

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "D", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.268/Ahd/2025
निर्धारण वर्ष /Assessment Year : 2022-23

Kriteshwar Prasad Singh F.No.07, Lilac Bldg Godrej Sky Garden Takka, Panvel - 410 206	<u>बनाम/</u> <u>v/s.</u>	The Asst./Dy.CIT Circle-2(1)(1) Vadodara - 390 007
स्थायी लेखा सं./PAN: AHLPS 7784 H		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Bhupendra C. Meha, Adv.	
Revenue by :	Shri Abhijit Sr.DR	

सुनवाई की तारीख/Date of Hearing : 09/09/2025
घोषणा की तारीख /Date of Pronouncement: 29/10/2025

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

The present appeal has been preferred by the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 21/01/2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2022-2023.

2. The assessee has raised the following grounds of appeal:

"1. 143 1 a

The Ld Addl JCIT A grossly erred on facts and in law in dismissing the appeal without adjudicating the preliminary issue raised regarding the violation of statutory provision of Sec 143 1 a of the Income tax Act 1961 the Act in the form of

non issue and service of the notice by the Ld AO us 143 1 a of the Act before making the adjustment of Rs. 334000

2. 143 1

The Ld Addl JCIT A grossly erred on facts and in law in not considering and adjudicating the raised ground in the appeal that the addition made by the Ld AO is without jurisdiction and authority of law.

3. Sec 10 10AA ii wrongly disallowed

The Ld Addl JCIT A has grossly erred in law and is not justified in confirming the addition made by the Ld AO without deciding the involved question of law and not allowing the exemption exceeding RS 3 lakhs u s 10 10 AA ii of the Act considering the invalid Gazette Notification No 50588 E dated 31 05 2002 issued by CBDT effective 01.04.1998.

4. S 10 10AA II

On merit also, the exemption claimed by the appellant exceeding RS 3 lakhs is allowable.

5. Sec Addition alteration of ground of appeal.

Your appellant craves leave to add amend alter substitute modify any ground of appeal."

3. The brief facts of the case are that the appellant, an individual, filed his return of income for the Assessment Year 2022-23 on 13.07.2022 declaring total income of Rs. 89,76,970/-. The return was processed by the Centralized Processing Centre (CPC), Bangalore, and an intimation under section 143(1) of the Act was issued on 13.02.2023. In the said intimation, the CPC made certain adjustments to the returned income, thereby raising additional tax liability over and above the tax payable as per the return filed by the assessee. The adjustment primarily related to the claim of exemption under section 10(10AA) of the Act in respect of leave encashment on superannuation. The CPC restricted the exemption claimed by the assessee to Rs. 3,00,000/- as

against the amount of Rs. 6,34,000/- claimed as fully exempt, thereby making an addition of Rs. 3,34,000/- to the total income. The total income under section 143(1) of the Act was computed at a figure of Rs. 95,60,973/- as against Rs. 92,26,967/- declared by the assessee.

4. Aggrieved by the said intimation, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), contending that the adjustment made by the CPC was in violation of the principles of natural justice and contrary to the provisions of section 143(1)(a) of the Act. The assessee submitted that no prior intimation or opportunity of being heard was granted before making the said adjustment as mandated under the first proviso to section 143(1)(a) of the Act. It was further contended that the CPC did not have jurisdiction to make an adjustment involving a debatable issue of law, and the order was not a speaking one. On merits, the assessee contended that being an employee of Oil and Natural Gas Corporation (ONGC), which is a Central Government Public Sector Undertaking, he was entitled to full exemption of leave encashment under section 10(10AA)(i) of the Act, as applicable to Government employees. The assessee further placed reliance on judicial precedents including the decisions of ITAT Ahmedabad in *Arham Pumps vs. DCIT* (ITA No. 206/Ahd/2021, order dated 27.04.2022) and *Shri Devendrasingh Bhaskar vs. DCIT* (order dated 11.10.2023, AY 2020-21), wherein additions made under section 143(1)(a) without prior intimation were deleted for violation of principles of natural justice. The Commissioner of Income Tax (Appeals), however, did not accept the contentions of the assessee and dismissed the appeal. The CIT(A) observed that the appellant had received Rs. 6,34,000/- towards earned leave encashment on retirement and claimed the entire amount as exempt under section 10(10AA). As per the provisions of section 10(10AA) of the Act, exemption in respect of leave encashment is

available up to the least of the prescribed limits, and in the case of non-Government employees, such exemption is restricted to Rs. 3,00,000/-. The CIT(A) held that ONGC, though an undertaking of the Central Government, is not the Central Government itself, and therefore, its employees cannot be treated as Government employees for the purpose of availing full exemption. Accordingly, the exemption was correctly restricted by CPC to Rs. 3,00,000/- in accordance with law. The CIT(A) further noted that the CBDT Notification No. 31/2023 dated 24.05.2023 enhancing the limit of exemption for leave encashment to Rs. 25,00,000/- is applicable prospectively from 01.04.2023 and not to the year under appeal, i.e., Assessment Year 2022-23. In view of these findings, the appeal of the assessee was dismissed.

5. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. Before us, the ld. counsel for the assessee reiterated the submissions made before CIT(Appeals). In response, Ld. DR placed reliance on the observations made by CIT(Appeals) in the appellate order.

6. We have carefully considered the rival submissions, the material placed on record and the judicial precedents relied upon. The brief facts of the case have already been stated hereinabove. The core issue for adjudication before us is whether the Centralized Processing Centre (CPC), Bengaluru, was justified in making an adjustment under section 143(1) of the Act, restricting the assessee's claim of exemption under section 10(10AA) of the Act without issuing any prior intimation as required under the first proviso

to section 143(1)(a) of the Act. On perusal of the records and the submissions of both parties, it is evident that the CPC made the impugned adjustment to the returned income without issuing any prior intimation or affording any opportunity to the assessee as contemplated in the first proviso to section 143(1)(a) of the Act. The learned Departmental Representative has fairly conceded that there is no record of such prior intimation being issued to the assessee before making the adjustment. Section 143(1)(a) of the Act mandates that before making any adjustment to the returned income, the assessee must be given an intimation in writing or in electronic mode, setting out the nature of the proposed adjustment and providing an opportunity to respond within 30 days. The provision is couched in mandatory terms, and its object is to ensure adherence to the principles of natural justice, namely *audi alteram partem* – that no one should be condemned unheard. In this regard, the issue is squarely covered in favour of the assessee by several decisions of various Benches of the Tribunal. In **Devendra Singh Bhaskar v. DCIT [IT Appeal No. 431 (Ahd) of 2022, order dated 11.10.2023]**, the Coordinate Bench of the ITAT, Ahmedabad, after an elaborate consideration of the statutory provisions and earlier judicial pronouncements, held as under:

"10.2. As per first proviso to section 143(1)(a), the total income or loss shall be computed after making following adjustments namely (i) arithmetical error in the return, (ii) incorrect claim which is apparent from any information in the return, then CPC is entitled to make adjustments as per 1st proviso of Section 143(1)(a) by giving an intimation to the assessee either in writing or in electronic mode before making such adjustments. In response to first proviso, when the assessee replies the same shall be considered before making any adjustments u/s. 143(1)(a) and in case, the assessee fails to response within 30 days of issue of such intimation, the CPC is empowered to make such adjustments. Here, in this case, the assessee was not given any intimation as per 1st proviso to section 143(1)(a) of the Act and CPC straight away made adjustments in 143(1) proceedings and communicated to the assessee by reducing the refund claimed by the assessee. The assessee in his written submission also relied upon Co-ordinate Bench decision in the case of Arham Pumps v. DCIT in ITA No. 206/Ahd/2021 dated 27-04-2022 wherein it is held as follows:

"...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 ld.NAFC has not looked into this fundamental principle of "audi alterm 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 ld.NAFC 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."

11. Respectfully following the above decision of ours which was again challenged by the Revenue by way of an M.A. No. 59/Ahd/2022. The same was also dismissed by this Bench vide order dated 03-05-2023. Even in the present case, we notice that the intimation passed u/s. 143(1) dated 15-07-2021 is violation of 1st proviso to section 143(1)(a) of the Act by not offering hearing to the assessee. Therefore, the entire proceedings u/s. 143(1) is vitiated and invalid in law. Consequently, the intimation passed by CPC is hereby quashed. Thus we are not adjudicating the other grounds raised on merits of the case.

12. In the result, the appeal filed by the Assessee is allowed."

7. Similarly, in **Khilav Rajendrakumar Joshi v. DCIT [IT Appeal No. 33 (SRT) of 2024, dated 08.11.2024]**, the Co-ordinate Bench of the Tribunal held that any adjustment made under section 143(1) of the Act without issuance of a prior intimation as contemplated under the first proviso to section 143(1)(a) of the Act is contrary to the statutory mandate and violative of natural justice, thereby rendering such intimation invalid in law.

7.1. Further, in **Kailash Narayan Shridhar v. DCIT [2025] 177 taxmann.com 755 (Ahmedabad - Trib.)**, on identical facts involving

adjustment to the claim of exemption under section 10(10AA)(ii) of the Act, the Tribunal categorically held that CPC was not justified in making an adjustment to the assessee's claim of exemption without issuing prior intimation as contemplated under the proviso. It was held that the failure to comply with this mandatory procedural safeguard vitiates the entire proceedings, and therefore, the intimation issued by CPC under section 143(1) of the Act is invalid in law and liable to be quashed.

7.2. In **Income-tax Officer (Exemption) v. Camellia Educare Trust [2023] 152 taxmann.com 304 (Kolkata - Trib)**, it was held that in respect of any proposed adjustment, a prior intimation to the assessee in writing or electronically is mandatory, and any adjustment made without following this requirement is invalid. The Tribunal observed that the failure to issue such prior intimation amounts to denial of natural justice and renders the entire adjustment proceedings unsustainable in law.

8. In the light of the above binding judicial precedents and having regard to the admitted factual position that no prior intimation was issued to the assessee before making the impugned adjustment, we hold that the intimation issued by CPC, Bengaluru, under section 143(1) of the Act dated 13.02.2023 is invalid in law, being in violation of the first proviso to section 143(1)(a) of the Act and the fundamental principle of *audi alteram partem*. Accordingly, the intimation issued under section 143(1) of the Act is quashed.

9. In view of this finding, the other grounds raised by the assessee on the merits of exemption under section 10(10AA) have become academic and are not adjudicated upon.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 29/10/2025 at Ahmedabad.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/10/2025

टी. सी. नायर, व. नि. स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad