

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4855/Del/2024
(ASSESSMENT YEAR 2018-19)

Bando India Pvt. Ltd. 411, JMD Pacific Square, Sector-15, Gurgaon, Haryana-122002 PAN-AACCB2994D	Vs.	Addl. JCIT, A-9, Mumbai.
(Appellant)		(Respondent)

Assessee by	Shri Arun Kishore, CA & Shri Alok Suri, CA
Department by	Shri Ashish Tripathi, Sr. DR
Date of Hearing	18/02/2025
Date of Pronouncement	18/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Ld. JCIT(A)-9, Mumbai dated 19.08.2024 in Appeal No. NFAC/2017-18/10186812 for AY 2018-19.

2. The assessee has taken total four grounds out of which first two grounds of appeal relate to the action of the ld. JCIT in dismissing the appeal of the assessee on the ground of delay in filing of appeal. Third ground of appeal is against the observations of the ld. JCIT wherein he held the appeal as non- maintainable for the reason that the appeal was filed against the order u/s 143(1) and the thereafter

the order was also passed u/s 143(3) and the intimation order passed u/s 143(1) stood merged in the said order passed u/s 143(3) of the Act. Last ground of appeal is on merits of the issue.

3. It was submitted by ld. AR that the ld. JCIT(A) has dismissed the appeal of the assessee without condoning the delay of 1014 days in filing appeal against the intimation order u/s 143(1). It was submitted that after receipt of the intimation the assessee filed a rectification application followed by various reminders but till date the rectification petition was not disposed-off by the department. Ld. AR further submit that during the course of assessment proceedings also the error in the intimation u/s 143(1) was brought to the notice of the AO and requested him to take necessary remedial action in the order passed u/s 143(3). However, such request was also turned down by AO by stating that the case was selected for limited scrutiny thus he cannot deal any other issue. Therefore, it was decided to file an appeal before the ld. CIT(A) against such intimation order. All these facts were stated in the delay condonation petition filed before the ld. JCIT(A). However, the ld. JCIT without appreciating the fact that assessee has opted for the alternate remedy by filing the rectification application and when the said application is not decided, appeal was preferred which is a reasonable and sufficient cause for delay in filing the appeal. Hence, it was his prayer that the delay in filing appeal before the ld. JCIT(A) be condoned and the appeal may be sent back to the file of JCIT(A) to decide the appeal on merits after providing an opportunity to the assessee.

4. With regard to the maintainability of the appeal against the intimation order u/s 143(1) when the final order u/s 143(3) is passed, it was submitted that the assessee has made the request for take necessary remedial action on the rectification petition pending with the department however, the said request was turned down by AO by stating that since the case was selected under limited scrutiny, he has no power to travel beyond the reason for limited scrutiny and assessment us/ 143(3) was completed where the income was computed by adopting the income as per order u/s 143(1) dt. 2-10-2019 and no discussion is made on the issue raised in rectification application in the assessment order. Thus according to the ld.AR, no option was left with the assessee except filing an appeal against the said intimation. Under these circumstances it is prayed that appeal of the assessee should be admitted and decided on merits after condoning the delay.

5. In reply, Ld. Sr. DR vehemently supported the order of the ld. JCIT(A) and submit that assessee has not been able to explain why the appeal was not filed within time as nothing prevent assessee to file an appeal even if the rectification application is filed. Hence, he opposed the contention of the ld. AR of the assessee.

6. We have considered the rival submissions. Adverting to the facts of the present case, it is seen that assessee has filed petition u/s 154 for rectification of the intimation order passed u/s 143(1) which was not decided by the department despite of various reminder and

grievance application filed. As the assessee was exhausting the alternate remedy available to it under the law thus no appeal was filed. This is a reasonable cause for delay and cannot be ignored more particularly looking to the fact that disposal of rectification application is beyond the control of the assessee. It must be remembered that in every case of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If the explanation does not smack of mala fide or it is not put-forth as a part of dilatory strategy, the Courts must utmost consideration to such litigant. At the most for the inaction or a little negligence, the assessee can be burdened with the cost. But his right of hearing of the appeal on merit ought not to be shut. Considering the overall facts and circumstances of the case and in the larger interest of justice, we are of the opinion that the appeal deserves to be allowed. We condone the delay in filing the appeal before the learned JCIT(A) and restore the matter back to the ld. JCIT(A), who will decide the appeal of the assessee on merit after affording reasonable opportunity of hearing to the assessee.

7. So far as the maintainability of appeal when the impugned intimation u/s 143(1) is succeeded by an order u/s 143(3) we find that the assessee during the course of assessment proceedings brought to the knowledge of the AO about the error committed by CPC in the intimation order however, no action was taken by the AO. Once the assessee has discharged the initial burden casted upon it by intimating the AO about the error and requested for the remedial

action in the assessment proceedings pending before the AO u/s 143(3), and the AO has not acted upon such request, assessee has left with no other remedy but to prefer an appeal against such intimation.

8. In the case of the assessee admittedly the AO has refused to entertain the issue raised by the assessee in the rectification application by stating that the same is outside the scope of limited scrutiny thus the same was not at all discussed and considered in the assessment completed u/s 143(3). Once this issue is not discussed and decided in the order passed u/s 143(3), it cannot be said that the same is merged in the order so passed u/s 143(3). The coordinate bench of Bangalore ITAT in the case of Areca Trust v. CIT (Appeals), NFAC reported in (2024) 117 ITR (Trib) 264 while dealing with the similar issue made the following observations:

(i) Though, Section 143(4) of the IT Act mentions that the tax paid by the assessee u/s 143(1) of the Act shall be deemed to have been paid towards the regular assessment u/s 143(1) or 144 of the Act, that by itself does not mean there is a merger of intimation u/s 143(1) with that of regular assessment u/s 143(3) or 144 of the Act, unless the issues have been discussed and adjudicated in regular assessment u/s 143(3)/144.

(ii) Since, the assessment is completed under Section 143(3) by merely adopting the assessed figures mentioned in the Intimation, no cause of action arises against the said Order and the assessee ought to have appealed against the Intimation under Section 143(1) of the IT Act.

9. Recently, coordinate bench of ITAT, Delhi in the case of Orient Craft Ltd. v. DCIT reported in 158 Taxmann.com 1124 also expressed the similar view. In view of the above discussion, we are of the view that the issue raised by the assessee against the intimation u/s

143(1) is not at all discussed by the AO in the regular assessment order passed u/s 143(3) where he simply picked the income determined in intimation for computing the total income thus the issue raised by the assessee against the intimation remained unanswered and only remedy available with the assessee to knock the door of the appellate authority for justice and accordingly we hold that the present appeal of the assessee against the intimation order u/s 143(1) as maintainable and the ld. JCIT(A) is directed to decide the appeal of the assessee on merits after affording reasonable opportunity to the assessee of being heard.

10. In the result, appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 18/02/2025.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated:18/02/2025

PK/PS

Copy forwarded to:

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

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI