

**THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No.3034/Del/2024
(Assessment Year 2021-22)**

Brahma Chandra Yadav 1G 201 AWHO Township, Gurjinder Vihar, Greater Noida, Gautam Buddha Nagar, UP-201310	Vs.	Jurisdictional Assessing Officer Range-17, Ward 2(1)(1), CGO, Complex-I Purani Hapur Chungi, Ghaziabad, Uttar Pradesh – 201002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: ABFPY5867K		
Appellant	..	Respondent

Appellant by :	Sh. Hemant Jain, Adv.
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	30.10.2024
Date of Pronouncement	29.11.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)Addl/JCIT(A)-5 Delhi, dated 24.04.2024 arising out of the order passed by PCIT, CPC, under Section 143(1) of the Act dated 21.11.2022 for Assessment Year 2012-13 whereby and whereunder addition of Rs.8,15,451/- in terms of provision of Section 2(24)(x) r.w.s 36(1)(va) of the Act on

account of alleged late deposit of employee contribution towards ESIC/EPF has been confirmed.

2. The case of the assessee before us is this that adjustment of Rs.8,15,451/- under Section 143(1) of the Act exceeds the scope of provision of Section 143(1) of the Act; it only allows prima facie adjustments based on clear errors or discrepancies in return such an arithmetic mistake, incorrect claims apparent from the return information, or inconsistencies in audit reports.

3. It is contended by the Ld. A.R that the CIT(A) has erred in upholding the action of the Ld. AO(CPC) in disallowing the employee contribution of Rs.8,15,451/- under Section 36(1)(va) with respect to PF/ESI when the same was deposited by the assessee before the due date of filing of return of income. It was further argued that both factually and legally, by failing to recognize that the Tax Auditor's report merely noted the due dates and actual payment dates of employees' contributions towards Provident Fund without recommending any disallowance. The CPC relied on this report to make additions under section 143(1)(a)(iv), which is unjustifiable since the auditor did not indicate any disallowance. Hence, the addition based on this report exceeds the permissible scope of adjustments under section 143(1)(a) of the Act.

4. The Ld. Counsel appearing for the assessee before us raised this issue as to whether such debatable/controversial issue can be considered for making adjustment under Section 143 of the Act as

per the intimation issued to the assessee under Section 143(1) of the Act. In this regard, he has relied upon the judgment passed by the Coordinate Bench in the case of Garg Heart Centre & Nursing Home Pvt. Ltd. Vs. ACIT, Circle 10(1) vide ITA No 1700/Del/2022 & others, a copy whereof has duly been submitted before the Bench, perusal of which, it appears that adjustment under Section 143(1) of the Act on a debatable and controversial issue, identical to the issue raised before us made by the revenue has been held to be unfair, unjust and bad in law. The relevant observation in this regard is as follows:

“(C.1.3.1) It is well settled that any adjustments u/s 143(1) of Income Tax Act by way of intimation u/s 143(1) of Income Tax Act, on debatable and controversial issues, is beyond the scope of Section 143(1) of Income Tax Act. In this regard, we respectfully mention the order of Hon’ble Delhi High Court in the case of ACIT vs. Haryana Telecom Pvt. Ltd. 14 taxman.com 122 (Delhi). Similar view was taken by Hon’ble Courts in the cases of George Williamson (Assam) Ltd. vs. CIT & Anr. [2006] 286 ITR 0533 (Gauhati); Tata Yadogawa Ltd. vs. CIT [2011] 335 ITR 0053 (Jharkhand); God Granites vs. Central Board of Direct Taxes & Ors. [1996] 218 ITR 0298 (Karnataka); Swamy Distributors vs. ACIT & Ors. [2003] 180 CTR 0290; 139 Taxman 0310 (Karnatka), CIT vs. Eicher Goodearth Ltd. [2008] 296 ITR 0125 (Delhi); Smt. Shanta Chopra vs. ITO [2004] 271 ITR 0132 (Delhi); Kvaverner John Brown Engg. (India) (P.) Ltd. vs. ACIT, [2008] 305 ITR 0103 (Supreme Court). In these present appeals before us, the additions have been made by way of adjustments, vide intimations issued under section 143(1) of Income Tax Act. In view of the foregoing precedents, we are of the view that the aforesaid adjustments made by Revenue u/s 143(1) of IT Act were unfair, unjust, and bad in law. For this view, we also respectfully take support from the order of Agra Bench of ITAT, in the case of Mahadev Cold Storage vs. Jurisdictional Assessing Officer (supra). At the very least, Revenue should have given due consideration to the fact that the issue was highly debatable and controversial. As already discussed earlier, adjustments u/s 143(1) of Income Tax Act by way of intimation u/s 143(1) of Income Tax Act, on debatable and controversial issues, is beyond the scope of section 143(1) of Income Tax Act. Revenue was clearly in error, in making the aforesaid adjustments u/s 143(1) of Income Tax Act on a debatable and controversial issue. We would also like to make respectful mention of order of Jabalpur Bench of ITAT in the case of Nikhil Mohine vs. DCIT (supra), in which similar view has been taken.

(C.1.4) Further, it is also well settled that retrospective amendment cannot be invoked to make addition by way of adjustment and intimation u/s 143(1) of Income Tax Act. This view was taken by the Hon'ble Supreme Court in the case of CIT vs. Hindustan Electro Graphites Ltd. [2000] 243 ITR 0048 (SC), in which the view of Hon'ble Kolkata High Court in the case of Modern Fibotex India Ltd. & Anr. Vs. DCIT & Ors.[1995] 212 ITR 0496 (Calcutta) was approved. Same view was taken by the Hon'ble Madhya Pradesh High Court in the case of CIT vs. Satish Traders [2001] 247 ITR 0119 (Madhya Pradesh).

(C.2) In view of foregoing discussion, we come to the following conclusions:

(a) The fact that payments by way of employees' contribution to provident fund and ESI were made by the respective assessee after stipulated date prescribed under the relevant laws governing provident fund and ESI, but before the due date of filing of return of income prescribed u/s 139(1) of Income Tax Act; is not in dispute.

(b) Whether the aforesaid amendments to Income Tax Act by way of Finance Act, 2021 are retrospective or prospective, is debatable and controversial.

(c) Adjustments made by Revenue u/s 143(1) of Income Tax Act, whereby aforesaid additions were made to the income of the respective assessee, were unfair, unjust and bad in law.

(d) Addition by way of adjustment and intimation u/s 143(1) of Income Tax Act on debatable and controversial issues is beyond the scope of Section 143(1) of Income Tax Act. Revenue was clearly in error in making the aforesaid adjustments.

(e) Addition by way of adjustment and intimation u/s 143(1) of Income Tax Act, on the basis of retrospective amendment to Income Tax Act is beyond the scope of Section 143(1) of Income Tax Act.

(f) In the present appeals before us, additions of aforesaid amount have been made by way of adjustments and intimation u/s 143(1) of Income Tax Act, on a debatable and controversial issue.

(C.2.1) In the light of the foregoing conclusions in paragraph

(C. 2) of this order and the preceding discussion, we are of the view that the aforesaid additions by way of adjustment and intimation u/s 143(1) of Income Tax Act, were beyond the scope of Section 143(1) of Income Tax Act. Accordingly, we set aside the impugned appellate orders of Ld. CIT(A) in the cases of Garg Heart Centre & Nursing Home Private Limited, Global Groupware Solutions Limited, Publix Realtors and Facilitators Private Limited, M/s Samarpit Surksha Private Limited, Ritu Mukherji, Manmohan Raizada, Girdhari Yadav, Dharamjit Singh, Virender Pratap Singh and Ansal API Infrastructure Limited respectively and direct the Assessing Officer to delete the additions made by way of adjustments/intimation u/s 143(1) of IT Act. For the

same reasons we uphold the impugned appellate order of Ld. CIT(A) in the case of M/s Jagatjit Industries Ltd.

(D) By way of abundant caution, we hereby clarify that we have not expressed any view in this order, on whether the aforesaid amendments brought in by Finance Act, 2021 [whereby Explanation-2 was inserted in Section 36(1)(va) of Income Tax Act and Explanation-5 was inserted in Section 43B of Income Tax Act] are prospective or retrospective. In the light of our decision in foregoing paragraph (C.2.1) of this order; this issue is merely academic in nature; hence not decided. (E) In the result, all these appeals are treated as partly allowed for statistical purposes. This order was already pronounced orally on 22nd August, 2022 in Open Court, in the presence of Ld. CIT(DR) for Revenue, and the representatives of the respective assesseees. Now, this order in writing is signed today on 25/08/2022.”

5. In that view of the matter, the order passed by the CPC Bangalore is found to be erroneous, and therefore, liable to be quashed.

6. The appeal of the assessee is allowed.

Order pronounced in the open court on 29.11.2024

Sd/-
(Madhumita Roy)
Judicial Member

Date 29.11.2024
Rohit: PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI