

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 555/Kol/2024
Assessment Year: 2018-19**

Divya Dugar,

6, Kankaria Estate,
Little Russel Street - 700071
[PAN: AXLPK2665D]

.....**Appellant**

vs.

ITO Ward-1(1), Kolkata,

P-7, Chowringhee Square 700069 **Respondent**

Appearances by:

Assessee represented by : Soumitra Choudhury, AR

Department represented by : Akhil Kumar, Sr. DR

Date of concluding the hearing : 12.11.2024

Date of pronouncing the order : 18.11.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), Addl./JCIT(A)-5, Mumbai (hereinafter referred to as "the Ld. CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2018-19, dated 12.01.2024, which has been passed against the intimation u/s 143(1) of the Act, dated 06.03.2020.

1. In this case, the Ld. AO is seen to have made the following adjustment u/s 143(1) of the Act:

(i) Addition of Rs. 2,52,31,516/- on the ground that the income/receipt credited to profit and loss account which is to be considered under "Capital Gains", is more than whatever amount

was shown in the schedule for Capital Gains in the Return of Income.

(ii) Addition of Rs. 14,65,957/- on account of income credited to profit and loss account which is to be considered under the head “Other Sources”, is more than whatever amount has been shown in the Schedule for the same in the return of income.

1.1 The Ld. CIT(A) upheld the action of Ld. AO with respect to the addition of Rs. 2,52,31,516/- but gave relief on the addition of Rs. 14,65,957/-. Aggrieved with the action of the Ld. CIT(A), the appellant is before the ITAT through the following grounds of appeal:

“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, that while issuing intimation u/s. 143(1) could not deny the intra head adjustment at Rs.2,52,31,516/- as per profit & loss account, claimed by the assessee as the same does not come within the ambit of 'an incorrect claim apparent from any information in the return', therefore, enhanced the gross total income made by the CPC was without jurisdiction which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case that while processing the return u/s. 143(1) of the I.T. Act, the A.O. (CPC) was wrong in not intra head adjustment Profit on sale of investment at Rs.2,52,31,516/-, which is already considered as income of capital gain, therefore, the total income under head business or profession has been increased, so, the A.O. (CPC)'s stand is double addition, which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

4. The assessee showing the income under head capital gain The assessee firstly shown as per books as Intra head and deducted of Rs.269,22,608/, secondly its considered under head capital gain Rs.65,074/- after indexation, but the A.O. holding Rs.2,66,97,473/-, and the Ld. CIT(A) confirmed Rs.252,31,516/-, as such his finding is completely arbitrary, unjustified and illegal.

Particulars	Sale	Purchase	Capital Gain
MF	15,95,160/-	8,58,000/-	53,754 (LTCG)
Share/MF	277,99,562/-	16,25,425/-	2,61,74,137/- [exempted u/s 10(38) LTCG
Share	95,932/-	84,622/-	11,310/- (STCG)
			65,074/-

5. For that the charging interest u/s. 234A, 234B and 234C are mechanically wrong and illegal.

6. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

2. Before us the Ld. AR has argued that the action of Ld. AO amounts to a double addition as the claiming of Capital Gains was accurately tendered in the Return of Income. He also averred that the well-reasoned submissions filed before the Ld. CIT(A) were disregarded.

2.1 The Ld. DR relied upon the order of authorities below.

3. We have carefully considered the submissions of the Ld. AR/DR and gone through the orders of both the Ld. AO/CIT(A). At least from the documents before us, it is not visible whether the appellant was served a notice proposing enhancement by the Ld. AO. A plain reading of the scheme of section 143(1)(a) of the Act reveals that the first proviso to this section directs that the Ld. AO must give an intimation to the assessee before any adjustment are made to the returned income. Continuing with this mandate further, the second proviso directs that any response received from the assessee needs to be considered before such adjustment is made. In this case it appears that neither has this directive been followed nor also the Ld. CIT(A) has adequately applied himself to this issue before upholding the action of the Ld. AO on the point of quantum of Capital Gains. Accordingly, we deem it fit to remand back this matter to the file of Ld. AO to enable the appellant to make an appropriate submission to enable a correct assessment of assessee's income.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the court on 18.11.2024

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024.
AK, PS

Copy of the order forwarded to:

1. Divya Dugar
2. ITO Ward-1(1), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches