note 17 also matches with serial 2(xi) of the said schedule in the return. Thus, there was no arithmetical error of Rs.60,46,002 in serial no 2(x) of the Schedule Part A - P and L - IndAS of the return of income and the consequential errors as alleged in serial no.4 - Total credits to Profit and Loss Account, in serial 45, Profit before tax and in serial 2(xi) - Total of Other Income, gets dispensed with and would not remain. The relevant page of the audited Statement of Profit and Loss for the year ended 31 March 2018 showing 'Other Income - Note 17', of Rs.1816 thousands is enclosed. The error made by the Assessing Officer was instead of reducing Rs.30,23,000/- as given in the return, he added back Rs.30,23,000/- leading to a total addition of Rs.60,46,000/-.*

5. The above submission has been partly reproduced by the ld. 1st Appellate Authority and after going through this, ld.

CIT(Appeals) has rejected the same by recording the following finding:-

“5. OBSERVATION AND DECISION:

The CPC has issued a letter to the appellant pointing out the mistakes and calling for explanations. The appellant admits a reply was filed but this was not considered by CPC in the processing stage, in disposing rectification petition. He same issued was raised in e-nivaran and was not corrected or rectified. The mistake pointed out by CPC is -

In schedule Part A-P and L-INDAS, the break-up of Any Other Income (Specify Nature and Amount) at SI. No. 2.x is not consistent with total of in SI. No.

2.x. (xa +xb + xc + xd)-3023000

In Part - P and L, IN SI. No. 4. Totals of credits to Profit and Loss Account(1C+2xi+3iv) is inconsistent.

In schedule Part A-P and L-INDAS, the sum of amount entered in SI. No. 42- 43iii-44 is inconsistent with SI. No. 45. Profit before taxes(42-43iii-44).

Sum of other income (i + ii + iii + iv + v + vi + vii + viii + ix + x) is not equal to total of other income in Schedule Part A- PandL

5.2 The CPC has pointed out 4 mistakes but all the errors are because of one mistake of declaring a loss of (-)3023000 in schedule Part A-P and L-INDAS, the breakup of Any Other Income (Specify Nature and Amount) at SI. No. 2.x. The following are to be observed.

Part A-P and L-INDAS has a heading: Revenue from operations

Part A-P and L-INDASSI.No. 2.x the narration is: Any other income

Part A – P and L-INDASSI. No. 4 states Total credits to P&L Account

These columns are only to enter income the positive figures. The expenses of loss start from column 5 onwards Column 38 contains Other expenses. The schedule is to enter Profit and loss accounts where one side has positive figures/income and the other side negative figures/losses. The system reads whatever figures given under Revenue from operations as positive figures only. If the appellant has a loss in any source that is to be shown from column 5 onwards Column 38 contains Other expenses. In any activity there will be direct loss and there may be cases were income is nil and there are expenses which

results in loss. The income tax return is designed in such a way that in any column you cannot enter a negative figure directly and in the schedules you have to enter income as zero or blank and can claim expenses which results in negative income. In the computation part if any negative income is entered it much match with the negative income in the schedule. In this case the appellant has entered a net income from some activity a negative income directly in the income side of P & L account. The system has read this as a positive figure as the columns are only to enter positive figures.

5.3. If the appellant has directly entered the return in the software in the e-filing site an error report will be generated and the return cannot be filed. If the return is uploaded through third party software sometimes error message is not generated or there will be option to ignore error. This may be reason for the system accepting the return with mistake.

5.4. The CPC has intimated the mistake to the appellant. The appellant instead of making any measures to correct the mistake has put the blame on CPC and have filed 154 petition, e grievance and appeal. The actual remedy was to file a revised return correcting mistakes immediately or file a petition u/s 264 requesting the CIT to set aside the return and file a fresh return.

5.5. The CPC has intimated the appellant and given the appellant a chance to rectify the mistake.

*5.6. The relevant provisions in the Act are
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 ⁹⁷[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under ⁹⁸[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 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:

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;

Explanation.—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

5.6. The CPC is authorized to correct any mistakes regarding entries inconsistent with the claims in the return and has done this correctly after giving an opportunity to the appellant. The CPC has corrected an arithmetical addition mistake in the return filed only. Hence the intimation of the CPC is correct and requires no intervention. Hence the appeal on this ground is dismissed.

5.7. In a processing u/s 143(1) the legality of the claims and whether there is double assessment is not considered. A simple clerical mistake must not result in over assessment of income. As the issue is open in appeal the issue whether there is over assessment of income is also to be considered. The loss claimed by the appellant is under the head "Net gain/loss arising on financial assets designated as a Fair Value through Profit and loss account". The narration itself states that this is

not a result of any trading activity or sale and is only a notional adjustment. The issue whether the Notional loss is allowable as a set off against requires detailed analysis. The issue involved is a legal issue and it is open to the appellant to file—a petition u/s264 before the CIT to correct the mistake made in the return filed if any.

5.8 In the result the appeal is dismissed.

*PALUTHODIYIL CHANDRAMOHAN
ADDL/JCIT(A)-1 COIMBATORE”*

6. During the course of hearing, ld. Counsel for the assessee took us through page no. 112 of the paper book, wherein the statement of computation of income has been placed on the record. He pointed out that the assessee had determined the fair value of its financial assets and such value has been determined in loss amounting to Rs.30,23,000/-. Though this aspect has been through the Profit & Loss Account but while preparing the return, this amount has not been claimed as deduction, rather it has been added back. The ld. Assessing Officer has made double addition of this amount, namely-

(a) assessee itself added back in its total income, which has been computed at Rs.1,08,62,160/- and the other disallowance is by ld. Assessing Officer. In this way, the income disclosed by the assessee has been increased from Rs.1,08,62,160/- to Rs.1,68,48,160/-.

(b) It has filed petitions through e-Nivaran rectification and all other things, but nobody could have appreciated the real grievance of the assessee.

It was also demonstrated before us that the ld. 1st Appellate Authority has not touched the controversy rather rejected the claim of the assessee on peripheral procedural aspect.

7. On the other hand, ld. Sr. D.R. has relied upon the order of the ld. CIT(Appeals) and submitted that the assessee should have revised its return by submitting correct figures. In a proceeding under section 143(1), the ld. Assessing Officer cannot amend those errors, which have been crept on the record at the end of the assessee.

8. We have duly considered the rival contentions and gone through the record carefully. A perusal of the ld. CIT(Appeals)'s finding would reveal that the ld. 1st Appellate Authority has not gone through the real controversy. The ld. CIT(Appeals) has reproduced Section 143(1) of the Income Tax Act and has observed that under Clause (1), any arithmetical error in the return could be rectified. In the present case, no doubt, the error was committed by the assessee but while processing the return, that error would also fall within the ambit of the apparent error in the record. The error cannot only be rectified, which has been committed by the ld. Assessing Officer, but any error committed by the assessee while filing its return would also be taken into consideration and only correct income is to be assessed. This aspect may not have been entertained by the ld. Assessing Officer in the garb of non-filing of the revised return, but the ld. 1st Appellate Authority could always take cognizance of this aspect and correct the same. We find that it is just a technical error committed by the assessee

while filing the return and same amount has been taxed twice. It has been included by the assessee itself while declaring the total income at Rs.1,08,02,160/- and thereafter it was added twice by the ld. Assessing Officer while determined the taxable income at Rs.1,68,48,160/-. Therefore, we allow this appeal of the assessee and delete the addition of Rs.60,46,000/- from the total income computed by the ld. Assessing Officer. In other words, income of the assessee is to be determined at Rs.1,08,02,160/- instead of Rs.1,68,48,160/-.

9. In the result, the appeal of the assessee is allowed in the above terms.

Order pronounced in the open Court on 19/03/2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 19th day of March, 2024

*Copies to :(1) Koomber Properties & Leasing Co. Pvt. Ltd.,
"Camellia House".*

14, Gurusaday Road, Kolkata-700019

*(2) Deputy Commissioner of Income Tax,
CPC, Bangalore,
Income Tax Department,
Bangalore-560500, Karnataka*

*(3) Commissioner of Income Tax (Appeals)-1,
Coimbatore;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

*(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.