

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.648/Del/2023

निर्धारणवर्ष/Assessment Year: 2020-21

DCIT Circle 1(1), Room No.153A, C.R. Building, I.P. Estate, New Delhi.	<u>बनाम</u> Vs.	Adidas India Marketing P. Ltd. Office No.6, 2 nd Floor, Sector-B, Pocket No.7, Plot No.11, Vasant Kunj, South West Delhi, New Delhi. PAN No.AAACA5313P
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Prakash Nath Barnwal, CIT DR
Assessee by	Shri Shashwat Bajpai, Adv. Shri Saransh Bhardwaj, Adv. & Shri Mahir Khanna, Adv.

सुनवाईकीतारीख/ Date of hearing:	30.05.2024
उद्घोषणाकीतारीख/ Pronouncement on	24.07.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 09.01.2023 for the AY 2020-21 arising out of the intimation passed u/s 143(1) of the Act. The Revenue in its appeal raised the following grounds: -

1. "The Ld.CIT(A) erred in deleting the disallowances made by AO-CPC without appreciating the facts that AO-CPC has made disallowance on the basis of disallowance as

mentioned in the audit report but has not taken it into account by assessee in computing the total income in the return.

- 2. The Ld. CIT(A) erred in deleting the adjustments made by AO-CPC without appreciating the fact that AO-CPC has made such adjustment well within its power u/s 143(1)(a)(iv) of the Act, and that not giving an intimation to the assessee before such adjustment is only a technical defect which can be cured.*
- 3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

2. The Ld. Counsel for the assessee, at the outset, submits that the CPC, Bengaluru while passing intimation u/s 143(1) of the Act made various disallowances u/s 37, 36(1)(va) and 43B of the Act without issuing any notice to the assessee as mandated under proviso to section 143(1) of the Act. Ld. Counsel for the assessee submits that in various decisions of the Tribunal it was held that adjustments made while passing the intimation u/s 143(1) of the Act without providing an opportunity to the assessee by issue of a notice as mandated u/s 143(1) of the Act is nullity in the eyes of law. Therefore, it is the submission of the Ld. Counsel that the Ld.CIT(A)-NFAC has rightly deleted the adjustments made u/s 143(1) of the Act in respect of the disallowance made u/s 37, 36(1)(va) and 43B of the Act in the absence of issue of any notice by

the CPC prior to making adjustments to the returned income. The Ld. Counsel for the assessee further placed reliance on the decision of the coordinate bench of the Delhi Tribunal in the case of Vinod Malik Vs. DCIT in ITA No. 1635/Del/2021 dated 25.11.2022 for the above said proposition. Ld. Counsel also filed written synopsis.

3. On the other hand, the Ld. DR strongly supported the actions of the CPC in making adjustments while passing the intimation u/s 143(1) of the Act. It is the submission of the Ld. DR that even though the notice was not given prior to making adjustments, such non issue of notice is only a technical defect which can be cured.

4. Heard rival submissions, perused the orders of the authorities below and the submissions made before us. The only issue to be adjudicated in the appeal of the Revenue is whether the CPC, Bengaluru can make adjustments while passing the intimation u/s 143(1) of the Act without prior notice to the assessee as mandated under the provisions of Section 143(1) of the Act. In this case the CPC, Bengaluru processed the return u/s 143(1) of the Act on 27.12.2021 for the AY 2020-21 which was filed on 14.02.2021 declaring income of Rs.271,84,29,110/-. While processing the return the CPC determined the income of the assessee at Rs.282,53,42,780/-. While passing the intimation u/s 143(1) of the

Act CPC has made three adjustments to the returned income as under: -

- a) Disallowance u/s 37 amounting to Rs.8,89,55,619/-;
- b) Disallowance u/s 36(1)(va) amounting to Rs.35,59,808/- and;
- c) Disallowance u/s 43B amounting to Rs.1,25,98,242/-.

These adjustments were made by the CPC without issuing any notice to the assessee or intimating the assessee of proposed adjustments before making any adjustments in the intimation passed u/s 143(1) of the Act.

5. Ld. CIT(A) considering the submissions of the assessee and after analyzing the provisions of section 143(1) of the Act deleted the adjustments in the absence of any proposal by the CPC for making adjustments while passing the intimation u/s 143(1) of the Act, prior to making adjustments to the returned income.

6. Ld. Counsel filed the following synopsis and relied on various decisions in support of his contention that adjustments made in the intimation passed u/s 143(1) of the Act without prior notice is nullity and not sustainable in law:

“Non-fulfillment of mandatory provision of Section 143(1)(a) by failing to give prior intimation - Nullity.”

- *Aggrieved by the order passed by the CPC, the Respondent filed an appeal before the Hon'ble CIT(A), New Delhi on the grounds that the said order had been passed in violation of the express mandate of the provisos to section 143(1)(a) of the Act and without issuing any intimation to the Respondent of the proposed additions, among other grounds on merits.*
- *The Hon'ble CIT(A) on finding that no proposal for adjustments was issued to the Respondent under section 143(1)(a) of the Act, vide order under section 250 of the Act dated January 9, 2023, allowed the grounds raised by the Respondent and thereby accepted the Respondent's contentions, holding that the adjustments made by the CPC were incorrect as these were against the principles of law, are liable to be deleted.*
- *CIT (A) finally held that since no intimation was issued to the Assessee prior to making adjustments u/s 143(1), therefore, the impugned adjustments are not correct and are liable to be dismissed.*
- *Section 143(1), 1st proviso read as -*

Assessment.

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) 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 indicated in the audit report but not taken into account in computing the total income in the return;*
- (v) *disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 8Q-IB, 80-IC, 80-ID or section 80-IE, 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;]

- **CIT (A) held that -**

[Pl see Para 5.2 & 5.3 @ pg 29-31]

“5.3.....As contended by the Appellant and also on a perusal of the CPC 2.0 portal, it is seen that no proposal for adjustments u/s 143(1)(a) was issued by the CPC prior to make adjustments to the returned income. Therefore, the adjustment made in the intimation u/s 143(1)(a) is against the principles of law provided in the section 143(1) of the IT Act Accordingly, I am of the opinion that the

adjustments made by the CPC is not correct and liable to be deleted. Therefore, I direct the A.O to delete the additions made in the intimation u/s 143(1)(a) dated 27.12.2021 while processing the return of income. As I have held that the addition made in the intimation is wrong, I am not dealing with the other issues raised by the Appellant consequent to these additions as the same are only academic in nature. Accordingly, the grounds raised in this regard are allowed.’’

- *In fact, the Department in its own Grounds of Appeal before the Hon’ble Tribunal have ADMITTED that no such intimation has been given to the Assessee. [pl see ground No. 2 Form 36].*

INDEX OF JUDGMENTS

S.No.	Particulars	Para
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1.	<i>Vinod Malik Vs. ADIT, CPC (ITA 1635/Del/2021)</i>	4, 6 & 7
2.	<i>Haft Propbuild Private Limited Vs. ITO, Ward 11(1), New Delhi (ITA 8910/Del/2019)</i>	7
3.	<i>Arham Pumps Vs. DCIT (ITA 206/Ahd/2021)</i>	8 & 9
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JUDGMENTS PROPOSITION

Order a NULLITY without Intimation Sec 143(1)(a) (5th Proviso)

1. Vinod Malik v. ADIT, CPC (ITA 1635/Del/2021) ITAT Delhi

“4. In the ground No. 2 the assessee raised the issue of disallowing the payment without providing an opportunity to establish the claim and the intimation u/s 143(1)(a) of the Income Tax Act, 1961.

6. From the above, we find that the disallowance made by the CPC was in accordance with provisions of Section 143(1)(iv). The act mandates, before making an adjustment, an intimation has to be given to the assessee of such adjustment in writing or in electronic mode. The revenue could not produce evidence of sending the intimation to the assessee with regard to the proposed adjustment.

7. Failure to adhere to the mandatory procedure prescribed in statute has DOMINO EFFECT ON THE ORDER PASSED u/s 143(1)(a) culminating in TREATING THE ORDER LEGALLY UNSUSTAINABLE.”

2. Haft Propbuild Private Limited v. ITO, Ward 11 (1), New Delhi (ITA 8910/Del/2019), ITAT Delhi

“7. We find that Id. CIT (A) has confirmed the order of CPC by ignoring the mandate of law contained in section 143(1)(a) that before making such adjustment, assessee should be put to notice. Since this has not been done the jurisdiction of CPC in doing such adjustment sans any notice is vitiated. Consequently, the adjustment done by CPC IS NOT SUSTAINABLE IN LAW.”

3. Arham Pumps v. DCIT (ITA 206/Ahd/2021), ITAT Ahmedabad

“8. On going through the above intimation made under section 143(1), CPC HAS NOT FOLLOWED the above provisos BY GIVING PROPER OPPORTUNITY TO THE ASSESSEE TO DEFEND ITS CASE AS PER THE FIRST PROVISO TO SECTION 143(1)(a). Further, the NFAC order is also silent about the intimation to the assessee. Therefore, we find that intimation issued under section 143(1) dated 19.10.2019 is against first proviso to section 143(1)(a), and therefore, the entire 143(1) proceedings is invalid in law. ”

9. We also observe that the Id. NAFC has not looked into this fundamental principle of “audi alterm partem”, which has not been provided to the assessee as per the 1st proviso of section 143(1) of the Act, but proceeded with the case on merits and also confirmed the addition

made by the CPC. The Id. NAFC is thus erred in conducting the faceless appeal proceedings in a more mechanical manner without application of mind. We therefore hereby QUASH THE INTIMATION ISSUED BY THE CPC and allow the appeal filed by the assessee.”

4. *M/s. Kalyan Educational Society v/s ACIT, Circle-2, Durgapur (ITA 106/Kol/2023), ITAT Kolkata*

“9. After hearing the rival contentions, perusing the material on record and also the proviso to section 143(1)(a) of the Act, we find that the Id. Assessing Officer CPC, before making any adjustment/disallowance to the returned income as per the return of income filed by the assessee is duty bound to intimate the same to the assessee either in writing or in the electronic mode. However, we find that no such intimation has been given to the assessee before making the said adjustment or disallowance either in writing or in electronic mode.

We have also examined the records of assessment proceedings on e-portal relating to the assessee as placed before us and observe that the Id. Assessing Officer, CPC has not followed the mandate of first proviso of section 143(1)(a) of the Act and consequently, the order passed under section 143(1) of the Act is not as per the mandate of provisions of the Act and HAS TO BE QUASHED. The case of the assessee finds force from the decision dated 21 April, 2022 of the Tribunal, Ahmedabad Bench in the case of Arham Pumps in ITA No. 206/AHD/1989. The operative part of the order is extracted below:-

.....

10. In the instant case also, the adjustment has been made by the Id. Assessing Officer, CPC to the income of the assessee without even giving any intimation in terms of proviso to section 143(1)(a) of the Act and, therefore, the said order is QUASHED AS INVALID AND NULLITY IN THE EYES OF LAW. In the result, the additional ground is allowed.”

5. Indoco Remedies Ltd. v. NFAC (ITA 192/Mum/2022), ITAT Mumbai

“6. Proviso to section 143(1)(a) mandates that NO ADJUSTMENT SHALL BE MADE UNLESS AN INTIMATION IS GIVEN TO THE ASSESSEE. In the instant case as is emanating from records no notice/intimation was given to the assessee for making adjustment/addition. The CPC/Assessing Officer made addition in an unilateral proceedings without affording opportunity of hearing to the assessee or to make submissions and explain as to how book profits have been computed by the assessee under MAT provisions. Non-granting of an opportunity of hearing/making submissions is against the principles of natural justice and mandate of section 143(1)(a) of the Act. Hence, THE ADDITION IS LIABLE TO BE SET-ASIDE ON THIS GROUND ALONE.”

6. Ceylons Pentecostal Mission v. ACIT, CPC, Bengaluru (ITA 320/Chny/2021) ITAT Chennai

“8.The proviso further specifies that no such adjustment shall be made unless an intimation is given to the assessee of such adjustments either in writing or electronic mode. In this case, ADMITTEDLY NO SUCH INTIMATION WAS GIVEN TO THE ASSESSEE BEFORE MAKING ADJUSTMENT towards capital gain and accumulation of income u/s 11(2) of the Income Tax Act, 1961.

Therefore, on this count itself adjustment made by the Assessing Officer towards capital gain and accumulation of income u/s 11(2) of the Income Tax Act, 1961 DESERVES TO BE DELETED.”

7. Bajaj Auto Finance v. CIT, Pune, 2018 SCC Online Bom 680, Bombay HC

“16.Therefore, for the above purpose it is necessary that the party to be given an opportunity to establish its claim. Therefore, in the present facts, adjustment by way of disallowing deduction by

intimation UNDER SECTION 143(1)(a) OF THE ACT IS NOT PROPER.”

7. We find considerable merit in the submissions of the Ld. Counsel for the assessee. It is the finding of the Ld.CIT(A) that on perusal of the CPC 2.0 portal it is seen that no proposal for adjustments u/s 143(1)(a) of the Act was issued by the CPC prior to making adjustments to the returned income. The finding of the Ld.CIT(Appeals) was not rebutted by the Revenue with any evidence. The case laws are relied upon by the Ld. Counsel for the assessee directly addresses the issue as to whether the CPC can make adjustments while processing return u/s 143(1) of the Act without prior intimation to the assessee. It is observed that various Tribunals including the coordinate bench of the Delhi Tribunal held that no adjustment shall be made unless an intimation is given to the assessee before making adjustments to the returned income while processing the return u/s 143(1) of the Act. It was held that in terms of proviso to section 143(1)(a) it is mandatory to issue prior notice to the assessee before making an adjustment and an intimation issued ignoring the mandate of law contained in section 143(1)(a) of the Act before making any adjustment is not sustainable in law.

8. In view of the above discussion, we hold that the intimation passed u/s 143(1) of the Act making adjustments without prior notice to the assessee is contrary to the proviso to section 143(1)(a) of the Act and consequently such intimation is bad in law. Thus, we see no infirmity in the order passed by the Ld.CIT(Appeals) in holding that the adjustments made by the CPC in the intimation passed u/s 143(1) of the Act are not correct and liable to be deleted.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 24/07/2024

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 24/07/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi