

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.4611/MUM/2024
(Assessment Year: 2020-2021)**

**&
ITA No.4610/MUM/2024
(Assessment Year: 2021-2022)**

**&
ITA No.4609/MUM/2024
(Assessment Year: 2022-2023)**

**Deputy Commissioner of Income Tax
Circle 5(2)(1), Mumbai**

Room No. 571, 5th Floor, Aayakar Bhavan,
M. K. Road, Mumbai – 400020,
Maharashtra.

..... **Appellant**

Vs

Aditya Birla Housing Finance Limited

18th Floor, Tower I, One World Centre,
Jupiter Mill Compound, 841,
Senapati Bapat Marg, Elphinstone Road,
Mumbai – 400030, Maharashtra.
[PAN:AABCL6440R]

..... **Respondent**

Appearance

For the Appellant/Department : Dr. K. R. Subhash
Shri Ram Krishn Kedia

For the Respondent/Assessee : Shri Ronak Doshi
Ms. Nidhi Agrawal

Date

Conclusion of hearing : 04.12.2024
Pronouncement of order : 03.03.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are three appeals preferred by the Revenue pertaining to Assessment Years 2020-2021, 2021-2022 and 2022-2023. Since identical issues were raised in the appeals, the same were heard

together and are, therefore, being disposed by way of a common order.

ITA No. 4610/MUM/2024 (Assessment Year 2021-2022)

2. We would first take up the appeal for Assessment Year 2021-2022 preferred by the Revenue against the order, dated 11/07/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 22/09/2022, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2020-2021.
3. The Revenue has raised following grounds of appeal :
 - "1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.43B of the Act in intimation u/s.143(1) of the IT Act in the appeal filed against order u/s.143(3) r.w.s. 144B of the I. T. Act ignoring the fact that the assessee had not challenged the intimation u/s.143(1) of the Act by filling separate appeal.*
 2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.143(1) of the IT Act in the appeal filed against order u/143(3) r.ws. 144B of the I.T. Act without calling the remand report on the issue of the addition/adjustment made u/s.143(1) of the IT Act.*
 3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in directing the AO to give credit of additional TDS of Rs. 27,40,247/- reflected in 26AS but not claimed by the assessee in the return of the income.*
 4. *Whether on the facts and circumstances of the case, the Ld.*

CIT(A) was justified in directing the AO to give credit of additional TDS of Rs.27,40,247/-reflected in 26AS but not claimed by the assessee in the return of the income without calling for the remand report on the above issue that the corresponding income to the claimed of aforesaid additional TDS was offered for taxation.

5. *The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO."*

4. The relevant facts in brief are that the Assessee is a Housing Finance Company registered under National Housing Bank. The Assessee filed return of income for the Assessment Year 2021-2022 on 15/03/2022.
- 4.1. The case of the Assessee was selected for scrutiny and notice, dated 28/06/2022, under Section 143(2) of the Act was issued by the Assessing Officer. Thereafter, intimation under Section 143(1) of the Act was issued on 25/10/2022. The Assessee did not prefer appeal against the aforesaid intimation. It is the case of the Assessee that appeal was not filed against the intimation issued under Section 143(1) of the Act since the regular assessment proceedings were pending. The regular assessment proceedings culminated into passing of the Assessment Order, dated 29/12/2022, under Section 143(3) read with Section 144B of the Act.
- 4.2. In appeal filed against the aforesaid assessment order, the Assessee raised grounds challenging the variation/adjustment made vide intimation, dated 25/10/2022, issued under Section 143(1) of the Act. The CIT(A) vide Order, dated 11/07/2024, allowed aforesaid grounds and granted relief to the Assessee, inter alia, by (a) deleting the disallowance of INR.1,67,98,699/- made under Section 43B of the Act on account of leave encashment, (b) deleting the disallowance of INR.5,87,81,517/- made under Section 43B of the

Act on account of employee bonus/commission (c) deleting the adjustment made on account of Income Computation and Disclosure Standards (ICDS) amounting to INR.2,27,82,861/-, (d) granting credit of Tax Deducted at Source (TDS) of INR.1,90,121/- and (e) granting additional credit of TDS INR.29,30,368/- reflected in updated Form 26AS.

- 4.3. Being aggrieved, the Revenue has now preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 3 above.
5. On perusal of grounds raised by the Revenue, we find that the Revenue has only referred to addition/adjustment made under Section 43B in Ground No. 1 whereby the Revenue has contended that the CIT(A) erred in deleting the addition/adjustment made under Section 43B of the Act in intimation issued under Section 143(1) of the Act in appeal filed against order passed under Section 143(3) r.w.s. 144B of the Act. Similarly, in Ground No. 2 raised by the Revenue has challenged the action of CIT(A) granting relief to the Assessee without calling for a remand report. Ground No. 3 & 4 are directed against the grant of TDS. While Ground No. 5 seeks setting aside of order passed by the CIT(A). Since all the grounds share overlapping facets the same are taken up together therein after.
6. We have heard both the sides.
7. The first contention of the Revenue is that the CIT(A) has granted relief to the Assessee in respect of adjustments made while processing the return of income under Section 143(1) of the Act in appeal preferred by the Assessee against the assessment order passed under Section 143(3) of the Act. According to the Revenue intimation issued under Section 143(1) of the Act is appealable order and therefore, the Assessee ought to have filed appeal against the

same before CIT(A). In the present case no such appeal was filed, the Assessee, therefore, was precluded from raising grounds challenging adjustment made under Section 143(1) of the Act before CIT(A) in appeal preferred against the assessment order passed under Section 143(3) of the Act. The second contention of the Revenue is that the CIT(A) granted relief without calling for a remand report from the Assessing Officer.

8. Per Contra, the stand taken on behalf of the Assessee is that the intimation issued under Section 143(1) of the Act stands merged with the order passed under Section 143(3) of the Act and therefore, the Assessee could have challenged the adjustment/addition made in intimation under Section 143(1) of the Act only in appeal preferred against the assessment order passed under Section 143(3) of the Act. Further, the Assessing Officer had incorporated the adjustment/addition made in the intimation order issued under Section 143(1) of the Act in the computation sheet attached to assessment order passed under Section 143(3) of the Act. Since the computation sheet forms part of the assessment order, the adjustment/addition stood incorporated in the assessment order passed under Section 143(3) of the Act appealed before the CIT(A).
9. We have given thoughtful consideration to the oral submissions advanced during the course of hearing (*which were supplemented by written synopsis*), perused the material on record and examined the position in law in light of the submission advanced.
10. Before dealing with the contentions raised by both the sides we deem it appropriate to refer to the brief legislative history of Section 143(1) of the Act as applicable to the relevant assessment year. Section 143(1) of the Act as applicable to the three assessment year under consideration was introduced by way of substitution of old Section 143(1) by the new Section 143(1) by the Finance Act, 2008.

As per the Memorandum to Finance Bill, 2008 the scheme of summary assessment contained in former Section 143(1) of the Act (*in force since the 10/06/1999*) did not contain any provisions allowing for *prima facie* adjustments. The scope of the scheme was limited to checking as to whether taxes have been correctly paid on the income returned. The former Section 143(1) of the Act did not contain any provision for correcting arithmetical mistakes or internal inconsistencies. This resulted in avoidable revenue loss. With the objective of reducing the aforesaid revenue loss, it was proposed to substitute the former Section 143(1) of the Act by a new Section 143(1) which provided for computation of total income after making the following adjustments to the returned income (a) adjustment for any arithmetical error in the return and/or (b) adjustment for an incorrect claim, if such incorrect claim is apparent from any information in the return. Further, the expression 'an incorrect claim apparent from any information in the return' was defined to mean such claim on the basis of an entry in the return (i) of an item, which is inconsistent with another entry of the same or some other item in such return; (ii) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; and (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction. Thus, the scope of newly substituted Section 143(1) was limited to the aforesaid adjustments. On the other hand the scope of regular scrutiny assessment under Section 143(3) of the Act continued to be much wider than Section 143(1) and covered scrutiny of the return of income.

11. In the present case, the intimation was issued under Section 143(1) of the Act after the regular scrutiny assessment proceedings were initiated under Section 143(3) of the Act. Since the scope of regular scrutiny is much wider than scope of adjustment under Section

143(1) of the Act, one of the issues that arises for consideration is whether the return of income could have been processed under Section 143(1) of the Act after the issuance of notice under Section 143(2) of the Act for scrutiny assessment. A perusal of the provisions contained in the Act shows that there is no provision which prohibits the processing of return of income under Section 143(1) of the Act in case notice for scrutiny assessment under Section 143(2) of the Act has been issued. Section 143(1D) of the Act (*which ceased to apply to a return of income furnished for the assessment year commencing on or after the 1st day of April, 2017*), used to provide that notwithstanding anything contained in Section 143(1), processing of return 'shall not be necessary' where notice has been issued under Section 143(2) of the Act. Thus, even though the scope of regular scrutiny assessment is much wider, there is not bar on processing of return of income under Section 143(1) of the Act even after issuance of notice under Section 143(2) of the Act. Thus, under the scheme of the adjustment/assessment as contained in Section 143 of the Act, for a single assessment year there can be an intimation issued under Section 143(1) of the Act as well as an order of assessment passed under Section 143(3) of the Act. This becomes clear from perusal of Section 246A of the Act. As per Section 246A(1)(a) of the Act an intimation issued under Section 143(1) of the Act as well as order passed under Section 143(3) of the Act are orders appealable before the CIT(A). Thus, an aggrieved person can file appeal against the intimation issued under Section 143(1) of the Act as well as assessment order passed under Section 143(3) of the Act for the same assessment year. Thus, to this extent we reject the contention of the Assessee that there cannot be two orders appealable before CIT(A) for the same assessment year.

12. During the course of hearing it was contended by the Learned Authorised Representative for the Assessee that on passing of the assessment order passed under Section 143(3) of the Act, the

intimation issued under Section 143(1) of the Act stands merged with the assessment order. In our view, while the aforesaid contention raised on behalf of the Assessee might have held good for the former Section 143(1) of the Act [*effective from 10/06/1999 to 31/03/2008*], the same did not hold good in all cases where intimation is issued under Section 143(1) of the Act as substituted by the Finance Act, 2008 [*effective from 01/04/2008*]. The former Section 143(1) did not provide for any adjustment and the scope of Section 143(1) was limited to checking whether taxes have been correctly paid on the income returned with no provision for prima facie adjustment. Thus, once the order was passed under Section 143(3) of the Act, it can be said that the intimation issued under Section 143(1) of the Act stood merged with Assessment Order passed under Section 143(3) of the Act. However, Section 143(1) of the Act substituted by Finance Act, 2008 provided for specified adjustments. Therefore, after the substitution of 143(1) of the Act by way of Finance Act 2008 the applicability of doctrine merger in respect of intimation issued under Section 143(1) of the Act with order passed under Section 143(3) of the Act would depend upon the facts and circumstances of each case and would be limited to the commonality of subject matter of adjustment. In case the variation/adjustment under intimation issued Section 143(1) of the Act is also the subject matter of the regular scrutiny assessment proceedings, then the intimation order issued under Section 143(1) of the Act would stand of merged with order passed under Section 143(3) of the Act to extent of such common subject matter. The effect of doctrine of merger would be that the adjustment made under Section 143(1) of the Act would become an addition/disallowance made under Section 143(3) of the Act [*having much wider scope than the proceedings under Section 143(1) of the Act*]. The natural corollary being that the defence available to the Assessee regarding limited scope of power of the Assessing Officer

under Section 143(1) of the Act would no longer be available to the Assessee. As a result the Assessee would not be able to contend that the addition/disallowance made is beyond the scope of Section 143(1) of the Act. Therefore, the addition/disallowance would be subjected to judicial review by the appellate authority on merits.

13. Coming back to the facts of the present case which are somewhat peculiar. We find that it is admitted position that the intimation under Section 143(1) of the Act was issued after the regular scrutiny assessment proceedings under Section 143(3) of the Act had been initiated. Vide intimated, dated 25/10/2022, issued under Section 143(1) of the Act an adjustment of INR.9,83,63,077/- to the returned total income of INR.2,18,41,70,864/- consisting of (a) adjustment of INR.1,67,98,699/- under Section 43B of the Act on account of Leave encashment liability, (b) adjustment of INR.5,87,81,517/- under Section 43B of the Act on account of employee incentives and (c) adjustment of INR.2,27,82,861/- on account of ICDS. Perusal of the Assessment Order, dated 22/12/2022, passed under Section 143(3) read with Section 144B of the Act shows that on first page of the aforesaid order the following details/information has been tabulated:

1.	<i>PAN</i>	<i>AABCL6440R</i>
2.	<i>Name of the assessee</i>	<i>Aditya Birla Housing Finance Limited</i>
3.	<i>Address of the assessee</i>	<i>xx</i>
4.	<i>Assessment Year</i>	<i>2021-22</i>
5.	<i>Status</i>	<i>Company</i>
6.	<i>Residential Status</i>	<i>Resident</i>
7.	<i>Date of filing of Return of Income</i>	<i>15/03/2022</i>
8.	<i>Acknowledgement Number of Return of Income</i>	<i>xx xx</i>
9.	<i>Date of processing u/s. 143(1)(a) of the Income-tax Act</i>	<i>25/10/2022</i>
10.	<i>Income Computed under Section 143(1) of the Act</i>	<i>2,28,25,33,940</i>
11.	<i>Date of service of Notice under Section 143(2) of the Income-tax Act</i>	<i>28/06/2022, ...</i>

12.	<i>Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act</i>	<i>12/10/2022, 01/11/2022</i>
13.	<i>Order passed under section</i>	<i>143(3) read with section 144B of the Income tax Act</i>
14.	<i>Returned Income</i>	<i>Rs.2,18,41,70,860</i>
15.	<i>Date of Order</i>	<i>29/12/2022</i>
16.	<i>DIN</i>	<i>XX XX</i>

14. From above it can be seen that the Assessing Officer was aware of the fact that return of income was processed under Section 143(1) of the Act on 25/10/2022 i.e., during the pendency of the regular scrutiny assessment proceeding (*which were initiated by issuance of notice, dated 28/06/2022, under Section 143(2) of the Act*). The Assessing Officer also recorded that vide intimation order, dated 25/10/2022, income of the Assessee has been computed at INR.2,28,25,33,940/-. Despite the aforesaid, the Assessing Officer concluded the regular scrutiny assessment proposing 'Nil' variation in the Assessment Order, dated 29/12/2022, passed under Section 143(3) of the Act and recording as under:

"6. Conclusion drawn:

The explanation offered by the assessee company and the documentary evidences submitted in support of the claim of assessee with regard to purchase/expenses claimed u/s 36 were examined in detail.

The assessee has also opted for Video Conferencing which was duly arranged and conducted on 26/12/2022, during the conference the AR of the assessee's company presented the case and explained the issues involved in detail. The argument of the assessee is heard properly and put on record.

*After considering all the material available on record and video conferencing, the explanation offered by the assessee company and the documentary evidences submitted in support of the return of income and the queries raised in 142(1) and SCNs in connection with the CASS reason and other issues noticed were examined in detail and found to be satisfactory and no adverse inference drawn from the replies of the assessee. **Hence, the assessment is completed by making NIL addition.***

7. Table of variations:

Sl.No	Description	Amount (in INR)
1.	Income as per Return of Income filed	Rs. 218,41,70,860/-
2.	Proposed addition on bogus expenses	NIL
3.	Total Income/Loss determined as per the above proposal	Rs. 218,41,70,860/-

The assessment is made u/s 143(3) read with section 144B of the Income Tax Act. **The assessment of income is done as per computation sheet** and the sum payable is determined as per the demand notice u/s 156 of the IT Act.” (Emphasis Supplied)

15. On perusal of above it can be seen that the returned income of INR.218,41,70,860/- filed by the Assessee has been accepted as assessed income. At the same time the Assessing Officer has, while concluding, has stated that the '*assessment of income is done as per computation sheet*'. A perusal of the Computation Sheet shows that the adjustment made while processing return of income under Section 143(1) of the Act have been incorporated. Therefore, in the facts of the present case, it cannot be said that the grievance raised by the Assessee in appeal before the CIT(A) does not rise from the Assessment Order, dated 25/10/2022, passed under Section 143(3) read with Section 144B of the Act. Accordingly, we accept the contention of the Assessee that in the facts and circumstances of the present case the doctrine of merger would apply. Therefore, we reject the contention of the Revenue that the CIT(A) erred in entertaining and adjudicating the grounds raised by the Assessee in appeal before the CIT(A) challenging the adjustments made while issuing intimation under Section 143(1) of the Act. Accordingly, **Ground No. 1** raised by the Revenue is dismissed.
16. This takes us to the second contention of the Revenue. In Ground No. 2 raised by the Revenue is has been contended that the CIT(A) had proceeded to grant relief to the Assessee without providing any

opportunity to the Assessing Officer to verify (a) the factual averments made on behalf of the Assessee and (b) the documents filed by the Assessee in support of the same. We do find some merit in the aforesaid contention. The adjustments were initially made under Section 143(1) of the Act. Admittedly, no submission/documents in relation to the adjustment were filed during the regular assessment proceedings. The CIT(A) has proceeded to allow the grounds raised without calling for a remand report. It was contended on behalf of the Assessee that no new evidence was filed by the Assessee during the appellate proceedings before the Tribunal and therefore, the question of calling for a remand report does not arise. Arguendo, even if the aforesaid submission of the Assessee is accepted as correct, we find that the CIT(A) has not recorded any reasoning for accepting the contention of the Assessee. After reproducing the assessment order and the submissions of the Assessee, the CIT(A) has concluded in favour of the Assessee. However, no reasoning has been recorded. The order passed by the CIT(A) is silent as the discrepancy or inadvertent error, if any, in the audit report, financial statements and/or the return of income. There is no finding of fact returned by the CIT(A) on any of the issues. We note that before the CIT(A) it was contended on behalf of the Assessee that adjustments made in the intimation under Section 143(1) of the Act were incorporated in the Assessment Order, dated 29/12/2022, without granting the Appellant an opportunity of being heard. Accordingly, keeping in view the overall facts and circumstances of the present case, we set aside the order passed by the CIT(A) to the extent the Ld. CIT(A) had deleted the following adjustments made under intimation issued under Section 143(1) of the Act: (a) adjustment of INR.1,67,98,699/- under Section 43B of the Act on account of Leave encashment liability, (b) adjustment of INR.5,87,81,517/- under Section 43B of the Act on account of bonus/commission paid to

employee, and (c) adjustment of INR.2,27,82,861/- on account of ICDS. All the three issues are remanded back to the file of the Assessing Officer with the directions to decide the same afresh after granting the Assessee a reasonable opportunity of being heard. All the rights and contentions of the Assessee are left open. The Assessee is directed to file such submission, documents and details before the Assessing Officer as the Assessee may deem fit to support the claims. As regards the grant to credit of TDS is concerned, we note that the CIT(A) has after verifying the updated Form 26AS directed the Assessing Officer to grant credit of TDS as reflected therein and thereby, accepted Assessee claim for additional credit of 29,30,368/- [INR.12,76,37,773/- Less INR.12,47,07,405/-] as tax deducted at source. The Revenue is aggrieved by the order of CIT(A) granting credit of TDS to the extent of INR.27,40,247/- [INR.29,30,368/- minus INR.1,90,121/-] since the aforesaid TDS was not claimed in the return of income. The Revenue has contended that since the Assessee had not claimed the aforesaid additional credit of TDS of INR.27,40,247/- in the return of income, the CIT(A) could not have granted the credit of TDS. In our view, the claim of the Assessee could, at best, be regarded as additional claim made by the Assessee in appellate proceedings before the CIT(A). The aforesaid additional claim has been adjudicated on the basis of the material on record by the CIT(A) without any fresh inquiry into facts. Therefore, we do not find any infirmity in the approach adopted by the CIT(A). It is admitted position that updated Form 26AS reflected aggregate TDS credit of INR.12,76,37,773/- for the Assessment Year 2021-2022. In our view, the Assessee is entitled to claim additional TDS credit provided corresponding income has been offered to tax during the Assessment Tear 2021-2022. Accordingly, we direct the Assessing Officer to allow credit for additional TDS of INR.27,40,247/- as reflected in updated Form 26AS after verifying that the corresponding income has been offered to tax as income for

the Assessment Year 2021-2022. The Assessee is directed to file a statement showing reconciliation statement in support of the contention that the additional TDS credit claimed pertains to income already offered to tax. Accordingly, to his extent the order passed by the CIT(A) is confirmed. In view of the aforesaid, **Ground No. 2, 3** and **4** raised by the Revenue are partly allowed. In terms of the aforesaid, **Ground No. 5** seeking set-aside of the order passed by the CIT(A) is partly allowed.

17. In result, appeal preferred by the Revenue is partly allowed.

ITA No. 4611/MUM/2024 (Assessment Year 2020-2021)

18. Now we will take up the appeal for Assessment Year 2020-2021 preferred by the Revenue against the order, dated 11/07/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 22/09/2022, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2020-2021.

19. The Revenue has raised following grounds of appeal:

- "1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.43B of the Act in intimation u/s.143(1) of the IT Act in the appeal filed against order u/s.143(3) r.w.s. 144B of the I. T. Act ignoring the fact that the assessee had not challenged the intimation u/s.143(1) of the Act by filling separate appeal.*
2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.143(1) of the IT Act in the appeal filed against order u/143(3) r.w.s. 144B of the I.T. Act without calling the remand report on the issue of the addition/adjustment made u/s.143(1) of the IT Act.*
3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in directing the AO to give credit of additional TDS of Rs.30,10,050/- reflected in 26AS but not claimed by the assessee in the return of the income.*

4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in directing the AO to give credit of additional TDS of Rs.30,10,050/-reflected in 26AS but not claimed by the assessee in the return of the income without calling for the remand report on the above issue that the corresponding income to the claimed of aforesaid additional TDS was offered for taxation.*
 5. *The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO."*
20. During the course of hearing both the sides made submissions identical to those made in relation to grounds raised in appeal for the Assessment Year 2021-2022. Both the sides had agreed that our finding/adjudication on the grounds raised in appeal for the Assessment Year 2021-2022 shall apply mutatis mutandis to grounds raised in appeal for the Assessment Year 2020-2021.
21. For the Assessment Year 2020-2021, Assessee filed its return of income on 15/02/2021. The case of the Assessee was selected for scrutiny and notice, dated 29/06/2021, under Section 143(2) of the Act was issued by the Assessing Officer. Thereafter, intimation under Section 143(1) of the Act was issued 25/12/2021. Appeal was not filed against the aforesaid intimation since the regular assessment proceedings were pending. The regular assessment proceedings culminated into passing of the Assessment Order, dated 22/09/2022, under Section 143(3) read with Section 144B of the Act. In appeal filed against the aforesaid Assessment Order, the Assessee raised grounds challenging the variation/adjustment made vide intimation, dated 25/12/2021, issued under Section 143(1) of the Act. The CIT(A) vide Order, dated 11/07/2024, allowed, inter alia, granted relief to the Assessee by (a) deleting the disallowance of INR.22,30,467/- made under Section 43B of the Act on account of Leave encashment liability, (b) deleting the disallowance of INR.5,28,85,289/- made under Section 43B of the Act on account of payment of bonus or commission and (c) granting credit of Tax Deducted at Source (TDS) as reflected in Form 26AS. Being

aggrieved, the Revenue has now preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 19 above.

22. On perusal of the Assessment Order, dated 22/09/2022, passed under Section 143(3) read with Section 144B of the Act shows that on first page it has been recorded as under:

1.	PAN	AABCL6440R
2.	Name of the assessee	Aditya Birla Housing Finance Limited
3.	Address of the assessee	xx xx
4.	Assessment Year	2020-21
5.	Status	Company
6.	Residential Status	Resident
7.	Date of filing of Return of Income	15/02/2021
8.	Acknowledgement Number of Return of Income	xx xx
9.	Date of processing u/s. 143(1)(a) of the Income-tax Act	24[5]/12/2021
10.	Income Computed under Section 143(1) of the Act	Rs.1,54,62,92,300
11.	Date of service of Notice under Section 143(2) of the Income-tax Act	29/06/2021, ...
12.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	01/12/2021
13.	Order passed under section	143(3) read with section 144B of the Income tax Act
14.	Returned Income	Rs.1,49,11,76,360
15.	Date of Order	22/09/2022
16.	DIN	xx xx

23. On perusal of the above it can be seen that the Assessing Officer was aware of the fact that return of income was processed under Section 143(1) of the Act vide an intimation order dated 25/12/2021. Income of the Assessee has been computed to INR.1,54,62,92,300/-. Despite the aforesaid the Assessing Officer concludes the assessment proposing Nil valuation in the Assessment Order recording as under:

"Conclusion drawn:

The explanation offered by the assessee company and the

documentary evidences submitted in support of the claim of assessee with regard to disallowance u/s 14A and Insurance expense claimed u/s 36 were examined in detail.

The assessee has also opted for Video Conferencing which was duly arranged on 10.08.2022, during the conference the AR of the assessee's company presented the case and explained the issues involved in detail. The argument of the assessee is heard properly and put on record.

After considering all the material available on record and video conferencing, the explanation offered by the assessee company and the documentary evidences submitted in support of the return of income and the queries raised in 142(1) and SCNs in connection with the CASS reason and other issues noticed were examined in detail and found to be satisfactory and no adverse inference drawn from the replies of the assessee. Hence, the assessment is completed by making NIL addition.

5. Table of variations:

Sl.no	Description	Amount (in INR)
1.	Income as per Return of Income filed	Rs. 149,11,76,360/-
2.	Income as computed u/s 143(1)(a)	-
3.	Variation in respect of issue of disallowance u/s 14A	-
4.	Variation in respect of issue of disallowance-insurance expense claimed u/s 36	-
5.	Total Income determined as per the above proposal	Rs. 149,11,76,360/-

The assessment is made u/s 143(3) read with section 144B of the Income Tax Act.

The assessment of income is done as per computation sheet and the sum payable is determined as per the demand notice u/s 156 of the IT Act." (Emphasis Supplied)

24. On perusal of above it can be seen that on one hand the Assessing Officer has accepted the return of income filed by the Assessee as assessed income, while on the other hand the Assessing Officer has stated that 'assessment of income is done as per the computation sheet'. In the computation sheet the variation made while processing return of income under Section 143(1) of the Act have been incorporated. Since facts and circumstances are identical to

those prevailing in the previous year relevant to the Assessment Year 2021-2022, we accept the contention of the Assessee that in the facts and circumstances of the present case the doctrine of merger would apply. Therefore, we reject the contention of the Revenue that the CIT(A) erred in entertaining and adjudicating the grounds raised by the Assessee in appeal before the CIT(A) challenging the adjustments made while issuing intimation under Section 143(1) of the Act. Accordingly, **Ground No. 1** raised by the Revenue is dismissed.

25. As regards Ground No. 2 raised by the Revenue is concerned, on account of parity of facts and adopting the reasoning given in appeal for the Assessment Year 2021-2022, we set aside the order passed by the CIT(A) to the extent the Ld. CIT(A) had deleted the following adjustments made under intimation issued under Section 143(1) of the Act: (a) adjustment of INR.22,30,467/- under Section 43B of the Act on account of Leave encashment liability, and (b) adjustment of INR.5,28,85,289/- made under Section 43B of the Act on account of payment of bonus or commission. Both the aforesaid issues are remanded back to the file of the Assessing Officer with the directions to decide the same afresh after granting the Assessee a reasonable opportunity of being heard. All the rights and contentions of the Assessee are left open and the Assessee is directed to file such submission, documents and details before the Assessing Officer as the Assessee may deem fit to support the claims. As regards the grant to credit of tax deducted at source is concerned, in identical facts and circumstances, the CIT(A) has directed the Assessing Officer to grant TDS as reflected in form 26AS. Adopting the reasoning given while disposing off identical ground raised by the Revenue in appeal for the Assessment Year 2021-2022, we direct the Assessing Officer to allow credit for additional TDS of INR.30,10,050/- after verifying that (a) the aforesaid TDS credit is reflected in updated Form 26AS and (b) the corresponding income

has been offered to tax as income for the Assessment Year 2020-2021. The Assessee is directed to file a statement showing reconciliation statement in support of the contention that the additional TDS credit claimed pertains to income already offered to tax. Accordingly, to his extent the order passed by the CIT(A) is confirmed. In view of the aforesaid, **Ground No. 2, 3 and 4** raised by the Revenue are partly allowed. In terms of the aforesaid, **Ground No. 5** seeking set-aside of the order passed by the CIT(A) is partly allowed. we confirm the order passed by the CIT(A) to this extent. Accordingly, **Ground No. 2** raised by the Revenue is partly allowed, while **Ground No. 3 and 4** raised by the Revenue are dismissed. In terms of the aforesaid, **Ground No. 5** seeking set-aside of the order passed by the CIT(A) is partly allowed.

26. In result, appeal preferred by the Revenue is partly allowed.

ITA No. 4609/MUM/2024 (Assessment Year 2022-2023)

27. Now we will take up the appeal for Assessment Year 2022-2023 preferred by the Revenue against the order, dated 11/07/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 21/03/2024, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2022-2023.

28. The Revenue has raised following grounds of appeal :

1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.43B of the Act in intimation u/s.143(1) of the IT Act in the appeal filed against order u/s.143(3) r.w.s. 144B of the I. T. Act ignoring the fact that the assessee had not challenged the intimation u/s.143(1) of the Act by filing separate appeal.*
2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition/adjustment made u/s.43B u/s.36(1)(va) of the IT Act in the appeal filed against order u/s 143(3) r.ws. 144B of the I.T. Act without calling the remand report on the issue of the addition/adjustment made u/s.143(1) of the IT Act.*

3. *The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO."*

29. For the Assessment Year 2022-2023, Assessee filed its return of income on revised return of income on 30/12/2022. The case of the Assessee was selected for scrutiny and notice, dated 02/06/2023, under Section 143(2) of the Act was issued by the Assessing Officer. Thereafter, intimation under Section 143(1) of the Act was issued 26/07/2023. It is the case of the Assessee, appeal was not filed against the aforesaid intimation since the regular assessment proceedings were pending. The regular assessment proceedings culminated into passing of the Assessment Order, dated 21/03/2024, under Section 143(3) read with Section 144B of the Act. In appeal filed against the aforesaid assessment order, the Assessee raised grounds challenging the variation/adjustment made vide intimation, dated 26/07/2023, issued under Section 143(1) of the Act. The CIT(A) vide Order, dated 11/07/2024, allowed aforesaid grounds and granted relief to the Assessee by (a) deleting the aggregate disallowance of INR.5,89,90,470/- made under Section 43B of the Act, and (b) granting credit of Tax Deducted at Source (TDS) as claimed in return of income and reflected in Form 26AS. Being aggrieved, the Revenue has now preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 28 above.
30. During the course of hearing both the sides had agreed that there is no change in the facts and circumstances. Ground No. 1, 2 and 3 raised by the Revenue in the present appeal are identical to Ground No. 1, 2 and 5 raised by the Revenue in appeal pertaining to the Assessment Years 2020-21 and 2021-22, respectively. The Assessing Officer and the CIT(A) had adopted approach identical to the approach adopted for Assessment Years 2020-2021 and 2021-2022. Therefore, our finding and adjudication on grounds raised in

appeal for the Assessment Year 2021-2022 shall apply mutatis mutandis to the corresponding grounds raised in appeal for the Assessment Year 2022-2023. Accordingly, on account of parity for facts and adopting the reasoning given while disposing identical grounds raised in appeal for the Assessment Year 2021-2022 in paragraph 7 to 16 above, **Ground No.1** raised by the Revenue is dismissed. **Ground No.2** raised by the Revenue partly allowed as the order passed by the CIT(A) to the extent the Ld. CIT(A) had deleted the INR.5,89,90,470/- made under Section 43B of the Act is set aside, and the issue is remanded back to the file of the Assessing Officer with the directions to decide the same afresh after granting the Assessee a reasonable opportunity of being heard. All the rights and contentions of the Assessee are left open and the Assessee is directed to file such submission, documents and details before the Assessing Officer as the Assessee may deem fit to support the claims. In terms of the aforesaid, **Ground No. 3** seeking set-aside of the order passed by the CIT(A) is partly allowed.

31. In result, appeal preferred by the Revenue is partly allowed.
32. In conclusion, the three appeals preferred by the Revenue are partly allowed.

Order pronounced on 03.03.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 03.03.2025
Divya Stenographer

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

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10	Date of Dispatch of order			