

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri TR Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 444/Ahd/2024
Assessment Year 2021-22**

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| Niyatiben Alpesh Parikh, Ahmedabad PAN: ABJPP8713D (Appellant) | Vs | The Dy. CIT, Circle-1(1)(1), Ahmedabad (Respondent) |
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**Assessee by: Shri Jyotish M. Shah, A.R.
Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 09-05-2024
Date of pronouncement : 07-06-2024

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-

The present appeal is filed by the assessee against the order u/s. 250 dated 12-01-2024 of Additional/Joint Commissioner of Income Tax (Appeals)-5, Mumbai, (in short 'the JCIT(A)') for Assessment Year 2021-22.

2. The brief fact of the case is that the assessee has filed her return of income for A.Y. 2021-22 declaring total income of Rs. 4,89,490/- and as per return refund of Rs. 5,99,320/- was due to the assessee. The return was processed by the CPC and as per intimation u/s. 143(1) dated 29-03-2022 and refund of Rs.6,35,280/- was determined. However, the assessee did not receive the refund as determined in the intimation. Subsequently, the assessee had received an intimation u/s. 245 of the Act dated 17th November, 2023 whereby the net amount refundable to the assessee was determined at Rs. 1,89,035/- only. Aggrieved with the reduction in refund, the assessee had filed an appeal before the CIT(A) which was decided vide the impugned order. The Id. JCIT(A) held that the appeal of the assessee was not maintainable u/s. 246 of the Act. Now the assessee is in appeal before us.

3. In the present appeal, the assessee has raised the following grounds:-

“1. Invalid & Bad Order

1.1. The Order passed by ADDL/JCIT (A)-5 MUMBAI dated 18-01-2024 is invalid and bad in law on facts and law.

1.2. The ADDL/JCIT erred in dismissing appeal, holding that as no adjustment has been made by AO CPC in the said intimation u/s 143(1), it is beyond the preview of section 246.

The appellant submits that ADDL/JCIT should have, alternatively considered that it is denial of refund and appeal lies under section 237.

1.3. The ADDL/JCIT erred in not giving Virtual hearing though requested. It is violating principles of natural justice.

1.4. The ADDL/JCIT erred in not considering facts that refund is adjusted without issuing notice u/s 245.

1.5. The ADDL/JCIT erred in passing order without dealing with submission filed and judgment relied. It is non-speaking order.

2. Without Prejudice

2.1. The ADDL/JCIT erred in dismissing appeal without taking care to look at the mechanical adjustment made by AO in communication dated 11-11-2023, without application of mind in adjusting refund.

2.2. The appellant submits that ADDL/JCIT should have taken note of CBDT Circular No. 14 dated 11-04-1955 followed by various Judicial pronouncement that department is duty bound to give what is correct.

3. *The appellant craves for leave to add, alter or amend all or any grounds of appeal before final hearing of appeal.”*
4. Shri Jyotish M. Shah, Id. A.R. of the assessee submitted that though the intimation u/s. 143(1) was dated 29th March, 2022 the refund was issued by the CPC on 30th Nov, 2023. Therefore, the refund as determined by the CPC was withheld for more than 19 months without following the due process of law. He further pointed out apparent inaccuracies in the demand as adjusted vide the intimation u/s. 245 dated 30th October, 2023 of the CPC. The Id. A.R. further submitted that the Ld. JCIT(A) was not correct in dismissing the appeal on technical grounds without deciding the issue on merit.
5. The Id. D.R. on the other hand submitted that he has no objection if the matter is set aside to the file of Assessing Officer to verify the correct facts about the outstanding demand and thereafter decide the matter.
6. We have carefully considered the rival submissions. It is found that the Id. JCIT(A) has taken a hyper technical approach by dismissing the appeal on the ground that no adjustment was made by the CPC in the intimation u/s. 143(1) dated 29-03-2022. If the refund as determined by the CPC in the intimation was not issued to the assessee and was withheld for undue long period without any valid reason, the assessee had a genuine grievance and same was required to be properly addressed. It is found from the copy of intimation u/s 143(1) of the Act that the CPC had determined refund of Rs. 6,35,280/-. However, a refund of Rs.1,89,035/- only was determined in the subsequent intimation u/s. 245 dated 11th Nov, 2023 after

adjustment with the existing demand. A copy of intimation u/s. 245 is reproduced below:-

Status
Refund adjusted
Against demand(s)
Reference
Intimation u/s 245
CPC/2122/G8a/208374776
dated 31-10-2023
Date of Communication 11-Nov-2023

Your return for the A.Y. 2021-22 has been processed on date 29-03-2022 determining a refund of Rs. 635280. The said refund is adjusted against the following outstanding demand(s).

| Sl. No. | A.Y. | Demand Amount | Demand Identification Number | Order Date | Section | Taxpayer's Response | AO's Response | Amount of Adjustment |
|---------|---------|---------------|------------------------------|------------|---------|---------------------|---------------|----------------------|
| 1 | 2016-17 | 172 | 2016201637046518740T | 15-10-2016 | 1431a | No Response | Collectable | 373393 |
| 2 | 2014-15 | 28330 | 2023201637216026771T | 24-12-2016 | 1433 | No Response | Collectable | 2600 |
| 3 | 2016-17 | 55995 | 2023201437216026605T | 10-11-2023 | 220(2) | No Response | No Response | 55995 |
| 4 | 2014-15 | 14257 | | 10-11-2023 | 220(2) | No Response | No Response | 114257 |

Net Amount Refundable
Refund Sequence No

189035/-
9387968815

6.1 It appears that no opportunity was provided to the assessee before passing of adjustment order u/s 245 of the Act by the CPC, which is against the principle of natural justice. Further, it is found from the above intimation that the demand for A.Y. 2016-17 (serial no. 1) was Rs. 172/- only whereas the amount of adjustment made was Rs.3,73,393/-. There is similar discrepancy in the amount of demand and the amount of adjustment in serial no. 2 as well. These discrepancies were required to be addressed which are apparent from the intimation u/s. 245. Further, it is also not evident as to whether any interest u/s. 244 was allowed to the assessee.

6.2 In view of the above facts and discrepancies, the matter is set aside to the jurisdictional Assessing Officer to re-concile the figure of actual demand and the amount of adjustment as made in the intimation u/s. 245 dated 11th Nov, 2023. The assessee may be allowed a proper opportunity of being heard in the matter as contemplated u/s 245 of the Act.

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

Order pronounced in the open court on 07-06-2024.

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 07/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद