

**IN THE INCOME TAX APPELLATE TRIBUNAL
"K (SMC)" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No.8536/MUM/2025
(Assessment Year:2024-2025)**

Surendra Himmatlal Shah

A 501/502, Juhu Trishul CHS Ltd.,
Gulmohar Cross Road No.6, J V P D,
Juhu, Mumbai – 400049. Maharashtra
[PAN: AABPS6877L]

..... **Appellant**
Vs

**Deputy Commissioner of Income Tax
8(2)(1), Mumbai**

Aayakar Bhavan, Maharshi Karve Road,
Churchgate, Mumbai – 400020 Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Gopal Sharma &
Ms. Vaibhavi Bhagat
For the Respondent/Department : Shri Bhagirath Ramawat

Date

Conclusion of hearing : 16.02.2026
Pronouncement of order : 09.03.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the Order, dated 16/10/2025, passed by the Additional/Joint Commissioner of Income Tax (Appeals), Faridabad [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal against the Intimation Order, dated 17/01/2025, passed under Section 143(1) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2024-2025.

2. The Assessee has raised following grounds of appeal:

"1. *Considering the facts and circumstances of the case and in Law, the Add/.JCIT(A) erred in confirming the action of the Assessing*

Officer-CPC of levying tax at rate of 30% on royalty income of Rs.19,03,766/- as against lower tax rate of 10% as per Section 115BBF of the Act.

2. *Considering the facts and circumstances of the case and in law, the Addl./JCIT(A) failed to appreciate the fact that the Appellant has not been provided with an opportunity of being heard as mandated by first proviso to section 143(1) of the Act and hence the impugned order/intimation under section 143(1) of the Act is void ab initio and is liable to be quashed.*
3. *Considering the facts and circumstances of the case and in Law, when the Appellant has opted for lower tax rate of 10% on royalty income which was disclosed in the return filed u/s.139(1) of the Act, the action of the Addl/JCIT(A) and Assessing Officer-CPC in denying benefit of lower tax rate of 10% merely due to delay in filing Form 3CFA is erroneous and is liable to be quashed.”.*

3. The relevant facts in brief are that the Assessee is an individual aged around 91 years. The Assessee had developed a patent in India being 'Frost Free Sub Zero Air Conditioner' bearing Patent Number 200821315328 registered on 15/12/2008. Assessee filed Original Return of Income for the Assessment Year 2024-2025 on 18/07/2024 declaring total income of INR.35,63,940/- and offered to tax royalty income of INR.19,03,766/- at special rate of 10% under Section 1158BF of the Act. The aforesaid return of income was processed by the Centralised Processing Centre, Income Tax Department, Bengaluru (hereinafter referred to as '**Assessing Officer-CPC**') and Intimation under Section 143(1), dated 17/01/2025 [hereinafter referred to as the '**Intimation Order**'] was passed. In the Intimation Order, the Assessing Officer-CPC taxed the royalty income of INR.19,03,766/- at the slab rate of 30% as against special tax rate of 10% under Section 115BBF of the Act as claimed by the Assessee. Further the Assessing Officer-CPC also failed to grant credit of tax deducted at source amounting to INR.72,000/-.

4. On 15/02/2025 the Assessee filed Form 3CFA for the Assessment Year

2024-2025 as per provisions of Section 115BBF of the Act. Thereafter, on 26/04/2025, the Assessee instituted appeal before the CIT(A) against the Intimation Order along with application seeking condonation of delay of 69 days in filing the said appeal. The Learned CIT(A) condoned the aforesaid delay. However, the Learned CIT(A) rejected Assessee's claim for grant to special tax rate of 10% under Section 115BBF of the Act on the ground that the Assessee had failed to file Form 3CFA on or before the due date of filing return of income for the Assessment Year 2024-2025.

5. Being aggrieved, the Assessee has now preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. We have considered the rival submissions and have perused the material on record.
7. Section 115BBF of the Act provides for beneficial rate of tax of 10% in respect royalty income earned by Indian resident from patent developed and registered in India. Filing of Form 3CFA is the mandatory declaration to avail the aforesaid concessional 10% tax rate under Section 115BBF of the Act. As per Section 115BBF(3) read with Rule 5G of the Income Tax Rules, 1962, the prescribed Form 3CFA must be filed on or before the due date of filing return of income under Section 139(1) of the Act. It is admitted position that the Assessee did not file Form 3CFA before the due date of filing return of income. During the course of hearing it was contended by the Learned Authorised Representative for the Assessee that no notice/intimation as mandated by Section 143(1)(a) of the Act was received by the Assessee. This prevented the Assessee from filing Form 3CFA before the prescribed time. It was pointed out that the Assessee had filed return of income within time and had claimed benefit of Section 115BBF of the Act. Per contra, the Learned Departmental Representative vehemently contended that there was no infirmity in

the Intimation Order. The Learned CIT(A) has noted that the Assessee had not filed Form 3CFA within prescribed time. Since the facts were apparent, there was no requirement of issuance of intimation in the present case before the issuance of Intimation Order. In this regard, we note that during the course of hearing the Learned Authorised Representative for the Assessee had placed reliance upon the decision of the Tribunal in the case of **Kalpesh Synthetics Pvt. Ltd. vs. Deputy Commissioner of Income-tax** [2022] 137 taxmann.com 475 (Mumbai - Trib.). In that case the Mumbai Bench of the Tribunal had held that the First Proviso to Section 143(1) of the Act mandates that no adjustment under Section 143(1)(a) of the Act shall be made unless an intimation is given to the Assessee of such adjustments either in writing or in electronic mode. Unlike the earlier scheme of 'prima facie adjustments', the scheme of present Section 143(1) of the Act does not involve a unilateral exercise. The Assessee receiving the intimation as per First Proviso to Section 143(1) of the Act gets an opportunity to raise objection to the proposed adjustment which the Assessing Officer-CPC is required to dispose. Such disposal of objections is a quasi judicial function requiring application of mind and setting out of specific reasons for rejection of the objections. Thus, issuance of intimation in terms of First Proviso to Section 143(1) of the Act forms essential part of the aforesaid quasi judicial process. The relevant extract of the decision of the Mumbai Tribunal reads as under:

"6. Coming to the mechanism of application of section 143(1), we find that the first proviso to section 143 (1) mandates 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" and, under the second proviso to section 143(1), "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". The scope of permissible adjustments under section 143(1)(a) now is thus much broader, and, as long as an adjustment fits the description under section 143(1)(a) (i) to (v), read with Explanation to section 143(1), such an adjustment,

subject to compliance with first and second proviso to section 143(1), is indeed permissible. It is, however, important to take note of the fact that unlike the old scheme of 'prima facie adjustments' under section 143(1)(a), the scheme of present section 143(1) does not involve a unilateral exercise. The very fact that an opportunity of the assessee being provided with an intimation of 'such adjustments' [as proposed under section 143(1)], in writing or by electronic mode, and "the response received from the assessee, if any" to be "considered before making any adjustment" makes the process of making adjustments under section 143(1), under the present legal position, an interactive and cerebral process. When an assessee raises objections to proposed adjustments under section 143(1), the Assessing Officer CPC has to dispose of such objections before proceeding further in the matter- one way or the other, and such disposal of objections is a quasi judicial function. Clearly, the Assessing Officer CPC has the discretion to go ahead with the proposed adjustment or to drop the same. The call that the Assessing Officer CPC has to take on such objections has to be essentially a judicious call, appropriate to facts and circumstances and in accordance with the law, and the Assessing Officer CPC has to set out the reasons for the same. Whether there is a provision for further hearing or not, once objections are raised before the Assessing Officer CPC and the Assessing Officer CPC has to dispose of the objections before proceeding further in the matter, this is inherently a quasi judicial function that he is performing, and, in performing a quasi judicial function, he has to set out his specific reasons for doing so. Disposal of objections cannot be such an empty formality or meaningless ritual that he can do so without application of mind and without setting out specific reasons for rejecting the same. Let us, in this light, set out the reasons for rejecting the objections. The Assessing Officer-CPC has used a standard reason to the effect that "As there has been no response/the response given is not acceptable, the adjustment(s) as mentioned below are being made to the total income as per provisions of section 143(1)(a)", and has not even struck off the portion inapplicable. To put a question to ourselves, can such casually assigned reasons, which are purely on a standard template, can be said to be sufficient justifications for a quasi judicial decision that the disposal of objections inherently is? The answer must be emphatically in negative. It is important to bear in mind the fact that intimation under section 143(1) is an appealable order, and when consideration of objections raised by the assessee is an integral part of the process of finalizing the intimation under section 143(1) unless the reasons for such rejection are known, a meaningful appellate exercise can hardly be carried out. When the

first appellate authority has no clue about the reasons which prevailed with the Assessing Officer- CPC, in rejecting the submissions of the assessee, because no such reasons are indicated by the Assessing Officer CPC anyway, it is difficult to understand on what basis the first appellate authority sits in judgment over correctness or otherwise of such a rejection of submissions. Whether the statute specifically provides for it or not, in our considered view, the need for disposal of objections by way of a speaking order has to be read into it as the Assessing Officer CPC, while disposing of the objections raised by the assessee, is performing a quasi judicial function, and the soul of a quasi judicial decision making is in the reasoning for coming to the decision taken by the quasi judicial officer. While on this aspect of the matter, we may usefully refer to the observations made by the Hon'ble Supreme Court, in the case of *Union Public Service Commission v. Bibhu Prasad Sarangi* [2021] 4 SCC 516. While these observations are in the context of the judicial officers, these observations will be equally applicable to the decisions by the quasi judicial officers like us as indeed the Assessing Officer CPC. In the inimitable words of Hon'ble Justice Chandrachud, Hon'ble Supreme Court has made the following observations:

..... Reasons constitute the soul of a judicial decision. Without them, one is left with a shell. The shell provides neither solace nor satisfaction to the litigant. We are constrained to make these observations since what we have encountered in this case is no longer an isolated aberration. This has become a recurring phenomenon.How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary.

7. These observations of Their Lordships apply equally, and in fact with much greater vigour, to the quasi judicial functionaries as well. Viewed thus, reasons in a quasi judicial order constitute the soul of the quasi judicial decision. A quasi judicial order, without giving reasons for arriving at such a decision, is contrary to the way the functioning of the quasi judicial authorities is envisaged. A quasi judicial order, as a rejection of the objections against the proposed adjustments under section 143(1) inherently is, can hardly meet any judicial approval when it is devoid of the cogent and specific reasons, and when it is in a standard template text format with clear indications that there has not been any application of mind as even the inapplicable portion of the template text, i.e. whether there was no response or whether the response

is unacceptable, has not been removed from the reasons assigned for going ahead with the proposed adjustment under section 143(1).....” (Emphasis Supplied)

8. Therefore, we reject the contention of the Revenue that the requirement of giving intimation to an Assessee in terms of First Proviso to Section 143(1) of the Act can be done away with in a case where the facts are apparent. In our view, the mandate of First Proviso to Section 143(1) of the Act is to be met by giving intimation to the assessee, either in writing or in electronic form, in all cases where adjustment is to be made in terms of Section 143(1) of the Act. In the present case, we note that the Learned CIT(A) has returned following finding in paragraph 5.2 of the order:

"5.2. On perusal of information available on system i.e. CPC 2.0, it is observed that no communication letter/intimation was issued by the CPC to the appellant proposing the said adjustment under Section 143(1)(a). Further, on perusal of the intimation order, it is observed that no reason was specified by CPC for applying higher tax rate of 30% on the royalty income, as against the lower tax rate of 10% claimed by the appellant in his return of income for the year under consideration."

9. The above finding has not been challenged by the Revenue. Further, there is nothing on record to controvert the same. The Learned CIT(A) has recorded that no intimation was issued to the Assessee before making the adjustment under Section 143(1) of the Act. Further, no reason has been provided for the adjustment made. We have already noted hereinabove that in the case of Kalpesh Synthetics Pvt. Ltd. (supra) the Tribunal had held that it is mandatory for Assessing Officer – CPC to give intimation to the assessee in terms of First Proviso to Section 143(1) of the Act before making the adjustment; and it is also mandatory for the Assessing Officer – CPC to give reasons for making the adjustment. Since in the present case both are absent, respectfully following the decision of the Tribunal in the case of Kalpesh Synthetics

Pvt. Ltd. vs. Deputy Commissioner of Income-tax [2022] 137 taxmann.com 475 (Mumbai - Trib.), we set aside the Intimation Order, dated 17/01/2025, passed under Section 143(1) of the Act. As a result, the additional demand raised upon the Assessee vide Intimation Order, dated 17/01/2025, stands deleted. Thus, Ground No. 2 raised by the Assessee is allowed.

10. Since we have allowed Ground No. 2, the issues raised in Ground No. 1 & 3 raised by the Assessee in the present appeal are left open and are not adjudicated upon. Therefore, Ground Nos. 1 & 3, having been rendered academic are dismissed as infructuous.
11. In terms of above, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 09.03.2026.

Sd/-
(Bijayananda Pruseth)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 09.03.2026
Milan, LDC

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.

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai