

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1321/Bang/2024
Assessment Year : 2020-21

M/s. Microland Ltd., 1B, RMZ Ecospace Business Park, Outer Ring Road, Bellandur, Bangalore – 560 103. PAN: AABCM2704P	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri B.K. Manjunath, CA
Revenue by	:	Shri V. Parithivel, JCIT-DR

Date of Hearing	:	23-08-2024
Date of Pronouncement	:	29-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 06/06/2024 passed by Ld.Addl./JCIT(A)-2, Chennai for A.Y. 2020-21 on following grounds of appeal.

“1. That the orders of the Learned authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, without jurisdiction, bad in law and all other known principles of law.

2. That the total income computed and the total tax computed is disputed

3. That the Learned CIT-Appeals (NFAC) erred in coming to wrong conclusion that the intimation u/s 143(1) of the Act dated: 26.09.2022 and scrutiny order u/s 143(3) r.w.s 144B of the Act dated: 26.09.2022 have been merged as per provisions of section 143(4) of the Act.

4. That the Learned Authorities below failed to appreciate that the intimation u/s 143(1) of the Act dated: 26.09.2022 is without jurisdiction and barred by limitation.

5. That the Learned authorities below erred in not appreciating that no opportunity as required under the provisions of section 143(1)(a) of the Act was provided before making adjustments u/s.143(1) of the Act, thus the intimation/adjustments is not as per law requires to be cancelled.

6. That the Learned authorities below failed to appreciate that the intimation passed u/s 143(1) is for the original return, however, details like income from business, tax liability as per revised return has been considered and on this ground alone the intimation requires to be cancelled.

7. That the Learned authorities below failed to appreciate that the intimation passed u/s 143(1) of the Act is in total violation of the provisions of the said section and is not as per law requires to be cancelled.

8. The Learned authorities below erred in considering total income at Rs. 48,53,50,572/- (which is as per the asst. order passed u/s 143(3) of the Act) as against Rs. 47,51,37,520/- as per the revised return.

9. The Learned authorities below erred in determining the net tax liability at Rs. 9,33,79,161/- (which is as per the asst. order passed u/s 143(3) of the Act) as against Rs. 9,01,28,851/- as per revised return.

10. *The Learned authorities below erred in restricting the deduction u/s 80JJAA of the Act to Rs. 2,71,12,299/- as against the claim of Rs. 3,73,25,354/-.*

11. *The Learned authorities below erred in restricting the relief u/s 90 of the Act to Rs. 2,87,73,871/- (which is as per the original return) as against the claim of Rs. 2,94,53,756/- as per the revised return.*

12. *The Learned authorities below have considered TDS credit only to the extent of Rs. 11,32,65,988/- as against the claim of Rs. 11,32,89,994/-.*

13. *The Learned authorities below erred in not correctly quantifying the period for which the appellant is eligible for interest u/s 244A of the Act.*

14. *For the above and other grounds/ additional grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”*

2. Brief facts of the case are as under:

2.1. The assessee is a Limited Company engaged in the business of providing IT infrastructure services. For the above asst. year the assessee filed its original return of income on 15/02/2021 declaring total income of Rs. 48,11,12,550/-with refund due of Rs. 2,74,77,460/-. Subsequently a revised return of income was filed on 27/03/2021 declaring total income of Rs. 47,51,37,520/- with a refund due of Rs. 2,96,61,150/-.

2.2. The assessee's case was selected for scrutiny assessment by issuance of notice u/s 143(2) of the Act. The assessment u/s 143(3) of the Act was concluded on 26/09/2022 by making additions and determining refund due of Rs.2,91,57,441/-, however, no refund order was issued post the assessment u/s

143(3) of the Act. The assessee received credit of refund of Rs. 2,53,56,579/- in its bank account on 26/02/2024 without any accompanying letter showing the workings. The assessee trying to reconcile the refund/income, with the returns filed, and on perusing the Income tax portal it was noticed that the revised return of income was processed u/s 143(1) of the Act on 26/09/2022, on the same day when the assessment order u/s 143(3) of the Act was passed. It is submitted that the intimation passed u/s 143(1) of the Act was not served at all and the assessee became aware of the intimation only on 26/02/2024.

Aggrieved by the intimation dated 26/09/2022, the assessee preferred appeal before the Ld.CIT(A).

2.3. The Ld.CIT(A) after considering the submissions of the assessee decided the issue by observing as under:

“4.1 Grounds No. 1 to 5. Since the substantive part of the appeal has been adjudicated in the following paragraphs, these grounds are not separately addressed.

4.2 Grounds No. 6 & The central issue in this case is that the appellant stated that they had filed the original return of income on 15.02.2021 after admitting original returned income of Rs. 48,11,12,550/-. Subsequently, the appellant filed a revised return of income on 27.3.2021 after admitting revised return of income of Rs. 47,51,37,520/-. It is observed that the revised return of income was processed under section 143(1) on 29.3.2022 after determining the total income at Rs. 48,53,50,570/-. The appellant argued that the revised return of Rs. 47,51,37.520/- was not taken into account while processing the return of income on 29.3.2022.

4.2.1 Upon perusal of the records available in the system, it is observed that on the day of 29.3.2022, a scrutiny

assessment order was passed by the Assessing Officer (AO) [National Faceless Assessment Unit) under section 143(3) of the IT Act on 26.9.2022 after assessing the total income at Rs. 48,53,50,575/-, While passing the scrutiny assessment, the AO of the Faceless Assessment Unit examined the reasons for the difference between the original return of income and revised return of income. The difference in income worked out to Rs. 59,75,029/1481112550-475137520]. The said difference comprised (a) Health and Education cess @ 4% Rs. 42,38,025/- and (b) Revised Computation of depreciation Rs. 17,37,004/- which were claimed by the appellant while filing their revised return of income. After affording the opportunity to the appellant, the AO (Faceless Unit) disallowed the claim of Health and Education cess claimed at Rs. 42,38,025/- and allowed the revised depreciation calculation of Rs. 17,37,004/-. Accordingly, the AO (Faceless Unit) assessed the total income for the A.Y 2020-21 at Rs. 48,53,50,575/-

4.2.3 In light of the above facts, it is evident that the intimation u/s 143(1) dated 29.3.2022 and scrutiny assessment order u/s 143(3) dated 29.3.2022 have been merged in view of the provisions of section 143(4) of the IT Act. Therefore, the appellant is advised to file an appeal against the scrutiny assessment order u/s 143(3) dated 29.3.2022 as the issues raised in this appeal have been merged. Therefore, Grounds No. 6 and 7 are hereby dismissed.

4.3 Grounds No. 8 to 11: These grounds are also not adjudicated as these issues have also merged with the scrutiny assessment order dated 29.3.2022.”

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this Tribunal.

3. The Ld.AR vehemently argued that in the present facts the scrutiny assessment order u/s. 143(3) and the intimation u/s. 143(1) have been merged with each other in view of the provisions of section 143(4) of the act. He submitted that, as soon as the assessment for the year under consideration was

taken up by issuing notice u/s. 143(2) to the assessee, any intimation u/s. 143(1) issued thereafter automatically becomes time barred. He relied on following dates in support:-

Sl.No	Particulars	Date
1	Original return filed on	15.02.2021
2	Revised return filed on	27.03.2021
3	Notice u/s 143(2) issued on	29.06.2021
4	Last date for passing intimation u/s 143(1) as per second proviso	31.12.2021
5	Intimation u/s 143(1) passed on	26.09.2022

3.1. He also submitted that, intimation u/s. 143(1)(a) also becomes bad in law as the adjustment proposed therein is without providing opportunity of being heard to the assessee. He also submitted that the adjustment made therein, cannot be treated as prima facie inadmissible adjustments, as contemplated u/s. 143(1) of the act.

3.2. The Ld.AR submitted that by virtue of amendment inserted by Finance Act, 2016, no adjustment could be made, unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode. He submitted that the additions made in intimation u/s. 143(1) were debatable, and therefore it was a necessity cast upon the authorities to issue notice calling for response from the assessee against such proposed additions. It is submitted that, no intimation was issued to the assessee, as it is apparently clear that, the intimation u/s. 143(1)(a) and the assessment order passed u/s. 143(3) is dated 26/09/2022.

3.3. He further submitted that, even otherwise an intimation cannot be passed beyond the period of limitation prescribed under the law which is 9 months from the end of the Financial Year in which the return is being filed by an assessee and the intimation so issued u/s. 143(1) on 26/09/2022 is beyond the period of limitation.

3.4. On the contrary, the Ld.DR opposed the argument of the assessee regarding the principle of merger of the intimation and the assessment order in the present facts of the case. He submitted that, there is no embargo under the act to pass an intimation u/s. 143(1)(a) and also an assessment order by the Ld.AO u/s. 143(3) of the act. He further emphasized that, the additions made in the intimation u/s. 143(1)(a) is different from the addition been made in the assessment order u/s. 143(3).

3.5. The Ld.DR submitted that the period of limitation therefore cannot be a reason to appreciate the argument of the assessee now. He submitted that the intimation u/s. 143(1) was passed on 26/09/2022 is within the reasonable period.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. Admittedly, the assessing officer completed assessment order u/s. 143(3) on 26/09/2022 wherein the assessed income was recomputed as under:

S.No.	Particulars	Amt in Rs.
1.	Returned Income	48,11,12,550/-
2.	Addition as discussed in para 3.2	42,38,025/-
3.	Assessed Income	48,53,50,575/-

It is noted that, in the intimation issued on 26/09/2022, the total income considered is as per the total income considered in the assessment order passed u/s. 143(3) of the act, passed on the even date.

4.1. It is further noted from the assessment order that what is disallowed by the Ld.AO is health and education cess at 4% claimed by the assessee as business expenditure amounting to Rs.42,38,025/-. The assessee on receipt of the show cause notice from the Ld.AO agreed to such disallowance, to avoid protracting litigation, is clear from the submission. Further, from the computation sheet annexed to the assessment order, we note that, the Ld.AO computed refund to the assessee amounting at Rs.2,91,57,441/-. However, the assessee received refund of Rs.2,53,56,579/-. It is submitted that, in order to understand the difference, upon perusing the income tax portal, the assessee realized about the intimation having passed u/s. 143(1) on the same date, as on the date of the assessment order, being 26/09/2022.

It is against the intimation that the assessee appealed before the Ld.CIT(A), who did not consider the prayer of the assessee, and the present appeal is arising before this *Tribunal*.

4.2. Ground nos. 1-2 raised by the assessee is general in nature and do not require adjudication.

4.3. The issue raised by the assessee in **ground no. 3** is that, the assessing officer could not have passed intimation u/s. 143(1)(a) of the act, when notice u/s. 143(2) was issued to the assessee on 29/06/2021, subsequent to which, the assessment order was passed u/s. 143(3). The Ld.AR though argued on Principle of merger being applicable to the present facts of the case, we do not agree with this preposition. The reason being that, the disallowance made in the intimation under section 143(1)(a) is different from the disallowance made in the assessment order passed under section 143(3).

Accordingly, the same is dismissed.

4.4. However, in **Ground nos. 4-7** the argument of Ld.AR that the intimation passed under section 143(1)(a) deserves to be considered on the first principles of law.

We note that, there was an amendment made to section 143(1)(a) by Finance Act, 2017, by inserting new sub section 1D to section 143, as against the old, and also new section 241A was inserted.

In order to verify the legality of the intimation passed under section 143(1)(a), in the present facts of the case, it is necessary to analyse these provisions which are as under:

By Finance Act 2017 w.e.f. 01.04.2017 new sub-section (1D) to section 143, replaced the original and now reads as under:

Newly inserted sub clause (1D) by FA 2017:

“(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 sub-section (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.]”

Sub clause (1D) as it stood prior to FA 2017:

“(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 sub-section (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.]”

4.4.1. Under the new sub-section (1D) the legislature provides that, notwithstanding anything contained in sub-section (1), the processing of return would not be necessary where a notice has been issued to an assessee under sub section (2). Meaning thereby, once notice under section 143(2) has been issued, the assessing officer shall not process the return under section 143(1). The original proviso to sub-section (1D) also stands

substituted by the new proviso, under which, it is clarified that the new proviso under the new sub-section (1D) shall not apply to any return furnished for the assessment year commencing on or after 01.04.2017.

4.5. It is relevant to note that, upto 01/06/2001, section 241 of the Act enabled the Ld.AO to withhold any refund under certain circumstances. Section 241, was subsequently withdrawn w.e.f. 01/06/2001.

Section 241 as it stood prior to 01/06/2001 and section 241A inserted vide Finance Act, 2017 reads as under:

“Power to withhold refund in certain cases.
(stands withdrawn)

241. Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 143 after a return has been made under section 139 or in response to a notice under sub-section (1) of section 142 and the Assessing Officer is of the opinion, having regard to the fact that—

(i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 143 in respect of the said return; or

(ii) the order is the subject-matter of an appeal or further proceeding; or

(iii) any other proceeding under this Act is pending, that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.”

Section 241A inserted by FA 2017:

"241A. Withholding of refund in certain cases.—For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made."

4.5.1. Now on comparing the newly inserted provision under (1D) of section 143 with newly inserted section 241A, it would be further clear that, the legislature provided that, notwithstanding anything contained in sub-section(1), the processing of the return would not be necessary where a notice has been issued to assessee under sub-section(2). This would in effect mean that, once the notice u/s. 143(2) is issued, the assessing officer shall not process the return u/s. 143(1).

4.6. We therefore do not find any reason to uphold the intimation passed u/s. 143(1)(a) dated 29/06/2021 do not have any legs to stand in the eyes of law. In any event, the assessee is in appeal against the assessment order before the Ld.CIT(A) as has been informed by the Ld.AR. We thus hold the intimation u/s. 143(1)(a) dated 29/06/2021 to be bad in law.

4.7. Ground nos. 8-13 are on merits of the addition made in the intimation u/s. 143(1)(a). As we have held the intimation u/s.

143(1)(a) to be bad in law, the merits of addition are considered to be academic at this stage.

Accordingly, we allow the assessee's appeal on this aspect.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29th August, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th August, 2024.
/MS /

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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