

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3789/MUM/2024

(Assessment Year :2017-18)

Samanya

G-2, Ameer Building,
167, Dixit Road, Vile Parle (East),
Mumbai - 400057
PAN: ACVFS2888K

..... Appellant

v/s

Income Tax Officer,

Ward-34(3)(5),
Mumbai - 400051

..... Respondent

Assessee by : Shri Rahul Sarada, Advocate
Revenue by:Dr. Kishor Dhule, CIT - DR

Date of Hearing – 09/10/2024

Date of Order – 16/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 12.06.2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional / Joint Commissioner of Income Tax (Appeals), Bhubaneswar [*"learned Addl./Joint CIT(A)"*], which in turn arose from the intimation dated 25.03.2019 issued under section 143(1) of the Act, for the Assessment Year 2017-18.

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

"1. The National Faceless Appeal Centre (NFAC) failed to appreciate that the Centralised Processing Centre (CPC) had erred in law and facts in treating the income of Rs. 45,97,16,217/- exempt u/s 10(38) of the Act as income from business or profession and levying tax thereon.

2. The NFAC failed to appreciate that the CPC had erred in law and facts in treating the exempt dividend income of Rs. 10,00,000/- as income from business or profession and levying tax thereon.

3. The NFAC failed to appreciate that the CPC had given time to the Appellant to respond to the proposed adjustments till 16th April 2019, and notwithstanding the same, passed the Intimation u/s 143(1) of the Act on 25th March 2019 as a result of which the response 28th March 2019 filed by the Appellant was not taken into consideration before passing the Intimation. Hence, the additions confirmed by the NFAC deserve to be set aside.

4. The NFAC further failed to consider the submissions of the Appellant before passing the impugned order dated 12th June 2024, and hence, the said order is in violation of principles of natural justice. Hence, the additions confirmed by the NFAC deserve to be set aside.

5. The NFAC failed to appreciate that exempt income of the Appellant had been treated as taxable business income in an unreasoned and a non-speaking manner. Hence, the treatment of exempt income as business income and levying tax thereon is bad in law."

3. The assessee is aggrieved against the adjustment made by Central Processing Centre, Bangalore ["CPC"] by treating the income amounting to Rs.45,97,16,217/- claimed as exempt under section 10(38) of the Act and the dividend income amounting to Rs.10 lakh claimed as exempt, as income from business or profession and accordingly computing the tax thereon.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 31.07.2017 declaring a total income of Rs.8,02,504/-. On 17.03.2019, the CPC issued a communication of a proposed adjustment under section 143(1)(a) of the Act and directed the assessee to respond to the same within a period of 30 days.

In response to the aforesaid communication, the assessee filed its reply on 28.03.2019. However, even before that on 25.03.2019, the CPC issued the intimation under section 143(1) of the Act computing the total income of the assessee at Rs.46,15,18,721/- after making the impugned adjustments. As per the assessee, while making the impugned adjustments, the CPC did not wait for a period of 30 days as granted vide communication dated 17.03.2019 seeking a response from the assessee on the proposed adjustments and thus could not consider its response filed on 28.03.2019.

5. Having considered the submissions of both sides and perused the material available on record, we find merits in the submissions of the assessee. Accordingly, we deem it appropriate to set aside the impugned order and restore the matter to the file of the Jurisdictional Assessing Officer with a direction to verify the claim of the assessee as per its submission and pass the order in accordance with law. Needless to mention, no order shall be passed without affording the adequate and reasonable opportunity of hearing to the assessee. We order accordingly. As a result, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 16/10/2024

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 16/10/2024
Prabhat

Copy of the order forwarded to:

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

By Order

Assistant Registrar
ITAT, Mumbai