

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

BEFORE SHRI RAJPAL YADAV, VP  
AND  
SHRI RAJESH KUMAR, AM

**ITA No.682/Kol/2024**

(Assessment Year: 2015-16)

Priscilla Vaz Trust  
125, S.B. Gorai Road,  
Asansol-713304

Vs.

ITO (E), Ward 2(1)  
Aayakar Bhawan Annexe,  
City Centre,  
Durgapur-713216

**(Appellant)**

**(Respondent)**

**PAN No. AACTP6275C**

**Assessee by** : Shri S.K. Tulsian &  
Ms. Puja Somani, ARs  
**Revenue by** : Shri B.K. Singh, DR

**Date of hearing:** 26.06.2024  
**Date of pronouncement :** 20.08.2024

**ORDER**

**PER RAJESH KUMAR, AM:**

1. This appeal is filed by the Priscilla Vaz Trust (Assessee / Appellant) against the appellate order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)] dated 8<sup>th</sup> December, 2012, for Assessment Year 2015-16, wherein the appeal filed by the Assessee against the assessment order dated 30<sup>th</sup> August, 2022, passed by the Income Tax Officer, Ward 2(1)(Exemption) (Ld. AO) under section 254/250/154/143(1) of the Income Tax Act, 1961 (the Act) computing the total income of the Assessee as Rs.6,28,592/-, was dismissed.
01. Besides the grounds raised in the memorandum of appeals , the assessee has also raised additional ground before us which is reproduced hereunder:-

*"1. "That on the facts and in law, the learned CPC in the intimation issued u/s 143(1) of the Act dated 27-03-2017 erred in not following the mandate as required by first proviso to section 143(1) of the Act which says that no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode."*

*The aforesaid ground arise out of the order of the learned AO,CPC passed u/s 143(1) of the Act dated 27-03-2017 wherein the learned AO, CPC has erred in treating the voluntary corpus donation of Rs.90,88,219/- standing in the books as on 31-03-2015 as income of the assessee.*

*It is submitted that this is a question of law and requires no further investigation of fresh facts by the lower authorities. It is well settled in law that a question of law can be raised at any stage of proceedings as held by the Hon'ble Supreme Court in the landmark judgment in the case of National Thermal Power Co. Ltd vs CIT (1998) 229 ITR 0383 wherein it was held that,*

*"The view that the Tribunal is confined only to issues arising out of appeal before the CIT(A) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to*



*consider that question in order to correctly assess the tax liability of an assessee."*

02. After hearing both the parties and perusing the material available on record, we find that the issue in the additional ground raised by the assessee is against the intimation issued by the learned Assessing Officer under Section 143(1) dated 27<sup>th</sup> March, 2017, without following the mandate as required by first proviso to Section 143(1) of the Income-tax Act, 1961 (the Act). We note that the said issue has arisen out of the intimation and therefore, no further verification on facts is required to be done in the matter. The assessee submitted that the issue is supported by the decision of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 0383, wherein it was held that the tribunal will have the discretion to allow or not allow a new ground raised but where the Tribunal is required to consider the question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Therefore considering the facts and circumstances, we are inclined to admit the additional ground raised by the assessee for adjudication.
03. Brief facts of the case are that the assessee has filed his return of income on 9<sup>th</sup> February 2016, in ITR-7 declaring total income of ₹6,28,592/-. The said return was processed by the Central Processing Centre, Bangalore under Section 143(1) of the Act on 27<sup>th</sup> March, 2013, in

which an addition of ₹97,16,810/- was made including the corpus donation shown by the assessee to the tune of ₹90,88,218/- in its accounts. The learned counsel for the assessee vehemently submitted before us that the addition made by the Central Processing Centre, Bangalore (Assessing Officer) in the intimation issued under Section 143(1) of the Act dated 27<sup>th</sup> March, 2017, is without jurisdiction and has to be deleted for the reason that the assessee was not intimated either in writing or electronically. The learned Assessing Officer can only make an adjustment to the total income while processing the return under Section 143(1) of the Income-tax Act, 1961 (the Act) only if the learned Assessing Officer has given an intimation to the assessee of such adjustment either in writing or in electronic mode. However, no such intimation was given to the assessee for the said issue.

04. The learned counsel for the assessee vehemently submitted that since, an addition has been made by the Assessing Officer to the total income of the assessee while processing the return of income under Section 143(1)(a) of the Act, the assessee has to be mandatorily given an opportunity through intimation of said adjustment either in electronic mode or in writing as is provided in proviso to Section 143(1) of the Act. Hence, the order passed by the learned Assessing Officer is in violation of the proviso to Section 143(1)(a) of the Act and the impugned addition made by the learned Assessing Officer sans jurisdiction and is invalid under the Act. This case is supported by the decision of this Tribunal in case of ITO (Exemption) vs.

Camellia Educare Trust reported in (2023) 152 taxmann.com 304 (Kolkata-Trib.).

05. The learned Departmental Representative on the other hand submitted that the issue may be restored to the file of the learned Assessing Officer to examine and to decide the same as per the facts and law.
06. After hearing the rival contentions and perusing the materials available on record, we note that the undisputed facts as coming out before us are that an intimation under Section 143(1) of the Act dated 27<sup>th</sup> March, 2017 passed in which an adjustment of ₹90,88,219/- was made on the ground of corpus donation shown by the assessee in the return of income. Undisputedly, the assessee was not given any notice or intimation either in writing or in electronic mode qua the above addition/adjustment made under Section 143(1)(a) of the Act. Therefore, we find merit in the contention of the assessee that the addition made by the learned Assessing Officer while processing the return of income of other corpus donation shown by the assessee is without jurisdiction and not in consonance with the proviso to Section 143(1)(a) of the Act which provides that no such adjustment shall be made unless the intimation is given to the assessee of such adjustment either in writing or through electronic mode. The case of the assessee is supported by the decision of this Tribunal in case of ITO (Exemptions) vs. Camellia Educare Trust (supra), wherein the co-ordinate Bench held as under:-

*"Considering the facts on record and the perusal of the provisions contained in section 143(1)(a) it is*

*found that on both the aspects, the revenue fails. This position has not been controverted by the department also. Even if it is assumed for a moment that such an intimation was given to the assessee in accordance with the 1<sup>st</sup> proviso, then the second proviso stipulates that if any response is received from the assessee then, the same should be considered before making any adjustment or disallowance. In case, where there is no response received from the assessee then, within thirty days of the issue of such intimation, department is free to make such adjustment or disallowance. The documentary evidence placed on record and the e-proceedings downloaded from the income- tax portal, nowhere suggests that such a process has been followed. Thus, the impugned intimation issued under section 143(1)(a) is not in compliance with the 1st proviso to section 143(1)(a) and thus, the impugned intimation is invalid under the Act." [Para 8]"*

07. We note that the facts of the case before us are materially similar to the facts of the case as decided by the coordinate Bench in case of Camellia Educare Trust (supra), wherein it has been held that in order to make an adjustment in the intimation issued under Section 143(1)(a) of the Act it is mandatory to give intimation to the assessee of such adjustments either in writing or through electronic mode and therefore, the impugned addition made by the learned Assessing Officer on the ground of corpus donation of ₹90,88,219/- is without jurisdiction and is accordingly, the ordered to be deleted.



The appeal of the assessee is allowed on the additional ground.

08. Since, we have allowed the additional ground in favour of the assessee, the other grounds raised by the assessee in the memorandum of appeals are not being adjudicated at this stage and are being left open to be decided at later stage if the need arises for the same in future.

09. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.08.2024.

Sd/-  
(RAJPAL YADAV)  
(VICE PRESIDENT)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated 20.08.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Kolkata
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata