

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 571/Bang/2024
Assessment Year : 2020-21

Dr. Vijayalakshmi L, No. 730/D, "Sireesha", 9 th Cross, 4 th Main, M C Layout, Vijayanagar, Bangalore – 560 040. PAN: ACJPV2022J	Vs.	The Income Tax Officer, Ward – 2(2)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Tharun Kothari, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate, Standing Counsel for Revenue

Date of Hearing	:	27-06-2024
Date of Pronouncement	:	27-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 07.02.2024 passed by NFAC, Delhi for A.Y. 2020-21 on following grounds of appeal.

"1. The order passed by the learned Commissioner of Income Tax (Appeals) — NFAC ("CIT(A)") under section 250 of the Act insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.

2. The Appellant denies herself liable to be assessed at Rs.32,77,000/- as against the returned income of Rs.26,75,740/- on the facts and circumstances of the case.

3. *The learned CIT(A) was not justified in confirming the additions of Rs. 6,01,260/- as per the processing made under section 143(1) of the act, on the facts and circumstances of the case.*

4. *The learned CIT(A) failed to appreciate that the adjustments of Rs. 6,01,260/- was without providing an opportunity of hearing and the adjustments were in violation of the proviso to section 143(1)(a) r.w.s 154 of the act, on the facts and circumstances of the case.*

5. *The learned CIT(A) ought to have set aside the intimation U/s 143(1) r.w.s 154 of the act, on the grounds of violation of principles of natural justice, alone, on the facts and circumstances of the case.*

6. *Without prejudice and not conceding that the assessing authority has not provided an intimation to make the adjustment of capital gains, the intimation provided on different issues has been accepted and the failure to provide an opportunity has vitiated the intimation, on the facts and circumstances of the case.*

7. *Without Prejudice, the Appellant has correctly furnished the data in ITR 3 filed Schedule 112A (pages 34 to 37 of ITR 3) copy enclosed hereto as Annexure A wherein all the particulars were furnished like FMV as on 31.1.2018 and cost of acquisition amongst others, which clearly indicated that Grandfathered gains of 6,01,261 needs to be deducted out of total Capital gains of Rs. 6,77,660 deducted from Business/Profession head of income and the net amount of 76,399 is taxable which is disclosed and taxes thereon remitted (We also enclose hereto as Annexure B the Gain statement of stocks for your kind information wherein your honour would observe that the grandfathered gains were 6,01,261). The learned CIT(A) failed to appreciate that the data entered in the form was accurate and the processing has been made erroneously and the adjustment ought to have been deleted in full, on the facts and circumstances of the case.*

8. *The Appellant denies the liability to pay interest under section 234B of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer on the facts and circumstances of the case.*

9. The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.

10. In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

2. Brief facts of the case are as under:

2.1 The assessee is a Dentist and is assessed to tax regularly. For year, she had invested in various securities, deposits etc. out of her earnings. During the Asst. year 2020-21, she sold some shares. She filed a return of income on 7.10.2020 declaring income of Rs. 26,75,740/-. After adjusting the taxes paid of Rs. 8,15,031/- a refund of Rs. 1,99,040- was claimed.

2.2 As against the said particulars the CPC while processing the returns sent proposal for adjustment on 3.9.2020 with respect to 2 items namely —

- a. Income from house property of Rs. 1,47,000 to be treated as LOSS and the double to income amounting to Rs. 2,94,000 would be added to income. The Logic is in comprehensible. Assessee declares income and the LAO wants to treat it as LOSS but intends to add double to income again.
- b. Capital receipts of Rs. 4,83,748 mentioned in capital receipts not included in P&L account would be added to income as it does not figure in "Business income" or in "other sources" . But LAO does not take into consideration the said receipt being Maturity proceeds of LIC policy having been disclosed in Exempt income in the return under the "Exempt income" head.

2.3 The assessee filed detailed submissions on 13.09.2020, that the additions are untenable based on the facts and return filed.

2.4 The Ld.AO processed the return on 28.10.2020 vide DIN no.CPC/2021/A3/179386669 adding amount of Rs.6,01,261/- the details of which were not forthcoming from the said intimation. It is submitted that, the original proposal for adjustments is not the same as adjustments carried out in the intimation and its rectification done now by the Ld.AO is in violation of the SOP of CBDT and the Faceless Assessment Scheme.

2.5 It is further submitted that the Ld.AO did not issue SCN nor a draft assessment order nor any time was granted for replying to such SCN.

3. The Ld.AR placed reliance on the decision of *Coordinate Bench of this Tribunal* in case of *ER Consulting vs. ADIT, ITO* in ITA No. 218/Bang/2024 vide order dated 16.05.2024 to submit that no adjustment while processing the return of income u/s. 143(1) can be made without affording opportunity of being heard to the assessee.

3.1 On the contrary, the Ld.DR though could not controvert the submissions of the assessee, vehemently supported the orders passed by authorities below.

I have perused the submissions of the assessee in the light of the decision relied by the Ld.AR (supra). The admitted position of the law is that, the assessee has to be put to notice regarding the disallowance proposed by the CPC before initiating the 143(1) proceedings. In the present facts of the case, the assessee was put to notice regarding the proposed additions recorded hereinabove. However, the addition made in the 143(1) issued to assessee is on a different issue.

3.2. Section 143(1) of the IT Act is reproduced as follows:

“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>(i)</i>	<i>any arithmetical error in the return</i>
<i>(ii)</i>	<i>an incorrect claim, if such incorrect claim is apparent from any information in the return;</i>
<i>(iii)</i>	<i>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;</i>
<i>(iv)</i>	<i>disallowance of expenditure 82[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;</i>
<i>(v)</i>	<i>disallowance of deduction claimed under 83[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</i>
<i>(vi)</i>	<i>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:</i>

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: (underline is ours) 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;”

3.3. On going through the above provisions it is clear that, the total income or loss shall be computed after making adjustment as provided in sub clause (1), mainly any arithmetical errors in the return, incorrect claim, if any that is apparent from the information forming part of the return, etc. The first proviso to section 143(1)(a) make it clear that, no adjustment shall be made unless an intimation is given to the assessee of such adjustment, either in writing or in electronic mode. In the present facts of the case, the assessee, did not receive any intimation towards the adjustment or disallowance made in 143(1), either in writing or in electronic mode. This position was not controverted by the Ld.DR.

3.4 I note that the *Coordinate Bench of this Tribunal* in case of *ER Consulting vs. ADIT, ITO (supra)* has referred to decision of *Hon’ble Ahmedabad Bench* in case of *Devendra Singh Bhaskar* in *ITA No. 431/Ahd/2022* by order dated *09.08.2023* for A.Y. 2020-21, wherein identical issue was considered.

3.5 Respectfully following the view taken therein and considering the position of law, I find it necessary to set aside the findings of

the Ld.CIT(A). However, in the interest of justice, I deem it fit and proper to remit this issue to the Ld.AO for fresh consideration having regard to the evidences filed by the assessee in accordance with law.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 27th June, 2024.

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 27th June, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore