

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1127/Del/2024  
[Assessment Year : 2018-19]**

Sampark Hotels Pvt.Ltd., 115, Ansal Bhawan, 16, K.G.Marg, New Delhi-110065. <b>PAN-AABCS8097H</b>	vs	ITO, Ward -22(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri R.S.Singhvi, CA & Shri Satyajeet Goel, CA	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	13.06.2024	
<b>Date of Pronouncement</b>	21.06.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)/ADDL/JCIT(A)-2, Pune dated 19.01.2024 for the Assessment Year (“AY”) 2018-19.

2. The assessee has raised following grounds of appeal:-

1. *“That the order passed by Addl/JCIT(A) is illegal, arbitrary and without proper appreciation of facts and opportunity to the assessee.*
- 2(i) *That on the facts and circumstances of the case, the Addl/JCIT(A) was not Justified in confirming the adjustment of Rs.23,44,048/- made by CPC vide intimation u/s 143(1) without appreciating the fact that impugned adjustment is in respect of claim of long term capital gain exempt u/s 10(38) of the Income Tax Act, 1961.*
- (ii) *That wrong reporting in the return was in the nature of inadvertent mistake and adjustment by CPC in intimation u/s 143(1) being without any opportunity, the same is illegal and unjustified.*

- (iii) *That the income of Rs.23,44,048/- arising from sale of equity oriented mutual fund being exempt u/s 10(38), the order of Addl/JCIT(A) upholding the adjustment is highly arbitrary and contrary to the scheme of the Act and total disregard to provisions of section 10(38).*
  - (iv) *That a mere mistake in ITR cannot result in taxation of income which is expressly exempt under the provision of the Income tax Act, 1961 and as such the observation of Addl/JCIT(A) regarding non-filing of revised return is misconceived and irrational.*
  - (v) *That the order passed by the Addl/JCIT(A) is inconsistent with CBDT Circular No. 14(XL-35), dated 11-4-1955 and judicial precedents as per which there is no embargo in raising a fresh claim before first appellate authority.*
  - (vi) *That the order of CIT(A) upholding the taxation of income of Rs.23,44,048/- from sale of equity oriented mutual fund which is exempt u/s 10(38) is perverse, devoid of merits and bad in law.*
3. *That the appellant craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.”*

3. Facts giving rise to the present appeal are that the appellant is a company and is engaged in the business of real estate development and it filed its Income Tax Return (“ITR”) on 25.08.2018 at a book profit of INR 23,07,498/- as per the provision of section 115JB of the Income Tax Act, 1961 (“the Act”). The assessee while filing the return of income due to oversight, made a mistake in choosing the group for exempt capital gain amounting to INR 23,44,048/-. The CPC processed ITR and issued intimation order u/s 143 of the Act, after making adjustment of INR 23,44,048/- under the head income from business and profession. Thus, as per assessee, the capital gain which is otherwise exempt was taxed erroneously by the AO.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who did not accept the claim of the assessee and dismissed the grounds of appeal raised by the assessee. The basis of dismissal of appeal is stated that the assessee ought to have filed application u/s 119(2)(b) of the Act, if the return of income had been processed u/s 143(1) of the Act.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee vehemently argued that Ld.CIT(A) failed to appreciate the facts in right perspective. He submitted that it was mere mistake in filing ITR. It is not the case that the assessee has not claimed exemption therefore, the question of revising the ITR and seeking condonation u/s 119(2)(b) of the Act, would not arise. The Ld.CIT(A) therefore, misdirected itself in not considering the fact that the gains arising out of sale of equity oriented mutual fund being exempt u/s 10(38) of the Act.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the assessee cannot be allowed to take benefit of its own lapse. The Ld. authorities below are justified in declining the claim of the assessee.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. It is not in the dispute that the assessee had made claim in the return of income but failed to make such claim of exemption u/s 10(38) of the Act

inadvertently, in the proper column of return of income. He contended that law is well-settled that AO is required to grant deduction/exemption if law so mandates. The inadvertent mistake of the assessee should not fasten it with liability of tax qua gains which is otherwise, not-taxable under law. Therefore, I am of the considered view that the Ld.CIT(A) ought not to have dismissed the appeal on hyper technical basis. The impugned order is hereby, set aside and the assessment is restored to the file of AO for verification. If the AO finds that the capital gains is exempt under law, he would allow the claim of the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 21<sup>st</sup> June, 2024.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI