

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1462/M/2024  
Assessment Year: 2019-20**

<b>M/s. Lintas Employees Family Planning Assistance Trust,</b> 13 <sup>th</sup> Floor, Express Towers, Nariman Point, Mumbai – 400 021 <b>PAN: AAATL0322N</b>	Vs.	<b>Centralized Processing Centre,</b> Income Tax Department, Bengaluru – 560 500
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Prakash Jotwani, A.R.  
Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 27 . 06 . 2024  
Date of Pronouncement : 13 . 08 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 22.06.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2019-20.

**2.** At the outset, we observe that there is a delay of 220 days in filing the instant appeal, on which the Assessee has submitted that the impugned order dated 22.06.2023 was communicated on the email of the Assessee. The President of the Assessee trust, who deals with affairs of Assessee is of old age and suffering from health issues, therefore quite often do not check Assessee's mail but the email account is generally accessed by other office staff/employees. The President due to health condition, attends the office once or twice a week and therefore emails are generally kept open by other employees and thus the status of emails was shown as "read mails" which resulted into non-noticing. Recently it was brought to the knowledge of Assessee's President that the Ld. Commissioner has decided the order but no appeal has been filed due to oversight. Therefore, Assessee's President immediately approached its lawyers for filing the appropriate appeal. The assessee is a bonafide assessee and always filed its return of income on time and also paid taxes on time. There was no intentional default for filing the appeal late but due to oversight and the reasons cited above, the delay in filing the instant appeal has been occurred, which may kindly be condoned and the Assessee may be given an opportunity to be heard on merits. The Ld. D.R. on the contrary refuted the claim of the Assessee.

**3.** We have heard the parties on the point of limitation and considered the claim of the assessee qua condonation of delay in filing the instant appeal. The reason submitted by the Assessee relates to the health condition of the Assessee's President and oversight and checking the impugned order by the other staff/employees, which resulted into non-filing of appeal in time, appears to be genuine, bonafide and unintentional and therefore

for substantial justice, we are inclined to condone the delay, however, subject to deposit of token amount of Rs.1100/- in the Revenue Department, within 30 days from the receipt of this order.

**4.** Coming to the merits of the case, we observe that admittedly the Assessee had shown its total gross income of Rs.5,23,399/- and claimed exempt income of Rs.28,06,604/- by filing its return of income on 15.07.2019 in Form ITR-5 for the assessment year under consideration, which was processed under section 143(1) of the Act and vide order/intimation dated 01.05.2020 issued by CPC/AO, the income of the Assessee was assessed at Rs.33,70,908/- as against the income declared by the Assessee to the tune of Rs.5,23,399/-. The CPC/AO made the addition of Rs.28,47,509/- under the head "business income" break up of which is as under:

1. Dividend from mutual funds	-	Rs.7,83,611/-
2. Interest from tax refund	-	Rs.92,379/-
3. Long term capital gain (on consolidation of mutual fund)	-	Rs.19,71,519/-
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Total	-	Rs.28,47,509/-
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**5.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, who deleted the additions of Rs.7,83,611/- and Rs.92,379/- by treating as exempt qua Dividend from mutual funds and Interest from tax free bonds of NHAI, however affirmed the addition of Rs.19,71,519/- on account of long-term capital gain (on consolidation of MF) as made by the AO as business income under the head "capital gains".

**6.** The Assessee being aggrieved against the affirmation of the addition of Rs. 19,71,519/-, is in appeal before us and raised the following grounds of appeal:

*“1. The Ld. CIT(A) erred in making an addition of Rs.19,71,519/- under the head ‘Long term Capital Gains’ and failed to take into consideration, that the same represented only the book profits on redemption of Mutual Funds (i.e. LTCG computed without indexation), whereas in fact the Assessee has incurred a Long-Term Capital Loss of Rs.10,85,580/- (where LTCG is computed with indexation) and the same has already been duly accepted.*

*2. The Ld. CIT(A) failed to take into consideration that the Long-Term Capital Loss of Rs.10,85,580/- (as filed in the Return of Income) arising on account of redemption/consolidation of Mutual Funds, has already been accepted in the Intimation u/s. 143(1) and therefore any addition on account of the same transaction cannot be taxed twice.*

*3. The ld. CIT(A) erred in ignoring the final submissions that were uploaded on the I.Tax portal on 09-06-2023 (which demonstrated the facts and circumstances of the case) and considered only the submissions that were filed on 08.03.2023.*

*4. The Ld. CIT(A) failed to take into consideration, the computation of the LTCG that was filed in detail in the Paper book that was submitted before him.”*

**6.1** The Assessee before us mainly claimed that before making the addition/disallowance, the AO/CPC has not given any opportunity to the Assessee to substantiate its claim, hence, the intimation/order dated 01.05.2020 under section 143(1) of the Act itself is liable to be quashed. Even otherwise on merit as well, no adjustment/addition under consideration is warranted and therefore the same may be deleted.

**7.** The Ld. D.R. though supported the impugned order, but not refuted the claim of the Assessee qua not issuing any intimation to the Assessee before processing the return filed by the Assessee under section 143(1) of the Act and making the addition vide order/intimation dated 01.05.2020 u/s 143(1) of the Act.

**8.** We have heard the parties and perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances of the case. As the return filed by the Assessee was processed under the provisions of section 143(1) of the Act, hence for sake of brevity and ready reference, the same are reproduced herein below:

*“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 <sup>97</sup>[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 <sup>98</sup>[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:***

**8.1** For making the adjustments, as prescribed in sub clause (i) to (vi) of sub clause (a) of section 143(1) of the Act, it is specifically provided that no such adjustments shall be made unless an intimation is given to the Assessee of such adjustment either in writing or in electronic mode. Admittedly in the instant case, no intimation was given to the Assessee before making the adjustment or the additions as made vide order/ intimation dated 01.05.2020 and therefore the Assessee has claimed that the addition under challenge is un-sustainable.

However, before considering the aforesaid legal aspect of the case, we observe that the Assessee has actually incurred a long-term capital loss of Rs.10,85,580/-, if the LTCG is computed with indexation. Once this long-term capital loss u/s 143(1) of the Act has been accepted (as no change was made on this issue), which arose on account of redemption/consolidation of mutual funds, then no addition is warranted and therefore adjudication that the Assessee has made LTCG of Rs.19,71,519/- is contrary to the peculiar fact, as the Assessee in fact has actually made a long term capital loss of Rs.10,85,580/- as per computation made, while filing Return of Income and therefore on this reason itself, the addition is un-sustainable. Even otherwise, the addition made and confirmed, can't be made u/s 143(1) of the Act being outside the purview of the same and therefor on this reason as well, the addition is un-sustainable. Resultantly the addition of Rs.19,71,519/- is deleted.

**9.** In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open court on 13.08.2024.**

**Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.