

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 2285/Mum/2024
(Assessment Year : 2020-21)**

Add More Real Estate Developers LLP, A-501, Gladdiola, Old Hanuman Road Vile Parle East, Mumbai-400 057 PAN : AB DFA7645R	vs	The Asst. Director of Income-tax, CPC, Bengaluru
APPELLANT		RESPONDENT

Assessee by : Ms. Aarti Vissanji & Prabhudesai

Respondent by : ShriManoj Kumar Sinha (SR.DR.)

Date of hearing : 04/07/2024

Date of pronouncement : 09/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the Learned Commissioner of Income-tax Addl / JCIT(A)-1, Hyderabad [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2020-21, passed on dated 16.03.2024. The impugned order was

emanated from the order of the CPC, Bengaluru (in short, 'the A.O. '), passed under section 143(1) of the Act, date of order 24/12/2021.

2. The assessee has taken the following grounds of appeal:-

"In the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have held that the adjustment made by the Ld. ADIT, CPC of denial of claim of exemption u/s. 10(2A) of the Act in respect of share of profit (net of loss) derived by the appellant in the capacity as a Partner of Rs.1,83,17,026/- by invoking the provisions of Section 143(1)(a)(ii) of the Act is illegal and bad-in-law since the same is made:

(a) By merely emailing the Intimation u/s. 143(1)(a) on 22.12.2021 without mentioning therein the nature of the proposed adjustment, the amount and the reasons for the adjustment proposed as well as without uploading the captioned Intimation on the portal prior to making the captioned adjustment being in violation of the condition stipulated under 1st proviso to Section 143(1)(a),

(b) By not granting an opportunity to the appellant to submit its reply in response to the adjustment so proposed being in violation of the condition stipulated under 2nd proviso to Section 143(1)(a) and

(c) Without application of mind by ignoring the fact that there is proper reporting and disclosure of the nature of income, amount thereof and name(s) of the Firms in which the appellant is a Partner in ITR and Tax Audit Report duly uploaded within the prescribed time in compliance with applicable provisions of the Act.

Without prejudice to Ground No. 1 above and in the alternate:

2. *In the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have held as under:*

(a) Keeping in view the infirmities as mentioned in Ground No. 1 of the appeal before the Ld. CIT(A), the Intimation passed by the Ld. ADIT, CPC is bad-in-law.

- (b) *The appellant's claim of exemption u/s. 10(2A) of the Act representing the share of profit (net of loss) derived in the capacity as a Partner of the Firm(s) as detailed hereunder inclusive of for the assessment year 2019-20 cannot be assessed as income for the year under appeal and accordingly, ought to have directed the Ld. ADIT, CPC to grant exemption u/s. 10(2A) of the Act of Rs.1,83,17,026/-:*

S.No.	Name of the Firm	A.Y.	Share of Profit	Share of loss(Rs.)	Net amount claimed exempt u/s 10(2A)
1	Unique Real Estate Developers	2019-20	2,12,17,019	-	2,12,17,019
2	Aspen Real Estate Developers LLP	2019-20	-	339	(339)
		2020-21	779	-	779
3	Sanskar Dwelling LLP	2019-20	-	2,376	(2,376)
4	Vertizo Resources Management LLP	2020-21	-	13,92,188	(13,92,188)
Total			2,12,17,798	29,00,772	1,83,17,026

3. *It is humbly prayed that the reliefs as prayed for hereinabove and / or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.*

4. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."*

3. The brief facts of the case are that the assessee is a partner of different firms. The assessee claimed the deduction under section 10(2A) as profit from

Partnership Firm amount to Rs.1,83,17,026/- during filing of return under section 139(1) of the Act. The return was processed and intimation for adjustment of income was issued to the assessee on dated 22/12/2021. As per the assessee, no window was open to reply the intimation issued by the Ld.AO in the web portal. Finally, after two days, the intimation order U/s 143(1) of the Act was issued to the assessee on dated 24/12/2021 with addition deduction claimed U/s 10(2A) of the Act. Within two days after the issuance of intimation, the order U/s 143(1) was issued. The grievance of the assessee is on both legal ground and on merit of the case. The claim of deduction U/s 10(2A) is related to share of profit from partnership firm is purely exempt under the Act. Further, Ld.AO violated the second Proviso of section 143(1) of the Act. Being aggrieved, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), after hearing the assessee, upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR filed a written submission which is kept in record. The Ld.AR first argued that the intimation for adjustment of demand duly informed to assessee on dated 20/12/2021. When the assessee proceeded to reply the intimation of the Ld.AO, there was no impression in the window in the website of the Income-tax Portal. So assessee was unable to comply the notice passed by the Ld.AO. Finally, within 2 days, the intimation was issued under section 143(1) of the Act and the demand was raised. The Ld.AR argued that there is a violation of 2nd Proviso of section 143(1) where the adjustment of income was done without allowing the 30 days time. Therefore, the entire intimation should be quashed.

5. The Ld.DR argued and relied on the order of the Revenue authorities. The Ld.DR placed that the assessee has declared this income in the P&L Account as an income and later on the amount was reduced from the income as exempted

income and claimed the deduction under section 10(2A) which is duly not accepted. But in argument of legal issue, the Ld.DR remained silent. The relevant part of the appeal order is duly reproduced as below:-

“1.It is evident from the above P and L account that appellant has claimed Rs. 1,83,17,026/- and claimed the same is exempt from tax u/s 10(2A) of the Act during the AY 2020-21 only.

2. In view of the above submissions of the appellant it is evident that the share of profit from the

3. It is trite to add that in reply to the notices 04.03.2024 and 14.03.2024, referred supra, the appellant has submitted that return of income of the concerns for the AY 2019-20 but for the year under consideration, i.e., AY 2020-21.

4. The quantum of share of profit admitted in the appellant's financial statements and those in the concerns is non-verifiable and according to the appellant, they are different.

5. The share of profit is has been claimed exempt from tax u/s 10(2A) of the IT Act in the return but appellant has failed to prove the same by one way not submitting the returns of the firms from which the share of profit was stated to have been earned and on the other hand submitting the self contradictory statement that the profit was earned in two years and claimed in the year under consideration. Thus, the appellant's claim is prima facie wrong.

6. Thus, there no infirmity in the intimation made by the CPC and accordingly, it upheld and the claim of the appellant is prima facie wrong and ineligible to exemption of tax u/s 10(2A) of the IT Act.

7.1. In view of the above, I'm of the considered opinion that appellant is NOT entitled for claiming exemption of Rs. 1, 83,17,026/- u/s 10(2A) of the IT Act. Hence, these grounds of appeal of the appellant are dismissed.

8.1. Ground No.3: Determination of gross tax payable under normal provisions of the Act. Upon granting relief as prayed for vide Ground No.1 and 2 here-in-above, the ADIT, CPC be directed to delete the demand raised of Rs.65,36,212/- in its entirety.

8.1.1 This ground is contingent on the decision on the grounds 1 and 2 and therefore doesn't.

*8.2. Ground No.4: **Interest u/s, 234 of the Act.** Upon granting relief as prayed for vide Ground No. 1 to 3 herein-above, the ADIT, CPC be directed to delete the additional interest quantified u/s. 234 aggregating to Rs. 18,81,1987- in its entirety.*

8.2.1 Charging of interest is consequential in nature and doesn't require to be adjudicated.

9.0. As a result, appeal of the appellant is dismissed."

6. We hear the rival submission and considered the documents available in the record. The addition was made on the basis of the profit received by the assessee from the different partnership firms total amount to Rs.1,83,17,026/- which is liable for exemption under section 10(2A) of the Act. But in case of legal issue, the intimation was issued and within two days, the final order U/s 143(1) of the Act was passed which entirely violated the 2nd Proviso of section 143(1) of the Act. Here, a quick look on section 143(1) of the Act and 2nd Provision as below:-

“143. ¹⁸[(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; ²³[***]

(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 or increase in income indicated] in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading “C.-Deductions in respect of certain incomes”, 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;]

(Emphasis Supplied)

In our considered view, the Ld.AO passed the order beyond the jurisdiction and liable to be quashed. Accordingly, the impugned appeal order is set aside and the addition of Rs.1,83,17,026/- is deleted. As the legal ground of the assessee is succeeded, the ground on merit is only remain for academic purposes.

7. In the result, the appeal of the assessee bearing **ITA 2285/Mum/2024** is allowed.

Order pronounced in the open court on 9th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 09/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai