

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA Nos.1109 and 1110/Hyd/2024		
Assessment Year: 2021-22		
TPL-SUCG Consortium, Hyderabad. PAN : AAEAT6639F.	Vs.	The Income Tax Officer, Circle – 6(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Malay Kalavadia, C.A.	
Revenue by:	Ms. Reema Yadav, Sr.DR.	
Date of hearing:	12.12.2024	
Date of pronouncement:	18.12.2024	

ORDER

PER LALIET KUMAR, J.M:

These two appeals filed by the assessee are directed against separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.24.05.2024 passed u/s 250 and dt.30.08.2024 and u/s 154 r.w.s. 250 for the assessment year 2020-21. Since, the facts are identical and issues are common, for the sake of convenience, these two appeals were

heard together and are being disposed of, by this consolidated order.

2. One of the appeals filed by the assessee i.e., ITA No.1109/Hyd/2024 is barred by limitation by 94 days. It has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

2.1. The assessee has raised more or less similar grounds for both the assessment years, therefore, for the sake of brevity, the grounds raised in ITA No.1109/Hyd/2024 for A.Y. 2021-22 read as under :

“1. Addition of an amount of Rs.35,30,677 in the order passed under section 143(3) of the Act resulting in double taxation.

1.1 On the facts and circumstances of the case, as well as in law, the learned CIT(A) erred in confirming the action of the learned Assessing Officer ('AO') and failed to appreciate that the Appellant had already included the amount of Rs. 35,30,677, related to the Provision for Performance Linked Rewards, as income for the AY 2021-22 in the return of income filed.

Consequently, the addition of the same amount in the intimation under section 143(1) of the Act and subsequently in the order under section 143(3) of the Act results in double taxation of the same income.

2. Intimation passed under section 143(1) loses its relevance once order is passed under section 143(3) of the Act

2.1 On the facts and circumstances of the case and in law, the Id. CIT(A) failed to appreciate that once the order under section 143(3) of the Act is passed, it supersedes the intimation issued under section 143(1) of the Act and any additions or adjustments made in the intimation under section 143(1) of the Act would become redundant if such an addition is not independently made by the AO in the order passed under section 143(3) of the Act.”

3. The brief facts of the case are that assessee consortium has been awarded contract of rejuvenation of the erstwhile river Dravayavati, currently known as Amanishah Nallah by Jaipur Development Authority. Assessee filed its return of income for Rs.12,83,180/- on 28.02.2022. Thereafter, assessee received intimation u/s 143(1) of the Act on total income of Rs.48,13,850/- and also notice u/s 143(2) of the Act dt.28.06.2022. Assessee also received show cause notice dt.30.11.2022 asking to show cause as to why disallowance of 10% of expenses which comes to Rs.5,71,37,356/- may not be made. In reply, assessee filed copy of ledger of cost of supplies and several bills etc and the same were examined by the Assessing Officer, who found no adverse inference. Accordingly, intimation / assessment u/s 143(1) of the Act was passed on 19.10.2022 on total income of Rs.48,13,850/- after making addition of Rs.35,30,677/- u/s 41 of the Act, against the addition of Rs.35,30,677/-. The assessee filed appeal before the lc on 15.11.2022. Before the LD.CIT(A), assessee had initially filed application for withdrawal of appeal, however, thereafter, scrutiny assessment notice was received by the assessee. However, the appeal as dismissed by the LD.CIT(A). Thereafter, before Assessing Officer, in the scrutiny assessment, assessee raised the

same ground for addition of Rs.35,30,677/-. However, the Assessing Officer had dismissed the same being not subject matter of scrutiny assessment and this demand is because final dismissal of appeal by the LD.CIT(A).

4. Aggrieved with such assessment order, assessee filed an appeal before the LD.CIT(A), who dismissed the appeal of assessee. The relevant portion of the LD.CIT(A) is to the following effect :

“Ground No.2:- In this ground the has contested the adjustment made by CPC of Rs.35,30,677/- on account of provision for performance linked rewards.

7.1 The submission filed by the appellant is re-produced in para 5 above.

7.2 I have perused the assessment order, grounds of appeal and submission filed by the appellant carefully. I find from the assessment order that no addition is made by the AO. The ground raised by the appellant is emanating from intimation u/s 143(1) for which separate appeal has been filed by the appellant which is not pending before this office. I find that the present appeal is filed against order u/s 143(3) dated 24/12/2022 and the ground raised is not emanating from the assessment order u/s 143(3) dated 24/12/2022. Therefore the ground raised by the appellant is infructuous hence dismissed.”

5. Aggrieved with the order of LD.CIT(A), the assessee is now in appeal before us.

6. Before us, ld.AR for the assessee submitted that the once the assessee itself had written back certain liabilities amounting to Rs.35,30,677/- which were credited to the statement of profit and loss account, then there was no question of adding the same while computing the income of the assessee. However the Centralized Processing Centre (CPC), Bangalore has erred in making the addition of Rs.35,30,677/- in the hands of the assessee. It was further submitted that once the Assessing Officer was passing the assessment order u/s 143(3) of the Act, then the Assessing Officer was not debarred from making the disallowance u/s 143(1) of the Act and contended that composite order is required to be passed. The ld.AR further submitted that the first appeal filed by the assessee before the LD.CIT(A) was dismissed on 24.05.2024 as infructuous and aggrieved by the said dismissal, assessee filed a rectification application on 31.07.2024 against the order of LD.CIT(A) dt.24.05.2024. The ld.AR submitted that the addition u/s 41 of the Act which was part of the intimation u/s 143(1) of the Act was carried forward into the assessment u/s 143(3) without any justification and despite the above, LD.CIT(A) erroneously rejected the rectification application stating that there was no apparent mistake in the original appellate order and hence, the assessee is challenging both the appeals.

7. The ld.AR further submitted that the LD.CIT(A) failed to appreciate that the assessee had already included the amount of Rs.35,30,677/- as income for A.Y. 2021-22 in the return of income and as a result, the addition of the same amount in the intimation

u/s 143(1) of the Act and subsequently in order u/s 143(3) of the Act, make into double taxation of the same income. The ld.AR further submitted that once the order u/s 143(3) of the Act was passed, then it supersede the intimation issued u/s 143(1) of the Act and that if any addition or adjustment made in the intimation order u/s 143(1) of the Act would become redundant if such an addition is not independently made by the Assessing Officer in the order passed u/s 143(3) of the Act.

8. On the other hand, Ld.DR contended that a direction may be issued to the Assessing Officer to examine the issue afresh and pass a consolidated order in case of the assessee while considering the facts and applicability of law to the issue. He further reported no objection to remand back the issue in accordance with law.

9. We have heard the rival submissions and perused the material on record. In the present case, assessee has received intimation u/s 143(1) of the Act from CPC by virtue of which the addition was made for an amount of Rs.35,30,677/- vide intimation dt.19.10.2022. Against the intimation, the assessee filed appeal before the LD.CIT(A) on 15.11.2022. Therefore, the case of the assessee was selected for scrutiny u/s 143(3) r.w.s. 144B of the Act on 24.12.2022. The Assessing Officer had not made any addition in the hands of assessee u/s 143(3) of the Act.

However, with respect to the addition made by CPC, it was observed as under :

“In this case intimation / assessment u/s 143(1) of the I.T. Act was passed on 19.10.2022 on total income of Rs.48,13,850/- after making addition of rs.35,30,677/- u/s 41 of the I.T. Act against which the assessee has filed appeal before the CIT(Appeals) on 15.11.2022. Accordingly, assessment is being completed on total income of Rs.48,13,850/- as assessed in intimation u/s 143(1) dated 19.10.2022.”

10. Thereafter, learned Addl.JCIT has dismissed the appeal filed by the assessee against the intimation on 19.10.2022.

11. Against the dismissal of appeal by the Addl.JCIT on 19.10.2022, the assessee had not preferred any appeal before the Tribunal. Against the assessment order dt.24.12.2022 u/s 143(3) of the Act, assessee preferred the appeal before the LD.CIT(A) and the LD.CIT(A) dismissed the appeal of the assessee vide order dt.24.05.2024 by holding as under :

“7. Ground No.2: In this ground the appellant has contested the adjustment made by CPC of Rs.35,30,677/- on account of provision for performance linked rewards.

7.1 The submission filed by the appellant is re-produced in para 5 above.

7.2 I have perused the assessment order, grounds of appeal and submission filed by the appellant carefully. I find from the assessment order that no addition is made by the AO. The ground raised by the appellant is emanating from intimation u/s 143(1) for which separate appeal has been filed by the appellant which is not pending before this office. I find that the present appeal is filed against order u/s 143(3) dated 24/12/2022 and the ground raised is not emanating from the

assessment order u/s 143(3) dated 24/12/2022. Therefore the ground raised by the appellant is infructuous hence dismissed.”

12. Against the order dt.24.05.2024, the assessee had filed 154 application before the LD.CIT(A) and the LD.CIT(A) has dismissed the same vide order dt.01.08.2024. Admittedly, no appeal had been preferred by the assessee against the order passed by JCIT on 19.02.2022 and the assessee has challenged before us, the addition made by CPC and confirmed by Revenue on 19.02.2022 in the order passed by 24.12.2022 and the LD.CIT(A) on 24.05.2024.

13. Now both the parties have agreed that the matter may be remanded back to the file of Assessing Officer for reconciliation of the account. However, we have noticed that u/s 254(1) of the Act, there is a separate provision for filing the appeal against the intimation passed by the CPC and before the LD.CIT(A) and thereafter before this Tribunal. The assessee chooses to be oblivious, to the above said fact, and without challenging the appeal against intimation dt.19.02.2022 before the LD.CIT(A) or on rejection of appeal before the Tribunal, assessee now sought to raise the grounds before us.

14. In our view, a separate appeal lies against the order of Addl. JCIT dt.15.11.2022. The approach of the LD.CIT(A) and the Assessing Officer on 24.12.2022 and also 24.05.2024 is in accordance with law. In view of the above, we do not find any merit

in the appeal filed by the assessee and accordingly, the same are dismissed. However, the assessee was given liberty to file in appropriate court of law against the order dt.19.02.2024 in any court. Thus, both the appeals of the assessee are dismissed.

15. In the result, both the appeals of assessee are dismissed.

Order pronounced in the Open Court on 18th December, 2024.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
--	---

Hyderabad, dated 18.12.2024.

TYNM/sps

Copy to:

S.No	Addresses
1	TPL-SUCG Consortium, 1-7-80 to 87, Mithona Towers, Prenderghast Road, Secunderabad – 500003, Telangana.
2	The Income Tax Officer, Circle – 6(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order