

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 1313/M/2024  
Assessment Year: 2020-21**

<b>M/s. KSB Limited</b> 601 Tower 1, Runawal R Square, LBS Road, Mulund (W.)- 400080. <b>PAN: AAACK5918J</b>	Vs.	<b>The Assistant Director of Income Tax, CPC</b> Bengaluru, Karnataka- 560500.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nikhil Tiwari a/w. Shri Mihir Chitaliya, A.R.  
Revenue by : Shri Biswanath Das- CIT D.R.

Date of Hearing : 13 . 06 . 2024  
Date of Pronouncement : 26 . 06 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/APL/S/250/2023-24/1060135975(1) Dated 25/01/2024 for the Assessment Year 2020-21.
2. The following grounds of appeal have been raised by the appellant:

*"Based on the facts and circumstances of the case and in law, KSB Limited (hereinafter referred to as 'the Appellant") has preferred an appeal before your*

*Honours against the order passed by the Commissioner of Income Tax, ADDL/JCIT(A)-1, Vishakhapatnam (hereinafter referred to as the 'learned CIT (A) under section 250 read with order under section 143(1) of the Income Tax Act, 1961 ('the Act'). The learned CIT (A) has erred in dismissing the appeal of the Appellant and holding that the appeal filed by the Appellant against order of Assistant Director of Income Tax, CPC, Bengaluru ('Learned AO') as infructuous. The Appellant further craves leave to prefer an appeal on the following grounds, which are independent of and without prejudice to one another.*

*On the facts and in the circumstances of the case and in law, the learned CIT (A) has:*

***1. Erred in considering the appeal filed by the Appellant against the intimation order under section 143(1) as infructuous***

*1.1. The learned CIT (A) has erred on facts and circumstances of the case and in law in considering the appeal filed by the Appellant against the intimation order under section 143(1) as infructuous due to passing of the assessment order under section 143(3) subsequent to the intimation order under section 143(1) of the Act.*

***2. Not grant of sufficient opportunity of being heard***

*2.1. The learned AO has erred in not issuing show cause notice before issuing intimation under section 143(1) of the Act and thereby not granting opportunity of being heard to the Appellant leading to violation of the principles of natural justice.*

***3. Erred in upholding the addition of INR 1,43,07,671 relating to deduction of Voluntary Retirement Scheme ('VRS') under section 35DDA erroneously reported as deduction under section 43B in return of income***

*3.1. The learned CIT(A) has erred on facts and in circumstances of the case and in law in upholding the addition of INR 1,43,07,671 made by the learned AO on account of eligible deduction of amount paid as VRS under section 35DDA of the Act erroneously reported as deduction under section 43B in the return of income.*

***4. Erred in short grant of TDS credit by INR 9,575***

*4.1. The learned AO has erred on facts and circumstances of the case and in law in granting the TDS credit short by INR 9,575.*

***5. Erroneous levy of interest under section 234C of the Act***

*5.1. The learned AO has erred on facts on levying the additional interest of INR 85,865 under section 234C of the Act.*

*The Appellant craves leave to add, alter, vary, omit, substitute, amend or delete one or more of the above grounds of appeal on or before or at the time of hearing of the appeal, so as to enable the Honorable Income Tax Appellate Tribunal to dispose of the appeal according to law.”*

*Though, several grounds of appeal have been raised by the appellant, the main ground is that The learned CIT(A) has erred on facts and in circumstances of the case and in law in upholding the addition of INR 1,43,07,671 made by the learned AO on account of eligible deduction of amount paid as VRS under section 35DDA of the Act erroneously reported as deduction under section 43B in the return of income.”*

3. Though, several grounds of appeal have been raised by the appellant stated as above, the main ground is that the Ld. CIT (A) has erred in upholding the addition of Rs.1,43,07,671/- made by the AO, CPC, while

processing the return, on account of payment made towards VRS under section 35DDA of the Act being not eligible for deduction under section 43B of the Act.

4. The facts of the case, in brief, are that the assessee in its income tax return had claimed an allowance of Rs.5,35,06,977/- in clause 10(B) of the Schedule Part A- OI, but the AO, CPC Bangalore allowed a sum of Rs.3,91,99,306/- only by making a disallowance of Rs.1,43,07,671/- in respect of payment made to employees towards voluntary retirement compensation which was otherwise allowable u/s.35DDA of the IT Act.
5. Aggrieved by the intimation order passed u/s.143 (1) of the Act, the assessee filed appeal before the Ld. CIT (A) who vide its Order No.ITBA/APL/S/250/2023-24/1060135975(1) dated 25/01/2024 for the Assessment Year 2020-21 dismissed the appeal of the assessee on the ground that assessment order u/s. 143(3) of the act has subsequently been passed in this case and thus, the intimation order passed u/s. 143(1) of the Act has become infructuous. It was further stated by the Ld. CIT (A) that if the appellant is aggrieved against the order u/s. 143(3), he may file appeal against the said order within the stipulated time period.
6. The appellant has preferred this appeal against the impugned order of the Ld. CIT (A). During the course of appellate proceedings before us, the appellant submitted a paper book and tried to explain the factual position as to how the amount paid towards voluntary retirement compensation

was an allowable deduction but adequate opportunity was not given to the appellant by the Ld. CIT (A) to explain the case. We, therefore, consider it proper to restore the matter back to the file of the Ld. CIT (A) to decide the issue on merit by affording adequate opportunity of being heard to the appellant to explain its case.

7. In the result, the appeal is allowed for statistical purpose.

**Order pronounced in the open court on 26.06.2024.**

**Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

**Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.06.2024.  
*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.