

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITAno.351/MUM/2025  
(A.Y. 2017-18)**

<b>EIPR(India) Private Limited,</b> 603, Unit No. 14, A&B, Floor 1, Plot 228, Mittal Chamber, Barrister Rajani, Patel Marg, Nariman Point, Mumbai - 400 021, Maharashtra	v/s. बनाम	<b>Deputy Commissioner of Income Tax, Circle – 3(1)(1),</b> Income Tax Office, Maharishi Karve Road, New Marine Lines, Churchgate, Mumbai 400020, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACE9094M</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Gyaneshwar Kataram, CA
Respondent by :	Shri Hemanshu Joshi, (Sr. DR)

Date of Hearing	12.03.2025
Date of Pronouncement	26.03.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order dated 30.12.2024 is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeal)/Addl./JCIT(A) Agra [hereinafter referred to as “CIT(A)”] pertaining to the Intimation order passed by the CPC u/s 143(1) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 18.01.2019 for the Assessment Year [A.Y.] 2017-18.



2. The grounds of appeal are as under:
1. *In the circumstances and facts of our case, the Ld. Commissioner of Income Tax (Appeals), Addl./JCIT(A), Agra has erred in law and on facts in confirming the action of Ld. DCIT. CPC in upholding disallowance of Rs. 40,25,474/- u/s 37(1) in respect of annual membership and subscription expenses on the conjectures and surmises on the ground that the appellant has failed to discharge its burden of proof or to provide sufficient evidence linking claimed expenses despite the fact that the Assessee had submitted the conclusive documentary evidence in its written submission along with supporting paper books and additional submissions filed during the course of appeal proceedings in support of the said expenses being incurred in the ordinary course of business and being allowable u/s 37(1).*
  2. *In the circumstances and facts of our case, the Ld. Commissioner of Income Tax (Appeals), Addl./ JCIT(A), Agra has erred in upholding the disallowance of Rs. 40,25,474/- u/s 37(1) pertaining to annual membership and subscription expenses being “Expenditure incurred at clubs being entrance fees and subscriptions” reported under Clause no 21 of the Tax Audit report which reads as “Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure.”*
  3. *In the circumstances and facts of our case, The Ld. Commissioner of Income Tax (Appeals), Addl./JCIT(A), Agra has erred in not considering the Certificate of the Tax Auditor wherein he has confirmed that such amount of Rs. 40,25,474/- (being annual membership and subscription expenses) was stated for reporting purposes and did not represent as disallowable items u/s 37(1). The Ld. Commissioner of Income Tax (Appeals), Addl/ JCIT(A). Agra has erred in not relying on the said Certificate duly supported with conclusive documentary evidence (such as details of membership and subscription expenses, tax invoices, etc.) filed in the course of appeal proceedings.*
  4. *Without prejudice to the other grounds, in the circumstances and facts of our case, the Ld. Commissioner of Income Tax (Appeals), Addl./ JCIT(A), Agra has erred in law and on facts in confirming the action of Ld. DCIT, CPC in upholding disallowance of Rs. 40,25,474/- u/s 37(1) of the Act by way of adjustment under the Intimation u/s 143(1) on conjectures and surmises and therefore such adjustment in the course of processing of return under section 143(1) is vitiated and invalid in law and such disallowance /adjustment under intimation*



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*under section 143(1) of the Act suffers legal irregularity and cannot be sustained.*

3. Facts in brief are that in this case, the return filed by the assessee was processed by the Central Processing Centre (henceforth 'CPC'), Bangaluru, under section 143(1) with the addition of Rs. 41,18,503/- based on discrepancies noted in the Tax Audit Report(henceforth 'TAR') submitted by the assessee and the Income-tax return filed by it. The disallowances were primarily made on account of differences noted between the reported and disallowed amounts in Form 3CD of the TAR. The assessee operates as a Private Limited Company engaged in the specialized business of investigations concerning Intellectual Property Rights (IPR) violations.

3.1 Though the adjustment pertained to two separate items i.e. disallowance of deduction claimed in respect of 'Membership and Subscription' and 'Employees Contribution to EPF', the present appeal arises from the disallowance made by the Assessing Officer (CPC, Bangalore) as an amount of Rs. 40,25,474/-pertaining to the deduction in respect of Membership and Subscription expenses only which was disallowed under Section 37 of the Act. The disallowance was based on an inconsistency noted in the TAR (Form 3CD), where the auditor reported Rs. 40,62,649/- as expenses to be disallowed, while the assessee had added Rs 37,175/-only in this regard. The resultant



discrepancy of Rs. 40,25,474/- was added back to the appellant's income.

3.2 Before the Id.CIT(A), it was contended that the adjustment made by the CPC, Bangalore is based on the discrepancies highlighted in the TAR (Form 3CD), a statutory document under Section 44AB of the Act although the figures reported in the TAR were erroneous due to mistakes. The assessee further contended that these adjustments were made without adequately considering its explanations and submissions. The Id.CIT(A) however, rejected the contention observing inter alia that the TAR holds significant legal and professional weight. Any contradiction between the figures in the TAR and those in the income-tax return requires the appellant to provide irrefutable evidence of error or omission. The assessee's reliance on the correction request with subsequent submission was found insufficient to overturn the presumption of correctness attached to the audit report. The certificate did not provide a detailed explanation of the nature and impact of the alleged errors. The adjustment under Section 143(1) is based on prima facie discrepancies and is within the scope of the law, which permits adjustments for inconsistencies apparent from the record. He further observed that the assessee's argument that the adjustments were made without considering its reply was not supported by evidence as the CPC



provided an opportunity to respond, and the appellant's reply was duly considered but found insufficient. Besides, allowances in previous years do not automatically validate claims for subsequent years. The appellant failed to discharge its burden of proof or to provide sufficient evidence linking the claimed expenses. Consequently, the disallowance of Rs. 40,25,474/- under section 37 of the Act was upheld by observing that the assessee failed to establish the direct nexus of the claimed annual membership and subscription expenses with its business operations.

4. Before us, the ld.DR relied on the orders of authorities below while the ld.AR vehemently argued against such disallowance by claiming inter alia that the ld.CIT(A) in a mechanical manner upheld the disallowance without properly evaluating the detailed contentions made in the written submission made. He did not appreciate the certificate from the Auditors submitted wherein the mistake was categorically admitted by him. Therefore, assessee could not be penalised on account of his mistake which itself was inadvertent. Even on merits, the ld.CIT(A) did not examine the nature of expenses being Membership and Subscription expenses which were wholly and exclusively incurred for the purposes of business and are also being consistently held to be allowable by several courts of law. The case laws relied upon in this regard were also brushed aside by him



4.1 As regards merits of the case, the Id.AR has contented that the disallowance of Rs. 40,25,474/- u/s 37 of the Act pertains to annual Membership and Subscription expenses which were legitimate business expenditure incurred to promote the company's activities, establish business relationships, and facilitate operational growth. To substantiate this claim, the assessee submitted various supporting documents. The assessee further argued that similar expenses were allowed in prior years. However, the Id.CIT(A) rejected this ground as well.

5. We have carefully gone through the facts on record, rival contentions, the contents of the appellate order as also the detailed submissions made by the assessee. In this regard, the provisions of section 143(1) providing for adjustment of returned income read as below:

“(1)Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a)the total income or loss shall be computed after making the following adjustments, namely:—

(i)any arithmetical error in the return;

(ii)an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii)disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;



**(iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;**

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to, him:



Provided further that no intimation under this sub-section shall be sent after the expiry of [nine months] from the end of the financial year in which the return is made. Explanation.—For the purposes of this sub-section,—

(a)"an incorrect claim apparent from any information in the return" shall mean a 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 the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(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;

(b)the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a)".

5.1 It appears that the CPC has applied the provisions contained in clause (iv) above which provides for disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return. Perusal of the communication from CPC reveals that the amount was disallowed while processing the return u/s 143(1) on account of 'Inconsistency in Total amount of disallowance u/s section 37' amounting to Rs 40,25,474/- as against Rs 37,175/- which was disclosed in the return while the amount reflected in TAR in Annexure was Rs 40,62,649/-.

5.2 The CPC has apparently made the adjustment rejecting the explanation of the assessee. However, the disallowance has been made



without examining the actual nature of the impugned expenses. Moreover, the assessee's case was also not picked for scrutiny or resorted to action 148 of the Act. Therefore, the provisions of section 143(1) have been mechanically applied.

5.3 Further, the ld.CIT(A) has also made no effort to decide the issue judiciously and merely relied on the processing even though the assessee furnished a detailed submission before him during appeal proceedings. A certificate from the Auditor accepting the inadvertent mistake in proper reporting the impugned has been brushed aside without controverting the contents therein. In this connection, it is submitted that the difference arose due to mistake of the Tax auditor M/s Gyaneshwar Kataram and Associates, Mumbai who in a letter addressed to the ld.CIT(A) dated 17.03.2020 categorically admitted the mistake due to oversight and inadvertently the reported amount was shown at Rs 40,25,474/- as Annual Membership and Subscription expenses in column 21(a) of the Tax Audit Report although the same was no capital or personal in nature. It was further certified that the impugned sum was incurred wholly and exclusively for the purposes of business only.



5.4 The assessee before the Id.CIT(A) has submitted detailed break up of the Membership and Subscription expenses giving complete details on partwise details comprising of name of the Institution, amount, nature of expenses etc. alongwith relevant invoices and bills. However has completely glossed over it. Rather he has kept a mum on these vital pieces of evidence which fully explained the nature of the impugned sum establishing it to be allowable u/s 37 of the Act having been incurred wholly and exclusively for the purposes of business.

5.5 Likewise, he did not take into account the plethora of judicial decisions including those of hon'ble Apex and jurisdictional High Court, none of which has been distinguished by him at all. As regards allowability of the deduction of such expenses, the assessee vide written submission before Ld. CIT(A) had relied on plethora of decision allowing such expenses i.e. CIT vs Lubrizol India 37 Taxmann.com 294 (Bom), DCIT vs Deloitte Group in ITA No. 3017,277,276,2200/Mum/2016 (ITAT-Mum), ITA No.1107,1114/Mum/2014 in Hinduja Global Solutions, MKJ Tradex Ltd ITA No.1044/Kol/2026,CIT vs Groz Beckert Asia Ltd 31 Taxmann.com 155(P&H) etc.

5.6 He further failed to make any observation of the similar expenses claimed by the assessee in AY 2016-17 and duly allowed u/s



143(1) by the Revenue. The assessee submitted comparative figures of similar expenditure claimed in the AYs 2016-17 and 2017-18. It is stated that in AY 2016-17 the amount was Rs 18.79 lakh which was 1.16% of the total revenue of Rs 16.25 cr while in the AY 2017-18 it is Rs 40.37 lakh vis-a-vis revenue of Rs 19.79 cr i.e. 2.05 per cent. No disallowance was made in the previous year u/s 143(1).

6. Considering the above facts, we are of the view that the Id.CIT(A) has failed to justify the addition made by the CPC, ignoring all contentions of the assessee. In this regard, reference could be made to the decision of the coordinate Bench of **ITAT, Chandigarh** in the case of **Deputy Commissioner Of Income Tax, vs Homeland City Project Ltd in ITA No.559/Chd/2024 dt 17.12.2024** in which in an identical case of processing of the return by the CPC, inter alia took cognizance of the mistake admitted by the Tax auditors of the assessee leading to the disallowance which was finally deleted by the hon'ble Bench. It was contented by the assessee therein that it was just a mistake of the Auditor in the Tax Audit Report and for which, the assessee could not be penalized as per settled law by **Hon'ble Punjab & Haryana High Court** in the case of **Manoj Ahuja**, reported in **150 ITR 696** and of **Chandigarh Bench of ITAT in the case of Habrol Cooperative Agricultural Service Society Vs ITO**, in ITA No.



**158/Chd/2024.** It was held that the CIT(A) had rightly deleted the uncalled for addition. Relevant paras of the order are reproduced as below:

*“ 3.4 The Tax Auditor vide clarification dated 21.07.2022 has clarified the above stated issue as under and has also issued revised tax audit report which has been placed on record during the course of appellate proceedings before the CIT(A):-*

*"1.that in the Tax Audit report in Form-3CD the corporate guarantee has been reported in para 21(g) as "particulars of any liability of a contingent nature".*

*2.That the above said amount has been reported in para 21(g) due to inadvertent mistake as according to the Guidance note on Tax Audit under [Section 44AB](#) of the Income Tax Act, 1961, "the particulars of any liability of a contingent nature debited to the P&L account" is required to be reported in clause 21(g) of the Tax Audit Report for which the kind attention of your goodself is drawn to Guidance note on Tax Audit under [section 44AB](#) of the Income Tax, 1961.*

*3.It is further brought on record that the corporate guarantee has only been reported by statutory auditor in the notes on account of the statutory audit report as contingent liabilities and commitments but the same has not been debited in the P&L account.*

*4.In view of the above stated facts, the reporting of corporate guarantee in para 21(g) being the "particulars of any liability of a contingent nature" has only been reported due to inadvertent mistake as the amount of corporate guarantee has not been debited to the P&L account.”*

6.1 In the light of above discussion and respectfully following the observations in the coordinate Bench decision, we are inclined to hold that the ld.CIT(A) was not justified in upholding the disallowance made by the CPC which is accordingly deleted.



**7. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on **26/03/2025**.

**Sd/-**

**NARENDER KUMAR CHOUDHRY**

**(न्यायिक सदस्य / JUDICIAL MEMBER)**

**Sd/-**

**PRABHASH SHANKAR**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 26.03.2025

Lubhna Shaikh / Steno

**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
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**आदेशानुसार/ BY ORDER,**

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

