

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.55/Nag./2023
(Assessment Year : 2018-19)

Alexis Multi-Specialty Hospital Pvt. Ltd.
347, New Colony, Chaoni, Nagpur 440 001
PAN – AAHCA1186B

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Processing Centre, Bengaluru

..... Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/09/2024

Date of Order – 18/09/2024

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 31/12/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2018-19.

2. In its appeal, the assessee has raised following grounds:-

“1:0 Re.: Non-adjudication of grounds of appeal raised by the Appellant:

1:1 The Commissioner of Income-tax (Appeals) has erred in not adjudicating the grounds of appeal as raised by the Appellant in the appeal.

1:2 The Commissioner of Income-tax (Appeals) has erred in copy pasting the grounds/ decision of some other assessment year (i.e. Assessment Year 2017-18) of the Appellant in the impugned Order.

1:3 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the Commissioner of Income-tax (Appeals) ought to have decided the grounds as raised in the appeal.

1:4 The Appellant submits that the Commissioner of Income-tax (Appeals) be directed to adjudicate the grounds of appeal as raised by the Appellant accordingly.

Without prejudice to the above

2:0 Erroneous adjustment to the total income of the Appellant:

2:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the total income of the Appellant without adhering to the mandatory provisions of section 143(1)(a) of the Income-tax Act, 1961.

2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject no adjustment is warranted, the stand taken by the Assessing Officer in this regard is incorrect and erroneous and the Commissioner of Income-tax (Appeals) ought to have held as such.

2:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the adjustment made by him and to re-compute its total income and tax thereon accordingly.

3:0 Re.: Double disallowance of share issue expense u/s. 37 of Rs. 71,25,000/-:

3:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the returned income of the Appellant in spite of the clarifications being provided in terms of second proviso to section 143(1)(a) of the Act

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-Bangalore/Assessing Officer is misconceived, incorrect, erroneous and not in accordance with the law and the Commissioner of Income-tax (Appeals) ought to have held as such.

The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the adjustment so made and to re-compute its total income accordingly.

4:0 Re.: Double disallowance of expense u/s. 40A(3) being amount in excess of twenty thousand rupees paid in a day otherwise than by account payee cheque / account payee bank draft of Rs.1,43,866/-:

4:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the returned income of the Appellant in spite of the clarifications being provided in terms of second proviso to section 143(1)(a) of the Act.

4:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-Bangalore/Assessing Officer is misconceived, incorrect, erroneous and not in

accordance with the law and the Commissioner of Income-tax (Appeals) ought to have held as such.

4:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the adjustment so made and to re-compute its total income accordingly.

5:0 Re.: Double disallowance of provision for payment of gratuity u/s. 40A(7) of Rs.18,19,430/-:

5:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the returned income of the Appellant in spite of the clarifications being provided in terms of second proviso to section 143(1)(a) of the Act.

5:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-Bangalore/Assessing Officer is misconceived, incorrect, erroneous and not in accordance with the law and the Commissioner of Income-tax (Appeals) ought to have held as such.

5:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the adjustment so made and to re-compute its total income accordingly.

6:0 Re.: Double disallowance of expense u/s. 43B towards provident fund and leave encashment of Rs. 37,21,511/-:

6:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the returned income of the Appellant in spite of the clarifications being provided in terms of second proviso to section 143(1)(a) of the Act.

6:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-Bangalore/Assessing Officer is misconceived, incorrect, erroneous and not in accordance with the law and the Commissioner of Income-tax (Appeals) ought to have held as such.

6:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the adjustment so made and to re-compute its total income accordingly.

7:0 Re.: Adjustment of Rs.6,90,538/- in respect of employees' contribution to 'Provident Fund' and 'other welfare funds' u/s. 36(1)(va) of the Income-tax Act, 1961:

7:1 The CPC-Bangalore/Assessing Officer has erred in making an adjustment to the returned income of the Appellant without adhering to the mandatory provisions contained in the first proviso to section 143(1)(a) in respect of the employees' contribution to Provident Fund and other welfare funds of Rs. 6,16,263/- u/s. 36(1)(va) of the Act.

7:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-

Bangalore/Assessing Officer is misconceived, incorrect, erroneous and not in accordance with the law and the Commissioner of Income-tax (Appeals) ought to have held as such.

7:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to delete the disallowance so made and to re-compute its total income accordingly.

8:0 Re.: Levy of interest u/s. 234B of the Income-tax Act, 1961:

8:1 The CPC-Bangalore/Assessing Officer has erred in levying excessive interest u/s. 2348 of the Income-tax Act, 1961 on the Appellant.

8:2 The Appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject, the interest levied by CPC-Bangalore/Assessing Officer is incorrect and the Commissioner of Income-tax (Appeals) ought to have held as such.

8:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to re- compute the interest leviable u/s. 2348 of the Act and to re-compute its final tax liability accordingly.

9:0 Re.: Levy of interest u/s. 234C of the Income-tax Act, 1961:

9:1 The CPC-Bangalore/Assessing Officer has erred in levying excessive interest u/s. 234C of the Income-tax Act, 1961 on the Appellant.

9:2 The Appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject, the interest levied by CPC-Bangalore/Assessing Officer is incorrect and the Commissioner of Income-tax (Appeals) ought to have held as such.

9:3 The Appellant submits that the CPC-Bangalore/Assessing Officer be directed to re- compute the interest leviable u/s. 234C of the Act and to re-compute its final tax liability accordingly.

10: 0 Re.: General:

10:1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of objections at or before the hearing of the appeal."

3. The learned Counsel appearing for the assessee, Shri Kapil Hirani, at the outset, raised a preliminary objection and invited attention to the Ground No.1, taken by the assessee wherein it is alleged that the order passed by the learned CIT(A) for the impugned assessment year 2018-19 is grossly illegal, as the same has been passed without considering the merits of the case and

without adjudicating the grounds taken by the assessee, but has simply been passed by copying and pasting the grounds/decision in case of the assessee for the assessment year 2017-18.

4. The learned counsel for the assessee placed on record a copy of the order dated 31/12/2022, passed by the learned CIT(A) in assessee's case for the assessment year 2017-18, wherein it is obvious that due to certain inadvertence, the same order for the assessment year 2017-18 has been copy and pasted for the assessment year 2018-19 as well and as such the grounds taken by the assessee for the assessment year 2018-19 has not been adjudicated by the learned CIT(A).

5. The learned counsel for the assessee further, very fairly, brought to our attention the fact that subsequent to the intimation having been issued under section 143(1)(a) of the Income Tax Act, 1961 ("*the Act*") and which is challenged in the impugned appeal, detailed scrutiny assessment of the assessee has been completed under section 143(3) of the Act vide order dated 09/03/2021, a copy of the order is placed on record.. A bare perusal of the assessment order passed under section 143(3) for the impugned assessment year 2018-19 makes it very clear that the assessment of the assessee has been completed by accepting the returned income of the assessee and no additions have been made whatsoever. It is further evident from the computation sheet attached to and forming part of the assessment order passed under section 143(3) that the returned income of the assessee

has been accepted and has been assessed as such and further the refund as claimed by the assessee in its ITR has also been granted.

6. The learned Departmental Representative relied upon the order passed by the authorities below.

7. I have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is important to mention here that the detailed scrutiny assessment has been completed vide order dated 09/03/2021, which is subsequent to the intimation challenged in the impugned appeal and which is dated 15/11/2019. I find that the detailed assessment under section 143(3) of the Act having been completed accepting the returned income of the assessee, the intimation earlier issued under section 143(1)(a) of the Act stands merged in the order so passed under section 143(3) and as such all the adjustments made in the intimation under section 143(1)(a) having not subsequently been made in the order passed under section 143(3), the adjustments made to the total income of the assessee as well as the consequent demands raised on account of such adjustments in the intimation under section 143(1)(a) stands annulled and nullified. Hence, I also refer to the judgment of the Hon'ble Calcutta High Court passed in *C.E.S.C Ltd. v/s DCIT*, [2004] 134 Taxman 647 (Cal.), wherein it has been categorically held that orders passed under section 143(1)(a) cease to be operative and merge in the final order under section 143(3) of the Act. The Hon'ble Calcutta High Court in *Coates of India Ltd. v/s Dy. Commissioner of Income Tax*, [1995] 214 ITR 498 (Cal.) has held that where order under

section 143(1)(a) of the Act is followed by a regular assessment under section 143(3), the order under section 143(1)(a), insofar as it is contrary to the regular assessment under section 143(3), ceases to be executable and becomes ineffective. The Co-ordinate Bench of the Tribunal, Gauhati Bench, in ACIT v/s GPT Bhartia JV, in appeal being ITA no.13/Gty./ 2022, has also held that once an assessment order has been passed under section 143(3), the intimation under section 143(1) merges into the said assessment order and loses its standalone existence. Similar view has also been held by the Co-ordinate Bench of the Tribunal, Gauhati Bench, in Dura Roof Pvt. Ltd. v/s ADIT, ITA No. 49/Gty./2022, order dated 14/06/2023. Considering the legal proposition, as enumerated hereinabove that where order under section 143(1)(a) is followed by a regular assessment under section 143(3), the order under section 143(1)(a), insofar as it is contrary to the regular assessment under section 143(3), ceases to be executable and becomes ineffective, the adjustments as well as the demand raised vide intimation under section 143(1)(a) having ceased to be in existence and nullified by virtue of the assessment order having been passed under section 143(3) of the Act accepting the returned income of the assessee, the additions and demand challenged in the impugned appeal emanating out of the intimation under section 143(1)(a) no longer subsist and survive. In the interest of natural justice, I set aside the matter to the file of the learned CIT(A) to re-adjudicate the grounds in view of the above contentions. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 18/09/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 18/09/2024

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur