

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3606/M/2024
Assessment Year: 2020-21**

M/s. Shah C J World LLP, 57, 5 th Floor, Plot 226, Bajaj Bhavan, Barrister Rajani Patel Marg, Nariman Point, Mumbai - 400021 PAN: ADVFS5201P	Vs.	Commissioner Of Income Tax, Appeal, ADDL/JCIT (A)-4 Bengaluru, Karnataka
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharan Gandhi, A.R.
Revenue by : Ms. Nayana Krishnakumar Sr. AR

Date of Hearing : 29.08.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 19.06.2024, impugned herein, passed by the Ld. Addl/Joint Commissioner of Income Tax (Appeals) (in short "Ld. Addl./Joint Commissioner") for the A.Y. 2020-21.

2. Brief facts for adjudication of this appeal are that in this case, the Assessee in note No.12 of its financial status, has declared the amount of Rs.5,07,47,178/- as income from dividend qua mutual funds and claimed the same as exempt from tax and accordingly reduced the same from profit under the head "income exempt from tax". The Assessee also made a disallowance of Rs.6,82,082/- u/s 14A of the Act. However, due

to inadvertence, the Assessee has not included the said amount in the schedule pertaining to exempt income.

3. The return filed by the Assessee was processed by the CPC who vide notice dated 20.12.2021 show caused mentioning the following reason for proposed adjustment u/s 143(1)(a) of the Act:

"incorrect claim u/s 143(1)(a)(ii) : disallowance of expenditure of deduction indicated in return in schedule BP not taken into account in computing the total income".

3.1 The CPC/AO however, within a short period of 3-4 days, passed an intimation/order u/s 143(1) of the Act on 25.12.2021 by making the addition of Rs.5,07,47,178/-, which was claimed as exempt being tax free dividend received from mutual funds. The CPC accepted a suo-moto disallowance of Rs.6,82,082/- as made by the Assessee, while processing the return.

4. The Assessee, being aggrieved, challenged the said disallowance/addition of Rs.5,07,47,178/- before the Ld. Addl./Joint Commissioner and claimed that due to inadvertent mistake, the said amount was not reported in the schedule of exempted income. The CPC while processing the return of income, without giving sufficient opportunities, has taxed the exempted income. The CPC has not given sufficient opportunity (30 days' notice) before making the adjustment as mandated in proviso to section 143(1) of the Act and therefore the adjustment/addition made is un-sustainable.

5. The Ld. Addl./Joint Commissioner considered the claim of the Assessee as well as determination made by the CPC and on verifying the return of income, audited financials relating to the impugned assessment year and other details etc., and observed as under:

"That from the financials of the Assessee, it is not clear whether the said sum of Rs.5,07,47,178/- is dividend income or gain from transfer of mutual funds, since the Assessee has shown Rs.49,52,47,583/- in its balance sheet as investment in mutual fund as on 31.03.2019 and "Rs. Nil" as investment in mutual fund as on 31.03.2020 and the Assessee himself has admitted his inadvertent mistake of not showing the amount of Rs.5,07,47,178/- in the schedule dealing with the exempt income, which can only be rectified by filing revised return of income u/s 139(5) of the

Act. Further, the Assessee should have responded to the query raised and should have filed the revised return before the due date. If time to file the revised return expired, the Assessee may file petition for condonation of delay in filing revised return before the jurisdictional Principal Commissioner of Income Tax / Commissioner of Income Tax”.

5.1 The Ld. Addl./Joint Commissioner with regard to the non granting of sufficient opportunity i.e. 30 days before making the adjustment, has observed and held as under:

“The CPC has provided opportunity to the Assessee as per the 1st proviso to section 143(1) of the Act as there was an omission on the part of the Assessee and no adverse adjustment made by the CPC while processing the return of income. Further the Assessee has not provided any documentary evidence in support of its claim in response to the notice for proposed adjustment u/s 143(1) of the Act issued on 21.12.2021 and the Assessee had not filed its objection to the proposed adjustment either before the intimation order dated 25.12.2021 or thereafter”.

5.2 The Ld. Addl./Joint Commissioner on the aforesaid facts and circumstances and the observations, ultimately affirmed the aforesaid addition by dismissing the appeal of the Assessee.

6. The Assessee, being aggrieved, is in appeal before us.

7. The Assessee before us at the outset by drawing our attention to the column 5(c) of the Annexure -Business and Profession attached with intimation order dated 25.12.2021, which pertains to the income credited to profit & loss account (including exempt), and submitted that the Assessee has duly shown the amount of Rs.5,07,47,178/- as exempt income, however the CPC, while processing the return u/s 143(1) of the Act and considering the exempt income as claimed by the Assessee, as it appears from the same column on the right side, has allowed the exempt income claimed by the Assessee, as exempt, however, in the sub column (d) of column 5 pertaining to the exempt income credited to profit & loss account, has shown the amount as '0', which amounted to disallowance of Rs.5,07,47,178/-. The Assessee has also claimed that as per 1st proviso, no adjustment as mentioned in sub section (a) of section 143(1) of the Act shall be made unless and until an intimation is given to the Assessee of such adjustments either in writing or in electronic mode.

