

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 4063/MUM/2024
Assessment Year: 2018-19**

IMA PD India Pvt. Ltd.,
R-677, TTC Industrial Area, MIDC
Thane Belapur Road, Rabale,
Maharashtra-400701.

PAN NO. AAACP 6442 Q
Appellant

NAFAC, Delhi.

Vs.

Respondent

Assessee by : Mr. Ramakrishna R. Lingsur
Revenue by : Mr. Krishnakumar, Sr. DR

Date of Hearing : 01/10/2024
Date of pronouncement : 22/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 09.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

- 1. The learned Commissioner of Income Tax erred dismissing all the grounds in appeal as infructuous.*



2. *The learned Commissioner of Income Tax erred in confirming in action of the Assessing Officer not granting deduction of Rs. 1,98,57,246/- under sec. 43B of the Act even though disallowed in the past assessment period.*
3. *The learned Commissioner of Income Tax erred in confirming in action of the Assessing Officer in taxing the income of Rs. 7,43,211/- under the head business profits even though offered to tax under other heads*
4. *The learned Commissioner of Income Tax erred in confirming in action of the Assessing Officer in taxing exempt income of Rs. 1,69,944/- credited to profit and loss account.*

2. Briefly stated, facts of the case are that the assessee filed return of income on 28.11.2018 declaring total income at Rs.15,69,25,560/- which was further revised to Rs.14,83,15,740/- on 30.03.2019. The return of income filed by the assessee was processed and intimation u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') was issued wherein certain adjustments were made. Subsequently, the return of income filed by the assessee was selected for scrutiny and assessment u/s 143(3) of the Act was completed wherein the Assessing Officer noted that the assessee did not furnish any *suo moto* submission with regard to adjustment made by the Central Processing Centre (CPC) in the intimation u/s 143(1) of the Act and therefore, same was not altered and for the purpose of the computation the income, the income which was assessed u/s 143(1) of the Act, was taken in place of the income filed in the return of income. The assessee did not prefer any appeal against the order u/s 143(1) of the Act and filed appeal against the order u/s 143(3) of the Act before the Ld. CIT(A) and challenged the adjustment which were made u/s 143(1) of the Act. The Ld. CIT(A) however rejected the grounds raised by the assessee and dismissed



the appeal as infructuous holding that the addition does not emanate from the impugned assessment order passed u/s 143(3) of the Act.

3. Before us, the Ld. counsel for the assessee submitted that when regular assessment was completed the relevant intimation issued u/s 143(1) of the Act got automatically merged with the assessment order passed u/s 143(3) of the Act and therefore, the intimation loses its relevance once the regular assessment is processed as the intimation is merely towards the accuracy of the information submitted by the assessee. The Ld. counsel submitted that validity of the intimation issued u/s 143(1) of the Act is limited to correctness of arithmetic accuracy of claims declared in the return of income and accuracy based on the information submitted along with return of income and it does not carry the legitimacy of an assessment. The Ld. counsel relied on the decision of the Co-ordinate Bench of the Tribunal in the case of *The South India Club v. ITO Ward Exemption (2)(3), New Delhi* in ITA No. 354/Del/2024 pronounced on 22.05.2024. The Ld. counsel also alternatively submitted that if the assessee is advised to file an appeal against the intimation u/s 143(1) of the Act, then any condonation for delay in filing appeal against said order might be liberally allowed, as the assessee was under bona fide belief that appeal did not lie against the order passed u/s 143(1) of the Act, particularly, when the order u/s 143(3) of the Act is passed after



making appropriate inquiry and after due discussion and adjudication of the issue of in the assessment proceedings.

4. We have heard rival submission of the parties and perused the relevant material on record. In the case of the assessee the Assessing Officer has made adjustment to the returned income in the order u/s 143(1) of the Act which is appealable before the Ld. First Appellate Authority as per section 246/246A during relevant period, but the assessee did not prefer any appeal against said intimation order. Subsequently, the return was selected for scrutiny and assessment u/s 143(3) of the Act was completed. The assessee preferred appeal against order u/s 143(3) of the Act and challenged the adjustments, which were made in the order u/s 143(1) of the Act. Before us, the Ld. counsel for the assessee has relied on the decision of the Co-ordinate Bench of the Tribunal in the case of South India Club (supra). In the said case under the intimation u/s 143(1) of the Act exemption was disallowed for non filing of information in prescribed form. The return of income was subsequently selected for scrutiny and the claim of exemption u/s 11 was examined on merit and thereafter same was disallowed. In the said case, the appeal against intimation was held to be infructuous as the issue of exemption was examined under the scrutiny proceedings and disallowed on merit. In our opinion facts of the said case are not applicable in the case of the assessee as in the case the adjustment made u/s 143(1) of the Act have not been



examined during the scrutiny proceedings u/s 143(3) of the Act by the Assessing Officer and therefore, the Ld. CIT(A) has rightly dismissed the grounds of appeal of the assessee holding that the addition disputed in the grounds raised are not emanating from the assessment order which was challenged before him. Thus, ground of appeal of the assessee is accordingly dismissed.

4.1 However, the assessee is at liberty to file an appeal against the order u/s 143(1) of the Act before the Ld. First Appellate Authority. As far as the issue of the condonation for delay is concerned, the assessee may file its explanation for the delay in filing appeal, which may be considered by the Ld. First Appellate Authority in accordance with law.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 22/10/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai