

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,  
MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4530/MUM/2024  
(A.Y. 2020-21)**

Penang Enterprises Pvt. Ltd. (Erstwhile Known as Samarth Life Sciences Pvt. Ltd.) 2 <sup>nd</sup> Floor, Samarth House, Ram Mandir Road, Goregaon West, Mumbai-400104	v/s. बनाम	Assessment Unit, Income Tax Department, Room No. 524, Aayakar bhavan, M.K. Road, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCS4014L</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Assessee by :	Mr. Snehal Shah
Revenue by :	Shri Mahesh Pemnani

Date of Hearing	09.01.2025
Date of Pronouncement	15.01.2025

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 09.07.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2020-21.

2. The assessee has raised following grounds of appeal:

*“1. Despite the submission and clarification filed by the Appellant during the course of the assessment proceedings. the Learned Assessing Officer has grossly erred in considering the wrongly processed income of Rs. 75,63,17,710/- under section 143(1)(a) of the Act by the CPC Bengaluru while determining the assessed income u/s 143(3) of the Act without considering the plea made by the Appellant w.r.t Dividend Income of Rs. 22,11,803/- in response to intimation u/s 143(1)(a) of the Act prior to processing the return of income.*

*2. Despite the submission and clarification filed by the Appellant during the course of the assessment proceedings. the Learned Assessing Officer has grossly erred in considering the wrongly processed income of Rs 75,63,17,710/- under section 143(1)(a) of the Act by the CPC Bengaluru while determining the assessed income u/s 143(3) of the Act without considering the plea made by the Appellant w.r.t CSR Expenditure of Rs. 1,63,00,000/- in response to intimation u/s 143(1)(a) of the Act prior to processing the return of income. Despite the fact that the Appellant has Suo motu disallowed Rs. 1,63,00,000/- under clause 15 of schedule BP, the CPC Bengaluru has again erroneously disallowed the amount of Rs.1,63,00,000/- being CSR contribution.*

*3. The Learned Assessing Officer failed to appreciate that assessment under section 143(3) supersedes the intimation u/s 143(1)(a) of the 'Act'. The appellant has not only raised an objection to the variation proposed by CPC, Bengaluru to the income before the CPC, Bengaluru but also raised the same objection before the Ld. AO during the course of the Assessment Proceedings who had the authority to consider the issue at his level and take appropriate remedial action.*

*4. Despite the powers vested with the Learned CIT(A), NFAC, he has grossly erred in confirming the action of the Learned Assessing Officer instead of directing him to verify the contentions of the Appellant and accordingly take appropriate remedial actions especially since any income or receipt cannot be doubly taxed.”*

3. Brief facts of the case are that the assessee filed return on 01.12.2020 declaring income of Rs. 73,78,05,910/-. The return was selected for scrutiny and notice u/s 143(2) of the Act was issued on 29.06.2021. The return was also processed by CPC and following adjustments were made to the returned income:

- a. Rs. 22,11,803/- on account of dividend income wrongly reported in the tax audit report as ‘personal expenditure’.



b. Rs. 163,00,00,000/- being CSR contribution which was already added to the total income but was disallowed again, thereby resulting in the same amount being taxed twice.

4. The issues were agitated in appeal before Ld. CIT(A) who did not consider the assessee's contention and dismissed the ground on following observations:

*4.14 It is evident that the first issue covered under the intimation issued u/s.143(1) was disallowance of Rs.22,11,803/- based on the reporting of the same as "Personal Expenses" in the Tax Audit Report which the appellant claims was a mistake on the part of the auditor and that it represents Dividend Income. However, no revised Tax Audit Report has been filed in support thereof and no appeal was also filed thereagainst. The Second issue covered in the intimation u/s.143(1) was disallowance of CSR expenses of Rs.1,63,00,000/- which the appellant claims was already added back to the total income in the return of income filed. However, perusal of Computation of Income forming part of ITR submitted by the appellant does not show any such suo motu disallowance of Rs. 1,63,00,000/- on account of CSR. Since these issues were not among the reasons for selection of the case for scrutiny assessment proceedings u/s.143(3) they were not among the issues that came up for examination before the AO. Thus, the matter had already reached a finality and without there being any change in facts, the AO cannot re-visit the same as it would tantamount to review/revision of original intimation issued u/s.143(1) and such power is not vested with the AO.*

*4.15. Since these issues originally arose in the intimation u/s.143(1) itself appeal thereagainst if any, ought to have been filed against the original intimation u/s.143(1) of the Act. Reliance is placed on the decision of the Hon'ble ITAT, A Bench, Bangalore in ITA No.49/Ban/2021 in the case of M/s. Navodaya Education Trust, wherein it was held that assessee cannot use proceeding u/s.154 to file appeal against order passed u/s.143(1) of the Act. In view thereof, the contention of the appellant on this issue is not tenable on facts and in law. Ground No.3 is dismissed."*

Aggrieved with the order of Ld. CIT(A), the assessee has filed an appeal before us.

5. Before us, Ld. AR has pointed out that the Ld. CIT(A) wrongly invoked doctrine of merger and declined to consider the adjustments made u/s 143(1) which were contested during the appellate proceedings. It was pointed out that



the notice u/s 143(2) was issued prior to receipt of intimation, and therefore, the assessee had no occasion to file an application u/s 154 or an appeal against the intimation u/s 143(1). It was genuinely believed by the assessee that the same would be considered by the AO at the time of passing final assessment order u/s 143(3) of the Act. However, while computing the income in the order u/s 143(3), Ld. AO adopted the income as computed u/s 143(1)(a) of the Act.

6. Ld. DR, on the other hand, has relied on the orders of lower authorities and argued that the issues which were not part of the assessment order cannot be agitated in appeal by the assessee.

7. We have heard the rival submissions and perused the material placed before us. It is seen that the Ld. AO while finalizing the income computation took the income computed u/s 143(1)(a) at Rs. 75,63,11,000/- as the basis and made further additions/disallowances thereon. Accordingly, the adjustments made in the return of income have been made part of the assessment order though without any discussion on the two issues relating to dividend and double addition on account of CSR. We are, therefore, of the view that these issues also arise from assessment order u/s 143(3) and should have been adjudicated by the Ld. CIT(A), after considering submissions made by the assessee. We, accordingly, restore the matter to the file of Ld. AO and direct him to verify the contentions of the assessee with regard to dividend income as well as double



disallowance of CSR contribution and allow the contentions of the assessee, if found correct.

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

Order pronounced in the open court on 15.01.2025.

Sd/-

**AMIT SHUKLA**

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

**RENU JAUHRI**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 15.01.2025

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