Further, as per 2nd proviso, in a case where the response received from the Assessee, if any, shall be considered before making any adjustment and in a case where no response is received within 30 days of such intimation, such adjustment shall be made. Meaning thereby before making any such adjustment clear-cut notice/intimation of clear 30 days is required to be given either in writing or in electronic mode. Whereas in the instant case, the CPC has given the notice/intimation dated 20.12.2021 on 21.12.2021 and without waiting for the statutory period of 30 days immediately thereafter on 25.12.2021 passed the intimation/order and made the adjustment of Rs.5,07,47,178/- as taxable income and therefore the same is liable to be deleted.

7.1 The Assessee further claimed that admittedly the CPC upheld the addition of Rs.6.98 lakhs u/s 14A of the Act as suo-moto made by the Assessee, however, while considering the return of income, without checking the relevant facts passed the intimation/order u/s 143(1) of the Act in absolute haste and denied the exemption as claimed by the Assessee and therefore the adjustment made by the AO in any case is unsustainable.

8. On the contrary the Ld. D.R. refuted the claim of the Assessee.

9. We have heard the parties and perused the material available on record. It is not res-integra as held by the Hon'ble Jurisdictional High Court in the case of Sanchit Software and Solutions Pvt. Ltd. vs. CIT (2012) 349 ITR 404 (Bom.) as under:

"That in any civilized system the Assessee is bound to pay the tax which he is liable under the law to the Government and the Government on the other hand is obliged to collect only that amount of tax which is legally payable by an Assessee. The entire object of administration of tax is to secure the revenue for the development of the country and not to charge the Assessee more tax than that which is due and payable by the Assessee.

9.1 The CBDT vide circular dated 11.04.1955 directed the officers of the department not to take advantage of Assessee's ignorance and/or mistake. Article 265 of the Act also enumerated that no tax shall be levied or collected except by authority of law".

9.2 Coming to the instant case, admittedly the Assessee had claimed the amount of Rs.5,07,47,178/- in the column 5(c) which pertains to exempt income credited to the profit & loss account and the CPC in the same column in the computation, as it appears has mentioned the exempt income, however, in the column (d) of clause 5 pertaining to the exempt income credited to the profit & loss account mentioned '0' which appears to be inadvertent mistake, which resulted into making the addition in hand. For clarity and ready reference, the copy of relevant intimation is reproduced herein:

"Intimation u/s 143(1)

Name: SHAH C J WORLD LLP

PAN: ADVFS5201P AY : 2020-21 DIN:CPC/2021/A5/201763629

Ack.No.:254605531120221

Annexure – Business and Profession

Sl. No.	Particulars	As provided by Taxpayer Amount in ₹	As Computed u/s 143(1)
A	From business or profession other than speculative business or specified business		
1.	Profit before tax as per profit and loss account (item 54, 62ii, 63ii, 64iv and 65iii & 65(iv) of Part A-P & L)	17,03,38,921	17,03,38,921
2.	(a) Net profit or loss from speculative business included in 1 [Sl. No.66iv of Schedule P&L]	0	0
		
		
5.	Income credited to Profit and Loss account (included in 1) which is exempt		
	(a) share of income from firm(s)		0
	(b) Share of income from ADP/BOI		0
	(c) Any other exempt income,		

(specify nature and amount)	5,07,47,178	5,07,47,178
(d) Total exempt income (5a+5b+5c)"	5,07,47,178	-0-

(highlighted by us for better understanding)

9.3 Further, admittedly the CPC has not given proper opportunity/time of 30 days as mandated in the 2nd proviso to section 143(1) of the Act and therefore on the aforesaid reasons, the addition is un-sustainable. However, considering the peculiar facts and circumstances of the case as the Assessee has accepted its inadvertent mistake for not reporting the exempt income in the respective schedule and on verification of the return of income, audited financial and other details pertaining to the assessment year under consideration, the Ld. Addl./Joint Commissioner doubted the said amount mainly on the reason that it is not clear whether the said amount is dividend income or gain from transfer of mutual funds as the Assessee has shown in its balance sheet with Rs.49,52,47,583/- as investment in mutual funds as on 31.03.2019 and "Rs. Nil" as investment in mutual fund as on 31.03.2020", hence considering the aforesaid facts and circumstances as the CPC in the column 5(d) pertaining to the exempt income credited to profit & loss account inadvertently allowed the exempt income as "zero" which is contradictory to the sub clause (c) of clause 5 pertaining to the exempt income credited to profit & loss account and the CPC has also not given clear cut intimation/notice of 30 days, hence for the just decision of the case and substantial justice, we are inclined to delete the addition, however, subject to verification by the JAO that the said sum of Rs.5,07,47,178/- was on account of dividend income/exempt income, as claimed by the Assessee .

10. In the result, the appeal filed by the Assessee stands allowed in the terms stated above.

Order pronounced in the open court on 23.10.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
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.