IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1028/Bang/2024
Assessment Year: 2018-19

Societe Generale Global Solution Centre Private Limited 10th Floor, Voyager Building ITPL, Whitefield Road Ramagondanahalli Whitefield SO Bangalore 560 066 **PAN NO : AAECS6764L**	**Vs.**	DCIT Circle-6(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Rony Antony, A.R.
Respondent by	:	Smt. S. Praveena, D.R.

Date of Hearing	:	02.07.2024
Date of Pronouncement	:	02.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2018-19 dated 30.3.2024. The assessee raised following grounds:

1. *That the order dated 30 March 2024 issued under section 250 of the Income-tax Act, 1961 ("the Act") is contrary to the facts, provisions of the Act and is therefore, liable to be quashed.*

2. *That the Ld. Addl./ Jt. CIT(A) was not justified in not allowing an opportunity of being heard to the Appellant during the proceedings even when the Appellant had specifically requested for the same. Hence, the Ld. Addl./ Jt. CIT(A) violated the principles of natural justice which ought to have been followed during the proceedings.*

3. *That the Ld. Addl./ Jt. CIT (A) and ADIT grossly erred in adding INR 4,26,84,797 towards 'net loss on derivative instruments' under ICDS VI (Changes in Foreign Exchange Rates) as disclosed in the report of audit undertaken under section 44AB of the Act (Form 3CA-3CD) despite when the*

Appellant had alqeady disallowed the same while computing income from business in the return of income. The action of the Ld. Addl./ Jt. CIT (A) and ADIT has led to double disallowance which is completely unwarranted and uncalled for.

(Tax effect: INR 1,47,72,355)

4. *That the Ld. Addl./ Jt. CIT (A) grossly erred in not allowing a deduction under section 10AA of the Act corresponding to the increased income from business resulting from the addition of INR 4,26,84,797 towards 'net loss on derivative instruments' under ICDS VI (Changes in Foreign Exchange Rates).*

5. *That the Ld. ADIT failed to correctly determine the amount of credit to be carried forward by the Appellant under section 1 15JAA of the Act.*

6. *That the Ld. ADIT erred in not allowing credit under section 90/ 90A of the Act in respect of tax paid by the Appellant outside India.*

7. *That the Ld. ADIT erred in levying interest under section 234C of the Act in excess of what was levied on the returned income in the return of income.*

2. The assessee also filed following additional grounds:

"In addition to the grounds of appeal filed on 14 June 2024 before the hon'ble ITAT in Annexure 1 to Form no. 36, the Appellant humbly wishes to pursue the following ground-

8. *That the addition(s) of INR 4,26,84,797 towards 'net loss on derivative instruments' under ICDS VI (Changes in Foreign Exchange Rates) made in the intimation dated 10 June 2020 issued under section 143(1) of the Act is infructuous as the said addition(s) was not retained in the order dated 13 April 2021 issued under section 143(3) of the Act and therefore, the said addition(s) ought to be deleted by applying the principles of 'Doctrine of merger'."*

3. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above grounds. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bona fide.

4. At the time of hearing, assessee confined his arguments only to the additional grounds and not pressed the main grounds of appeal. Accordingly, all the main grounds of appeal are dismissed as not pressed.

5. With regard to additional grounds, ld. A.R. submitted that the assessment order for the assessment year 2018-19 was passed u/s 143(3) of the Income Tax Act, 1961 (in short "The Act") on 13.4.2021, wherein while issuing the notice u/s 142(1) of the Act, he raised the issue of disallowance of ICDS compliance and adjustment for which the assessee given a reply as follows:

> *"h. ICDS compliance and adjustment*
> *In the return of income filed by the Company for AY 2018-19, while computing income under normal provisions of the Act, the company has reduced from its net profits and loss as per books, an amount of INR 55,888,937 on account of ICDS – VI changes in Foreign Exchange Rates. The same is reported in sl.no.34 of the Schedule BP of the ITR 6 filed for AY 2018-19.*
>
> *Further, the details of ICDS compliance and adjustment are also provided in clause 13(e) and 13(f) of Form 3CD."*

5.1 After satisfying with the reply given by the assessee on this captioned issue, the ld. AO not made any additions on this count. Thus, he submitted that the assessment order passed u/s 143(3) of the Act prevails over the intimation sent by CPC u/s 143(1) of the Act dated 10.6.2020 for the assessment year 2018-19. For this purpose, he relied on the decision of coordinate bench of this Tribunal in the case of National Stock Exchange of India Ltd. in ITA No.732/Mum/2023 for the assessment year 2020-21 dated 22.9.2023, wherein the Tribunal held as under:

"3. We have gone through the intimation/order passed u/s. 143(1) of the Act, Order u/s. 143(3) r.w.s. 144B of the Act, Order of the Ld. CIT (A) u/s. 250 and submissions of the assessee alongwith grounds of appeal taken before us. Our observation after going through these documents can be summarised as under:

- *Revenue never doubted over the expenditure incurred by the assessee, the only issue was treatment of the same from tax point of view, i.e., whether to allow the same as business expenditure u/s. 37 of the Actor to be treated the same as capital expenditure;*

- *Assessee filed its objection/reply on 29.09.2021 over proposed adjustment to be made u/s. 143(1), but no response over the same was there from ADIT (CPC), Bangalore and it seems that final intimation u/s. 143(1) of the Act of the Act was passed ignoring the response of the assessee;*
- *Thereafter assessee filed an application u/s. 154 of the Act also to rectify the mistake apparent from record, as per assessee proposed adjustments do not fall in the purview of section 143(1) of the act, being legal issue/debatable issue requires thorough verification and it is observed that case of the assessee was selected for scrutiny assessment also in which this transaction could have been considered by the revenue. No order u/s. 154 of the Act was passed by ADIT (CPC), Bangalore;*
- *It is observed that notice issued u/s. 143(2) vide dated: 29.06.2021 vide Page No. 88 of the factual Paper Book it was clearly mentioned that* ***"Since it is a complete scrutiny, further queries may arise during the course of assessment proceedings".*** *Still, no query on this issue was ever raised during the assessment proceedings;*
- *Order u/s. 143(3) r.w.s. 144B of the Act was passed on 28.09.2022 and appeal u/s. 250 of the Act was disposed by the Ld. CIT (A) was disposed on 12.01.2023, wherein Ld. CIT (A) has all options/authority to instruct Assessment Unit for verification of disputed expenses and thereafter appeal could have been disposed accordingly;*
- *The proposed action was based on opinion of the Tax Auditor appointed by the assessee, as there was the difference between tax auditor's report and what assessee claimed in its return.*

4. For sake of ready reference and better clarity over the issue we need to analyse the powers/scope given to CPC, Bangalore through section 143(1) as under:

> ***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: —*
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> | | | |
> |---|---|---|
> | *(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 [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 [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;]*

(b) *the tax [, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);*

(c) *the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax [, interest and fee], if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, [any relief allowable under section 89,] any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax [, interest or fee];*

(d) *an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and*

(e) *the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:*

***Provided** that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax [, interest or fee] is payable by, or no refund is due to, him:*

***Provided further** that no intimation under this sub-section shall be sent after the expiry of [nine months] from the end of the financial year in which the return is made. 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;*
(b)	*The acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).*

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, [2012].

(1C) every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

[(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under subsection (2):

***Provided** that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.]*

5. As noted above, neither assessee's response to proposed adjustment was considered, nor application u/s. 154 of the Act was disposed of, these falls in the violation of proviso 1 and 2 of the section 143(1) and makes whole action null and void. Further, as the case of assessee was scrutinized u/s. 143(2) and assessment order u/s. 143(3) was passed, technically the doctrine of merger comes into picture, therefore the impugned adjustment by CPC gets merged into order passed u/s. 143(3) of the Act and order passed u/s. 143(3) only survives. As far as reporting by Tax Auditor is concerned, maybe he has been appointed by the assessee, still his independence is always assumed and he is always free to give his own legal opinion, but the same is not binding on assessee or revenue.

6, In view of above legal and factual discussion it can be reasonably hold that final order in this case is assessment order passed by AO u/s. 143(3) r.w.s. 144B of the Act and not the intimation/order passed by CPC, Bangalore u/s. 143(1) of the Act. Effectively, when order passed by AO u/s. 143(3) r.w.s. 144B of the Act is final and therein no such addition is there, whole issue becomes academic including the appeal order passed by the Ld. CIT (A) U/s. 250 of the Act. In the result grounds of appeal raised by the assessee is allowed."

6. Contrary to this argument, the ld. D.R. submitted that though ld. AO raised the issue relating to ICDS compliance and adjustments in notice u/s 142(1) of the Act, there was no discussion in the assessment order. Hence, it cannot be considered that ld. AO has dealt this issue in proper perspective. Further, she submitted that there is an order of the coordinate bench in the case of Areca Trust, Bangalore in ITA No.433/Bang/2023 for the assessment year 2018-19 dated 26.7.2023 wherein held as under:

"7. We have heard the rival submissions and perused the material on record. On perusal of the impugned Assessment Order passed under section 143(3) (order dated 12.02.2021), it is clear that AO has assessed the total income at Rs.23,29,62,420/- solely relying on the adjustment made by the AO/CPC in the intimation made under section 143(1) of the Act. In the impugned Assessment Order passed under section 143(3) of the Act, there is no independent discussion as regards the income assessed at Rs.23,29,62,420/-. The relevant portion of the assessment completed under section 143(3) of the Act dated 12.02.2021 reads as follows:

> *"4. In response to the notice, the assessee responded via e-proceedings and submitted the details called for. Details filed are examined and the income is assessed at Rs. 23,29,62,420/ as per 143(1)(a) of the Act."*

8. Section 246A specifically provides for an appeal as against intimation issued under section 143(1) of the Act. In the instant case, total income has been assessed at Rs.23,29,62,420/- as per the intimation passed under section 143(1) of the Act. Therefore, the cause of action for the assessee arises from the intimation issued under section 143(1) of the Act and appeal ought to have been filed as against the same. The assessment completed under section 143(3) of the Act merely adopts the assessed figures in the intimation order passed under section 143(3) of the Act. Therefore, no cause of action arises from the order passed under section 143(3) of the Act.

9. Section 143(4) of the Act only mentions that on completion of regular assessment under section 143(3) or 144 of the Act, the tax paid by assessee under section 143(1) of the Act shall be deemed to have been paid toward such regular assessment. That by itself does not mean there is merger of intimation under section 143(1) with that of regular assessment under section 143(3) / 144 (unless issue has

been discussed and adjudicated in regular assessment under section 143(3) / 144 of the Act). Assessee, against the intimation under section 143(1) of the Act, has filed a rectification application under section 154 of the Act (vide application dated 16.06.2020) and the same is pending disposal. The CIT(A) in the impugned order has directed the AO to dispose off the said rectification application dated 16.06.2020. Moreover, if assessee is advised to file an appeal as against the intimation under section 143(1) of the Act, a liberal approach may be taken for condonation of delay since assessee's application for rectification of the intimation under section 143(1) of the Act has been filed within time and same is pending disposal. With the above said observation, the grounds of the assessee are rejected."

7. We have heard the rival submissions and perused the materials available on record. It was brought to our notice that the assessee also filed appeal against order passed u/s 143(3) of the Act dated 13.4.2021 before the ld. CIT(A) and pending for adjudication. It is also noted that the ld. AO though raised the issue of ICDS compliance and adjustment in notice issued to the assessee u/s 142(1) of the Act for this assessment year, however, there was no discussion about this issue while passing the assessment order dated 13.4.2021. Being so, we are not in a position to follow the order of the coordinate bench cited by the ld. A.R. In view of this, in our opinion, it is appropriate to remit this issue in dispute to the file of ld. CIT(A)/NFAC where the appeal is pending against the order passed u/s 143(3) of the Act dated 13.4.2021 for this assessment year 2018-19. The ld. CIT(A)/NFAC has to consider the entire facts and circumstances of the case in all the above judgements and decide accordingly.

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

Order pronounced in the open court on 2nd July, 2024

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 2nd July, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.