

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

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

**ITA No.6792/MUM/2024
(A.Y. 2019-20)**

Punit Deora Trust, Mumbai, C/o Punit International, 17, Fair Field Society, Opp. K.C. College, Churchgate, Mumbai - 400 020, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 25(3)(1) , Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATP1811E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri S.L. Jain, AR
Respondent by :	Shri Kiran Unavekar, (Sr.DR)

Date of Hearing	18.07.2025
Date of Pronouncement	19.08.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/ADDL/JCIT(A) Bhubaneswar [hereinafter referred to as "CIT(A)"] pertaining to order passed u/s. 143(1) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 29.03.2021 for the Assessment Year [A.Y.] 2019-20.



2. The main grounds of appeal are as under:-

1. *Ld. CIT(A) erred in confirming intimation u/s 143(1) as made by Ld. AO CPC assessing appellant's income under the head 'Business Income' at Rs 7,04,55,431/- instead of income offered to tax under the head 'House Property' of Rs. 4,85,35,202/- and Rs 11,24,394/- under the head 'Other Source' without appreciating the fact that in almost in all past years income is assessed under the head 'House Property' and 'Other Source'*
2. *Ld. CIT(A) erred in not considering the fact that Appellant is entitled for deduction u/s 24(a) as claimed while computing 'House Property' income.*
3. *Ld. CIT(A) erred in not considering the fact that Ld. AO CPC erred in assessing appellant's income in intimation u/s 143(1) at Rs 7,04,55,431/- as against returned 'nil' without appreciating that the Appellant is a Private Specific Trust having 5 beneficiaries, each beneficiary having 20% share in Income and hence income be taxable u/s 161 in the same manner and same extent as in case of each of the beneficiary.*
4. *Ld. CIT(A) erred in not considering the fact that Ld. AO CPC erred in making an impermissible adjustment while assessing income and that too without any intimation and opportunity to the Appellant as required u/s 143(1)(a) hence income assessed at Rs 7,04,55,431/- in-place of returned nil is bad in law.*
5. *Ld. CIT(A) erred in not appreciating the fact that in almost all years in past income from 'House Property' and 'other sources' is assessed in the hands of individual 5 beneficiaries and nil in the hands of the appellant Trust.*
6. *Ld. CIT(A) erred in not appreciating the fact that each of the 5 beneficiaries of the Trust has offered 20% of the income of the appellant trust to tax in their Individual returns of income filled and said share of income from appellant trust is being assessed in their individual hands. Hence said income ought not to be assessed again in hands of the Appellant trust as it amounts to double taxation of the very same income.*
7. *Ld. CIT(A) erred in confirming non granting of credit for TDS deducted out of 'House Property' income although reflected in 26AS. Income being taxable in individual hands of the beneficiaries TDS is prayed to be allocated amongst the beneficiaries and TDS credit be granted.*
8. *Ld. CIT(A) in confirming action of Ld. AO CPC in taxing income by applying maximum marginal rate without appreciating that beneficiaries being 'individual' rate of tax applicable be as applicable to individuals.*

3. Brief facts of the case are that the assessee is a Private Specified Trust which filed return showing Nil income. The CPC, Bengaluru issued intimation order u/s 143(1) of the Act assessing its income at



Rs.7,04,55,431/- treating the disclosed House property income as Business income instead. Before the Id.CIT(A), it was stated that assessee is a 'Private Specified Trust' with five beneficiaries, each having 20% share in Income and assets and respective beneficiaries had offered income to tax in their respective hands. However, appeal of the assessee was dismissed by him.

4. In respect of **ground no. 1 to 6 and 8**, it is submitted that said property was let out without any other asset or services to various tenants from the year 2019 vide separate Leave and Licence agreements which shows that assessee granted a bare license of the property and no other service or asset provided to licensee. Hence, nature of income is 'House Property', the assessee being its owner of the property and rent received for exploitation of it cannot be 'Business Income'. Further, it is stated that ITAT, Mumbai in assessee's own case for AY 2018-19 in ITA No. 6249/Mum/2024 held income to be assessed under head 'House Property'. There is no change in facts during the year. Income being 'House Property', the assessee is entitled to standard deduction u/s 24(a) of the Act. It is further argued that consistently in all past years till A.Yrs.2016-17 income has been assessed in the hands of the specified beneficiaries under head 'House Property' and 'Other Source' u/s 161.0f



the Act. It is further contented that in present assessment year also, beneficiaries are taxed on said property income as disclosed in their returns of Income and taxed in Intimation u/s 143(1). The Tribunal in appeal for A.Y.2018-19 held that income, already, being taxed in beneficiary will not be taxed u/s 166 of the Act in assessee's hand. It is submitted that House Property income is being taxed in individual hands of each beneficiary at maximum marginal rate.

4.1 In respect of intimation order u/s 143(1), it is contented that the adjustment made is beyond permissible adjustments u/s 143(1)(a). 3rd proviso to sec 143(1) permitting adjustments based on TDS stood withdrawn from AY 2018-19. Adjustment made being without Intimation as required under 1st proviso to section 143(1) is bad in law as held in Onkar Society for Engineering & Technological Research [2024] 161 taxmann.com 773 (Kolkata - Trib.), Camellia Educare Trust-201 ITD 616 and Kalyan Education Society 226 TTJ 348 (Kol).

4.3 The ld.DR has relied on the orders of the authorities below.

5. We found sufficient merits in the contentions of the assessee w.r.t. intimation u/s 143(1) adjustment made without issuing any show cause notice. Accordingly, we called for a factual report from the ld.AO in this regard to examine the real facts on record. The ld.DR has submitted a



communication dated 17.06.2025 from the AO concerned in which he has categorically admitted that no prior show cause notice was issued by CPC before making the above adjustment to the return of the assessee. Relevant para of the report is reproduced as below:

Please refer to the trail mail. “I am directed by the Principal Director of Income Tax, CPC ,Bengaluru as under: In the aforesaid case ,prima facie adjustment notice prior to processing the return u/s 143(1) was not issued for AY 2019-10 due to technical issues.”

5.1 In view of the above report, the contentions of the assessee have been proved to be correct. The relevant provisions of section 143(1) of the Act are reproduced as below for the sake of brevity:

“143. (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 indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 8Q-IB, 80-IC, 80-ID or section 80-IE, 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;]”

5.2 We find that the provisions of the Act as stated above, make it abundantly clear that issuance of show cause notice before making any adjustment u/s 143(1) is *sine qua non*. Thus, the requirement being mandatory in nature and the CPC could not have skipped it which is palpably evident in this case and duly acknowledged by the AO. Therefore, the intimation order is liable to be quashed on this issue itself.

5.3 We find that similar issue has been considered in favour of the assessee in a plethora of decisions by various coordinate benches of ITAT across the country, some of which are narrated for the sake of clarity. In the case of **Onkar Society for Engineering & Technological Research [2024] 161 taxmann.com 773 (Kolkata - Trib.)**, it was observed as below:

“7. After hearing the rival contentions, perusing the material on record and also the proviso to [section 143\(1\)\(a\)](#) of the Act, we find that the Id. Assessing Officer CPC, before making any adjustment/disallowance to the returned income as per the return of income filed by the assessee is duty bound to intimate the same to the assessee either in writing or in the electronic mode. However, we find that no such intimation has been given to the assessee before making the said adjustment or disallowance either in writing or in electronic mode. We have also examined the records of



assessment proceedings on e-portal relating to the assessee as placed before us and observe that the Id. Assessing Officer, CPC has not followed the mandate of first proviso of [section 143\(1\)\(a\)](#) of the Act and consequently , the order passed under [section 143\(1\)](#) of the Act is not as per the mandate of provisions of the Act and has to be quashed.”

5.4 The case of the assessee finds force from the of the coordinate bench decision of Ahmedabad ITAT in the case of **Arham Pumps** in **ITA No.206/Ahd/2021** as extracted below:-

“7. On going through the above section and proviso attached therein, the total income or loss shall be computed after making following adjustment mainly of any arithmetical error in the return. Incorrect claim, if such incorrect claim is apparent from any information in the return, etc. Thus, it is clear that a return can be processed [u/s.143\(1\)](#) by making adjustments on six types of adjustments only. The first proviso to [section 143\(1\)\(a\)](#) make it very clear that no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. Apparently in the case of the assessee, no intimation had been given to the assessee for making any adjustment or disallowance either in writing or in electronic mode. Thus, the CPC center has not followed the first proviso to [section 143\(1\)\(a\)](#) of the Act. This position was not controverted by the Id. DR also. Assuming a moment, if such an intimation is given to the assessee as per first proviso, then the second proviso stipulates that if any response is received from the assessee, the same should be considered before making any adjustment or disallowance, and also in a case where no response is received, then within thirty days of the issue of such intimation, department is free to make such adjustment.

8. On going through the above intimation made under [section 143\(1\)](#), CPC has not followed the above provisos by giving proper opportunity to the assessee to defend its case as per the first proviso to [section 143\(1\)\(a\)](#) .

Further, the NFAC order is also silent about the intimation to the assessee. Therefore, we find that intimation issued under [section 143\(1\)](#) dated 19-10-2019 is against first proviso to [section 143\(1\)\(a\)](#), and therefore, the entire 143(1) proceedings is invalid in law.

9. We also observe that the Id. NAFC has not looked into this fundamental principle of "audi alteram partem ", which has not been provided to the assessee as per the 1st



proviso of [section 143\(1\)](#) of the Act, but proceeded with the case on merits and also confirmed the addition made by [the CPC](#). The Id. NFAC is thus erred in conducting the faceless appeal proceedings in a more mechanical manner without application of mind. We, therefore, hereby quash the intimation issued by [the CPC](#) and allow the appeal filed by the assessee".

8. In the instant case also, the adjustment has been made by the Id. Assessing Officer, [CPC](#) to the income of AY: 2020-21 the assessee without even giving any intimation in terms of proviso to [section 143\(1\)\(a\)](#) of the Act and, therefore, the said order is quashed as invalid and nullity in the eyes of law. In the result, the additional ground is allowed."

5.5 In the case of **Adidas India Marketing Pvt. Ltd** in **ITA 648/Del/2023**, it was likewise held as under:

"6. Ld. Counsel filed the following synopsis and relied on various decisions in support of his contention that adjustments made in the intimation passed u/s 143(1) of the Act without prior notice is nullity and not sustainable in law:

"Non-fulfilment of mandatory provision of [Section 143\(1\)\(a\)](#) by failing to give prior intimation - Nullity.

- Aggrieved by the order passed by [the CPC](#), the Respondent filed an appeal before the Hon'ble CIT(A), New Delhi on the grounds that the said order had been passed in violation of the express mandate of the provisos to [section 143\(1\)\(a\)](#) of the Act and without issuing any intimation to the Respondent of the proposed additions, among other grounds on merits.

- The Hon'ble CIT(A) on finding that no proposal for adjustments was issued to the Respondent under [section 143\(1\)\(a\)](#) of the Act, vide order under [section 250](#) of the Act dated January 9, 2023, allowed the grounds raised by the Respondent and thereby accepted the Respondent's contentions, holding that the adjustments made by [the CPC](#) were incorrect as these were against the principles of law, are liable to be deleted.

- CIT (A) finally held that since no intimation was issued to the Assessee prior to making adjustments u/s 143(1), therefore, the impugned adjustments are not correct and are liable to be dismissed.

"5.3.....As contended by the Appellant and also on a perusal of [the CPC 2.0](#) portal, it is seen that no proposal for adjustments [u/s 143\(1\)\(a\)](#) was issued by [the](#)



CPC prior to make adjustments to the returned income. Therefore, the adjustment made in the intimation u/s 143(1)(a) is against the principles of law provided in the section 143(1) of the IT Act. Accordingly, I am of the opinion that the adjustments made by the CPC is not correct and liable to be deleted. Therefore, I direct the A.O to delete the additions made in the intimation u/s 143(1)(a) dated 27.12.2021 while processing the return of income. As I have held that the addition made in the intimation is wrong, I am not dealing with the other issues raised by the Appellant consequent to these additions as the same are only academic in nature. Accordingly, the grounds raised in this regard are allowed."

5.6 In another case of **Vinod Malik v. ADIT, CPC in ITA 1635/Del/2021(ITAT Delhi)**, it was held likewise in following paras:

"6. From the above, we find that the disallowance made by the CPC was in accordance with provisions of Section 143(1)(iv). The act mandates, before making an adjustment, an intimation has to be given to the assessee of such adjustment in writing or in electronic mode. The revenue could not produce evidence of sending the intimation to the assessee with regard to the proposed adjustment.

7. Failure to adhere to the mandatory procedure prescribed in statute has DOMINO EFFECT ON THE ORDER PASSED u/s 143(1)(a) culminating in TREATING THE ORDER LEGALLY UNSUSTAINABLE."

6. After hearing the rival contentions, perusing the material on record and also the relevant provisions of the Act, we find that the CPC, before making any adjustment/disallowance to the returned income as per the return of income filed by the assessee, is duty bound to intimate the same to the assessee either in writing or in the electronic mode. However, we find that no such intimation has been given to the assessee before making the said adjustment or disallowance in any mode. Therefore, we hold that the CPC has not followed the mandate of first proviso of section 143(1) of the Act and consequently, the intimation order



making adjustment to the income is not as per the said provisions of the Act .Accordingly, we are of the considered opinion that the adjustments made by [the CPC](#) are not correct and liable to be deleted. Therefore, we direct the A.O to delete the additions made in the intimation u/s 143(1) of the Act and accept the returned income without any modification. **Ground no.8** regarding application of maximum marginal tax, the same is consequential and is also allowed.

7. In so far as TDS credit to the beneficiaries as per **ground no.7** is concerned, it is submitted by the Id.AR that the beneficiaries are entitled to be assessed for house property and other source income allocated to them. Income being taxable in their respective hands and being assessed as such, are entitled for TDS proportionate credit u/s 199 of the Act. The Id. CIT(A) held that Rule 37BA(2) applies in case of assessee and as it has not followed the provision. The Id.CIT(A) observed that as per the provisions of sub-rule 2 of Rule 37BA which is applicable to the facts of the case since the TDS was name in the of the assessee but the corresponding house property income was claimed in the hands of beneficiaries. Therefore, in such a situation the assessee should have filed a declaration with the deductor so that the deductor would have reported the TDS in the respective names of the beneficiaries. On perusal of the



agreement with the tenant of the said property i.e. Schlumberger Asia Services Ltd which deducted TDS in the name of the assessee that it did not follow the procedure laid down in the above Rule and had not submitted any such declaration. Accordingly, applying the decision in the case of Naresh **Bhavani Shah 396 ITR 589(Guj)**, he rejected the grounds of appeal of the assessee.

9. Before us, the ld.AR has contented that the rental and interest income and TDS thereon are claimed in the hands of the beneficiaries for which the assessee files application u/s 199 of the Act before the AO to determine the TDS to be allocated between the beneficiaries. Income of the assessee is distributed as also the TDS are distributed in the ratio of respective shares of beneficiaries. This practice is being followed and accepted by the department in all the years excepting AYs 2-17-18 and 2019-20. It is further stated that TDS is being claimed by the assessee as it is appearing in 26AS.

10. On careful consideration of the above facts, we do not find any infirmity in the conclusion drawn by the ld.CIT(A). The credit for tax has to be accorded strictly in conformity with [section 199](#) of the Act read with Rule 37BA of the Income Tax Rules, 1962. The wording of the rule 37BA(2) make it clear that credit for tax deducted on income assessable in



hands of a person other than the deductee shall be given to the other person and not the deductee, provided the deductee files declaration with the deductor and he reports the tax deduction in name of the other person as per provisions of Chapter XVII of the Act. In the given case, the TDS return filed by the deductor shows the tax deduction in the name of the Trust and it is duly reflecting in the 26AS statement of the Trust .The assessee is claiming credit in the hands of the beneficiaries as per rule 37BA and for that it should have ensured that the Trust filed a declaration with the deductor giving proper name, address and PAN of the beneficiaries in whose hands income was to be assessable. On receipt of such declaration, the deductor shall issue certificate for the deduction of tax at source in the name of such other person. The crux of [section 199](#) read with Rule 37BA(2) is that if the income, on which tax has been deducted at source, is chargeable to tax in the hands of the recipient, then credit for such tax will be allowed to such recipient. If, however, the income is fully or partly chargeable to tax in the hands of some other person because of the operation of any provision, the proportionate credit for tax deducted at source should be allowed to such other person who is chargeable to tax in respect of such income, notwithstanding the fact that he is not the recipient of income. It is with a view to regularise the allowing of credit for tax deducted at source to the person other than



recipient of income, that the proviso to Rule 37BA(2) has been enshrined necessitating the furnishing of particulars of such other person by the recipient for enabling the deductor to issue TDS certificate in the name of the other person. The entire purpose of this exercise of allowing credit to the other person is to ensure that the benefit of tax deducted at source is availed once and that too, by the right person, who is chargeable to tax in respect of such income. It is just to streamline the procedure for giving effect to this intent and rule out the possibility of taking any inappropriate credit for the amount of tax deducted at source, firstly, by the recipient who is not chargeable to tax and secondly, by the person who is rightly chargeable to tax in respect of such income, that the procedural provision has been put in place in Rule 37BA(2).

10.1 However, it is settled law that non-compliance of a procedural provision, which is otherwise directory in nature, cannot disturb the writ of a substantive provision. What needs to be seen is harmonious construction of [section 199\(1\)](#) of the Act read with the conditions provided in rule 37BA and intention of the legislature was not to deny the credit if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, whereas the intention is to grant credit for the tax deducted at source on behalf of



the person from whose income the deduction has been made. Now, if the deductee has produced evidence or certificate that it has not claimed TDS as income belongs to the other person and in his return has not taken such credit and there is no dispute by the department that the original deductee is never going to take the credit of TDS, then if deductor for some reason fails to report the tax deduction in the name of the other person; or does not issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax, then, is other person who is showing the income in respect of which TDS has been deducted and the original deductee files a declaration with the deductor and also in the return of income, can credit of TDS be denied to the other person showing the income. Under such circumstances, a liberal interpretation has to be given. To avoid duplication of TDS credit in the hands of the Trust and the beneficiaries, in our opinion this is a matter of verification whether credit of TDS is allowed to the person who has declared the corresponding income and tax has been deducted from that income and credit of allowed both to the assessee and beneficiaries. Accordingly, we restore the matter back to the file of the AO with the direction to him to assist the assessee in revising the relevant TDS returns and reversing the credit of the said TDS in the Form No. 26AS pertaining to the result vis-à-



vis the beneficiaries. For this purpose, the AO should write to the deductor to rectify the TDS Return and ensure that the TDS credit is appropriately reflected in the Form 26AS of the concerned persons. The assessee may also be accorded reasonable time to get the necessary amendment done. With the above direction, the grounds of the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on **19.08.2025.**

Sd/-

NARENDER KUMAR CHOUDHRY
(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR
(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 19.08.2025
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



5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
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आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

