

आयकर अपीलीय अधिकरण
मंबई पीठ "ई" मंबई
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.1263 /मुं/ 2022 (नि.व. 2019-20)
ITA NO.1263 /MUM/2022(A.Y.2019-20)

M/s. T. Bhimjyani Warehousing Cold
Chain Private Limited,
301, A-Wing 3rd Floor, Fortune 2000,
Bandra Kurla Complex(BKC),Mumbai – 400 051
PAN:AACCR-2371-Q

..... अपीलार्थी /Appellant

बनाम Vs.

The Deputy Commissioner of Income-tax,
Circle – 14(3)(1) Mumbai,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी /Respondent

आअसं.1264 /मुं/ 2022 (नि.व. 2019-20)
ITA NO.1264 /MUM/2022(A.Y.2019-20)

M/s. T. Bhimjyani Realty Private Limited,
301, A-Wing 3rd Floor, Fortune 2000,
Bandra Kurla Complex(BKC),Mumbai – 400 051
PAN:AAFRCR-4733-F

..... अपीलार्थी /Appellant

बनाम Vs.

The Deputy Commissioner of Income-tax,
Circle – 14(3)(1) Mumbai,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharan Gandhi

प्रतिवादी द्वारा/Respondent by : Shri Prakash Mane, CIT-DR &
Ms.Nilu Jaggi,Sr.AR

सुनवाई की तिथि/ Date of hearing : 06/09/2022

घोषणा की तिथि/ Date of pronouncement : 02/12/2022

आदेश/ ORDER**PER VIKAS AWASTHY, JM:**

These two appeals have been filed by two different assessees (from the same group) for Assessment Year 2019-20. Since, the issue raised in both the appeals are similar, these appeals are taken up together for adjudication and are decided by this common order. For the sake of convenience the facts are narrated from ITA No.1263/Mum/2022.

ITA No. 1263/Mum/2022, A.Y. 2019-20:

2. This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)] dated 25/03/2022 for the Assessment Year 2019-20.

3. Shri Dharan Gandhi appearing on behalf of the assessee narrating the facts of case submits, that the assessee filed its return of income for Assessment Year 2019-20 on 10/10/2019 declaring total income of Rs.88,77,030/-. The assessee received communication dated 14/02/2020 from Central Processing Centre of Income Tax Department (in short 'CPC') highlighting certain inconsistencies in the return of income and proposed to make adjustment u/s. 143(1)(a) of the Income Tax Act, 1961 [in short 'the Act']. The inconsistency pointed by CPC are as under:

- “(i) In Schedule BP, Sl.No.32. Any amount disallowed under section 43B in any preceding year but allowable during the previous year(10h of Part A-OI) is not consistent with amount shown in Sl.No.10.h. Total amount allowable under section 43B(total of 10a to 10g) in schedule OI.*
- (ii) In Schedule BP, Sl.No. 18, Any amounts debited to the profit and loss account to the extent disallowable under section 43B is not consistent with amount shown in Sl.No.11.h. The total amount disallowable under section 43B(total of 11a to 11g) in schedule OI.*

- (iii) *In Schedule BP, Sl.No. 14. Amounts debited to the profit and loss account, to the extent disallowable under section 36(6s of Part A-O) is not consistent with amount shown in Sl.No.6.s. Total amount disallowable under section 36(total of 6a to 6r) of Part-OI.”*

The assessee in response to the notice filed reply and submitted that the error was due to punching. However, the assessee gave the reasons for not making adjustments as proposed. The Id. Counsel for the assessee pointed that CPC without considering the submissions of the assessee passed order dated 09/05/2020 u/s. 143(1) of the Act. The Id. Counsel for the assessee submits that a perusal of the intimation dated 09/05/2020 would show that the submissions made by the assessee have been rejected in a mechanical manner without application of mind. The said order without referring to the submissions merely states, “ *As there has been no response/the response given is not acceptable the adjustments as mentioned below are being made to the total income as per the provisions of section 143(1)(a) of the Act*”. The Id. Counsel for the assessee contended that the order passed u/s.143(1) of the Act is a quasi judicial order, therefore, before rejecting the reply furnished by the assessee reasons should have been given. To support his submissions he placed reliance on the decision in the case of Kalpesh Synthetics P. Ltd. vs. DCIT, 195 ITD 142 (Mum-Trib).

3.1 The Id. Counsel for the assessee submits that aggrieved by the order dated 09/05/2020, the assessee filed appeal before the CIT(A). The CIT(A) erred in holding that the CPC is competent to make prima-facie adjustments based on Income Tax return and Tax Audit Report. In case the assessee has committed any error it is solely by way of revised return the error could be rectified. The CIT(A) confirmed the addition in so far as amount disallowed u/s. 43B of the Act Rs.63,48,767/- and the addition/disallowance on account of

disallowance u/s. 43B of the Act qua service tax liability pertaining to Assessment Years 2017-18 and 2018-19 Rs.37,59,524/-.

3.2 The Id. Counsel for the assessee submits that in so far as allowability of Rs.63,48,767/-, the amount was correctly shown in Schedule-BP, however, due to punching error the same remain to be reflected in Schedule -OI. Similarly, in respect of provident fund, superannuation, gratuity and other funds, the amount remain to be reflected in Form 3CD. The Id. Counsel for the assessee prayed that the assessee should not be allowed to suffer merely on technicalities.

4. Per contra, Shri Prakash Mane representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that if there was any error in punching at the time of filing of return, the right course of action available to the assessee was to file revised return of income. The assessee had sufficient time to file revised return, however, for the reasons best know to the assessee, the assessee choose not to correct the alleged error in the return of income. The Id. Departmental Representative further submits that the assessee could have filed rectification petition before CPC u/s. 154 of the Act instead of filing appeal before the CIT(A). The CIT(A) cannot accept additional evidences. Further, no appeal is maintainable against the order u/s. 143(1) of the Act.

5. The Id. Authorized Representative for the assessee rebutting the submissions made on behalf of the Department referred to Centralised Processing of Return Scheme 2011 in Notification No.S.O.16(E) [NO.2/2012 (F.NO. 142/27/2011-SO(TPL)] Dated 04/01/2012. The Id. Counsel for the assessee asserted that Clause -11 of the Scheme provides for mechanism of

appeal against the order passed by CPC processing the return of income. The Id. Counsel for the assessee further pointed that a perusal of order passed u/s. 143(1) of the Act would show that option is given to the assessee either to file response to the show cause notice u/s. 143(1)(a) of the Act or to file revised return. The assessee has opted for one of the options given in the show cause notice. Now, the Revenue cannot reject the reply furnished by the assessee on the pretext that the assessee should have filed revised return of income. The Id. Counsel for the assessee further submits that a bare perusal of the provisions of Section 246A(1)(a) of the Act would show that an intimation under sub-section (1) of section 143 is an appealable order. To further strengthen his point the Id. Counsel for the assessee placed reliance on the decision in the case of Balmukund Acharya vs. DCIT, 310 ITR 310 (Bom).

6. Both sides heard, orders of authorities below examined. The assessee in appeal has assailed disallowance u/s. 43B of the Act. A bare perusal of the return of income filed by the assessee shows that the assessee in Schedule –BP gas reflected the amount of Rs.63,48,767/- as an amount disallowed u/s. 43B of the Act in preceding previous year but allowable during previous year. However, the said amount was not reflected in Schedule – OI. Not mentioning of the aforesaid amount in Schedule – OI is merely a technical defect, therefore, the same should not have been disallowed to the assessee in appellate proceedings.

7. Similarly, in respect of disallowance of Rs.37,59,524/- the said amount remain to be punched. The assessee explained the position in reply to notice issued by the CPC u/s. 143(1)(a) of the Act . However, the CPC without taking note of the submissions of the assessee proceeded to make adjustment.

8. A perusal of the intimation dated 915/2020 would show that CPC in a mechanical manner processed the return of income without even taking cognizance of the reply filed by the assessee in response to notice dated 17/02/2020. The only remark in the said intimation is that *“there has been no response/the response given is not acceptable”*.

The Tribunal in the case of *Kalpesh Synthetics P. Ltd. vs. DCIT(supra)* in an unambiguous terms has held that the order passed by CPC is a quasi judicial order it is not merely a formality or meaningless ritual that can be done without application of mind. A specific reason has to be given for rejecting the reply of the assessee. For the sake of completeness the relevant observations in the aforesaid decision are reproduced herein below:

“ 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 quasijudicial 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 and Ors., [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."

9. The Id. Departmental Representative has raised objection that the order passed u/s. 143(1) is not appealable. The above arguments made by Id. Departmental Representative are contrary to the provisions of section 246A of

the Act. Section 246(1)(a) of the Act provides that intimation u/s. 143(1) is appealable. Similarly, CBDT vide notification dated 04/01/2012(supra) has also clarified that against intimation by CPC u/s. 143(1) of the Act remedy of appeal is available. Therefore, there is no element of doubt with respect to remedy of appeal available to the assessee against intimation u/s. 143(1).

10. Thus, taking into consideration entire facts of the case we deem it appropriate to restore the issue to the Assessing Officer to examine, but for the punching/technical error, if otherwise the claim of the assessee is allowable, the same should be allowed, in accordance with law. In the result, appeal is allowed for statistical purposes.

ITA No. 1264/MUM/2022, A.Y. 2019-20:

11. This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)] dated 25/03/2022 for the Assessment Year 2019-20.

12. The Id. Counsel for the assessee submits that the grounds raised in the appeal are similar to the one raised in the appeal in ITA No.1263/Mum/2022, therefore, the submissions made in the said appeal would equally apply to the present appeal.

13. The Id. DR fairly admits that the issue raised in the present appeal is similar to the one raised in ITA No.1263/Mum/2022.

14. Both sides heard. A perusal of the impugned order shows that the CIT(A) has rejected the appeal of assessee primarily for the similar reasons as was in the case of M/s. T. Bhimjyani Warehousing Cold Chain Private Limited decided above. The assessee received show cause notice from CPC to which

the assessee furnished reply. Without considering the reply of assessee, the CPC processed the return of income making adjustment. In principle, we concur that the CPC should have considered the reply of assessee and thereafter, if not convinced should have rejected the reply by passing a detailed order. Since, the facts for rejecting the claim of assessee are similar to ITA No. 1263/Mum/2022, the appeal of the assessee is allowed for statistical purpose with similar directions.

15. To sum up, appeal of assessees in ITA No.1263/Mum/2022 and ITA No.1264/Mum/2022 are allowed for statistical purpose.

Order pronounced in the open court on Friday the 2nd day of December, 2022.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/12/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

Asstt. Registrar, ITAT, Mumbai