

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2605/Bang/2024
Assessment Year: 2022-23

HMSHost Hospitality Services Bharath Pvt. Ltd., 6/12 Gurappa Avenue, Bangalore North, Bangalore – 560 025. PAN – AADCH 1592 C	Vs.	The Dy. Commissioner of Income Tax, Circle - 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Khirendra Mohan Gupta – Advocate and Shri Divjot Oberoi - CA
Revenue by	:	Shri Balusamy N, JCIT (DR)

Date of hearing	:	10.07.2025
Date of Pronouncement	:	06.10.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT(A)-7, Kolkata vide order dated 03/10/2024 in DIN No.ITBA/APL/S/250/2024-25/1069349110(1) for the assessment year 2022-23.

2. The assessee has raised a ground that the learned CIT(A) erred in confirming the adjustment of ₹3,32,571 made by CPC under section 143(1)(a)(ii) of the Act towards provision for gratuity.
3. The contention of the assessee is that this amount was never claimed in the computation of taxable income and was only shown under Other Comprehensive Income (OCI).
4. The learned Authorised Representative submitted that the assessee had created a gratuity provision of ₹8,05,914 during the year. Out of this, an amount of ₹4,73,343 was debited to the profit and loss account under employee benefit expenses. The assessee had suo motu disallowed this amount in the return of income. The balance of ₹3,32,571 was debited under the head Other Comprehensive Income. This amount did not enter the profit and loss account before comprehensive income and was never considered in the computation of total income. It was argued that CPC wrongly assumed that the entire gratuity provision mentioned in the tax audit report was claimed as deduction, and made an adjustment under section 143(1) of the Act. The AR contended that such an adjustment is not permissible as the amount under OCI was never claimed, and further, debatable issues cannot be the subject matter of an adjustment under section 143(1) of the Act. The AR placed reliance on the principle that no disallowance can be made for expenditure which was never claimed.
5. The learned Departmental Representative supported the order of the CIT(A). It was submitted that in the tax audit report, the auditor had

mentioned that gratuity provision of ₹8,05,914 was disallowable under section 43B of the Act. The assessee in the return had disallowed only ₹4,73,343.00 only. Thus, the CPC was therefore justified in making an addition of the balance ₹3,32,571 while processing under section 143(1). The Id. DR submitted that provision for gratuity is not allowable as deduction and hence the action of the CPC and the CIT(A) require to be upheld.

6. We have considered the rival submissions and perused the records. The fact remains that the assessee created a total provision of ₹8,05,914. Out of this, the assessee had already disallowed ₹4,73,343 in the computation of income. The balance of ₹3,32,571 was reflected under Other Comprehensive Income. This amount was not routed through the profit and loss account before comprehensive income. The computation of total income was based on the loss before comprehensive income. Therefore, the balance provision of ₹3,32,571 was never claimed as deduction by the assessee. All these facts can be verified from pages 229 and 122 of the paper books where profit and loss account and computation of income are placed. Hence, the action of CPC in making an adjustment under section 143(1) is not sustainable. It is a settled position of law that no disallowance can be made of expenditure which was never claimed. By making this adjustment, CPC has in effect disallowed an amount which did not form part of the income computation. This has resulted in double disallowance of the gratuity provision. We find that the assessee's computation was correct and the adjustment of ₹3,32,571 was not allowable. In view of the above discussion, we hold that the action of CPC in making the addition

of ₹3,32,571 and the order of the CIT(A) confirming the same cannot be sustained. The addition is directed to be deleted. Hence, the ground of appeal of the assessee is hereby allowed.

7. This ground of the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals) sustaining an adjustment made by CPC under section 143(1) of the Act, which was later confirmed in rectification proceedings under section 154 of the Act amounting to Rs. 99,73,014.00.

8. The facts of the case in brief are that the assessee filed its return of income for the relevant assessment year. While processing the return, CPC made an adjustment of ₹20,90,74,357 on the ground that there were inconsistencies between the ICDS adjustments disclosed in the ITR and those mentioned in the Tax Audit Report. Subsequently, in the rectification order dated 28.11.2023, CPC restricted the adjustment to ₹99,73,014. This sum was treated as excess depreciation claimed on tangible fixed assets under ICDS V.

9. Before the learned Id. CIT(A), the assessee submitted that the effect of ICDS V had already been considered in the return of income. The assessee had suo-moto disallowed depreciation as per the Companies Act amounting to ₹2,81,42,024 and claimed depreciation allowable under the Income Tax Act amounting to ₹1,81,69,010. The net effect of ₹99,73,014 was already reflected in the computation and shown in Schedule BP of the ITR. It was argued that CPC had taken into account only the increase in profit but ignored the decrease in profit

and, therefore, made a double disallowance. The assessee also submitted that a detailed reply had been filed against the proposed adjustment, but CPC passed the intimation and rectification order without considering the same. The learned CIT(A), however, upheld the action of CPC and sustained the addition of ₹99,73,014.00 only.

10. Being aggrieved by the order of learned CIT-A, the assessee is in appeal before us.

11. Before us, the learned Authorised Representative reiterated that the adjustment was mechanical and unwarranted. He pointed out that the reconciliation of depreciation was clearly shown in the return of income and the assessee had already disallowed Companies Act depreciation and claimed only Income Tax Act depreciation. He submitted that no further adjustment was necessary and sustaining the addition would amount to a double disallowance. He accordingly prayed for deletion of the impugned addition.

12. The learned Departmental Representative supported the orders of the authorities below. He contended that there was a mismatch between the ITR and the Tax Audit Report and, therefore, CPC was justified in making the adjustment. According to him, the assessee had failed to demonstrate proper reconciliation and the disallowance sustained by the CIT(A) was correct.

13. We have carefully considered the rival submissions and perused the records. It is evident that the assessee had already made the

necessary adjustment in the return by disallowing depreciation as per Companies Act and claiming depreciation as per the Income Tax Act. The net impact of ₹99,73,014 was duly considered in the computation of income. CPC, however, made an adjustment by considering only the increase in profit without giving credit to the corresponding decrease in profit. Such an approach clearly leads to double disallowance, which cannot be sustained. It is further seen that the assessee had explained this position in its reply, but CPC as well as the learned CIT(A) did not take note of the same. This fact can be verified from pages 194 and 149 of the paper books where necessary details are placed. In our considered view, once the net effect of ICDS V adjustment has already been accounted for in the return of income, no further addition can be made. The adjustment sustained by the learned CIT(A) is not justified. We therefore direct the deletion of the addition of ₹99,73,014.00 made by the CPC and confirmed by the Id. CIT-A. Hence, the ground raised by the assessee is allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in court on 6th day of October, 2025

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 6th October, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore*