

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1375/KOL/2023
Assessment Year: 2020-2021**

***Majhulia Sugar Industries Pvt. Ltd.,.....Appellant
10, Camac Street, 15th Floor,
Kolkata-700017, West Bengal
[PAN:AAJCM8867F]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-10(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri B.K. Chaturvedi, Advocate, appeared on behalf of the
assessee*

*Shri B.K. Singh, JCIT, Sr. D.R. appeared on behalf of the
Revenue*

Date of concluding the hearing : April 10, 2024

Date of pronouncing the order : April 30, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Addl./JCIT(Appeals)-12, Mumbai dated 23rd October, 2023 passed for assessment year 2020-21.

2. The assessee has taken three grounds of appeal. However, its grievances revolve around a single substantial issue, namely whether a payment made towards environmental compensation is to be construed as penal in nature or just a payment in compensatory in nature.

3. The admitted facts are that the assessee has filed its return of income. It has debited an expenditure of Rs.64,70,000/-, which was paid on the directions of the Central Pollution Control Board for violating environmental norms. The assessee has claimed this payment as compensatory in nature, which ought to have been allowed it.

4. The ld. Assessing Officer while processing the return under section 143(1) disallowed this claim of the assessee and appeal to the ld. Addl./JCIT(Appeals)-12, Mumbai did not bring any relief to the assessee.

5. With the assistance of ld. Representatives, we have gone through the record carefully. Before the ld. 1st Appellate Authority, the assessee has explained that the scope of disallowance ought to have been made by the CPC under section 143(1). The assessee has made reference to Memorandum to Finance Bill, 2008 as well as Finance Bill, 2016. These submissions have been noticed by the ld. Addl./JCIT(Appeals) from paragraphs no. 3.1 to 3.6. For completeness of the finding, we deem it appropriate to take note of these submissions, which read as under:-

“3. Ground No. 1 – In this ground, the appellant has contended that the order passed by the CPC is illegal and bad in law.

3.1. In this regard, the question arises whether adjustments can be made by the CPC under section 143(1)(a) of the Act while processing the return filed by the assessee wherein an incorrect claim is apparent from any information in the return or not. The Memorandum of Finance Bill 2008 and Finance Bill, 2016 are being reproduced as it is:-

3.2. Memorandum to Finance Bill, 2008 Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralised Processing of Returns. Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income. In India, the scheme of summary assessment being in force since the 1st day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss. With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return:- (a) any arithmetical error in the return; or (b) an incorrect claim, if such incorrect claim is apparent from any information in the return. Further it is proposed to clarify the meaning of the term “an incorrect claim apparent from any information in the return”. This term shall mean such claim on the basis of an entry, in the return,- (a) of an item, which is inconsistent with another entry of the same or some other item in such return; (b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; or (c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction. Further, these adjustments will be made only in the course of computerized processing without any human interface. In other words, the software will be designed to detect arithmetical inaccuracies and

internal inconsistencies and make appropriate adjustments in the computation of the total income.

3.3. Further, in Memorandum to Finance Bill 2016, Legislative framework was done to enable and expand the scope of electronic processing of information in order to expeditiously remove the mismatch between the return and the information available with the Department, to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section 143 so that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A.

3.4. From the above Memorandum to Finance Bill, 2008 & 2016 explaining the provisions of section 143(1)(a)(ii), specifies the incorrect claim particularly if such incorrect claim is apparent from any information in the return of income and that can be any information as such as the audit report or some other information as provided by assessee in the return of income. In this context, it is pertinent to mention that earlier only prima-facie arithmetic adjustments can be made but in view of the amendment provisions by the Finance Act, 2008 w.e.f. 01.04.2008, the amended provisions empowers adjustments to be made inter alia on the basis of remarks indicated in the return of income or incorrect claim apparent from any information in the return of income. Post amendment w.e.f. 01.04.2008, the scope of adjustment u/s.143(1) of the Act has widened and enlarged. It provides that total income shall be computed after making adjustments inter-alia on account of incorrect claim, if such incorrect claim is apparent from any information in the return of income.

3.5. In this regard, the reliance placed by the appellant on the judgment of Kvaerner John Brown Engg. (India) P. Ltd. and Modern Fibotex India were examined and it was found that the matter has been settled recently by the Finance Act, 2016, wherein the scope of adjustments was widened and enlarged.

3.6. In the present case, the adjustment u/s. 143(1)(a) has been made on the basis of incorrect claim which is apparent from information in the return of as provided by appellant.

6. The solitary issue before us is that whether this payment is compensatory or penal in nature, is a question, which is a question of fact. Such question is quite debatable and according to our understanding, this cannot fall within the ambit of section 143(1),

where arithmetical mistakes and adjustment of incorrect claim are to be looked into by a software while processing the return. It would be a different position, if assessment of the assessee was taken for scrutiny and after confronting the assessee, the Assessing Officer would have decided this issue but in our understanding in a proceeding under section 143(1), such disallowance cannot be made. The Id. Assessing Officer has nowhere examined the order of the Pollution Control Board asking the assessee to make the payment. Every payment made by the assessee would not be in penal in nature, therefore, disallowance is not sustainable. We allow this ground of appeal and delete the disallowance.

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

Order pronounced in the open Court on 30/04/2024.

Sd/-	Sd/-
(Rajesh Kumar)	(Rajpal Yadav)
Accountant Member	Vice-President (KZ)
<i>Kolkata, the 30th day of April, 2024</i>	

*Copies to : (1) Majhulia Sugar Industries Pvt. Ltd.,
10, Camac Street, 15th Floor,
Kolkata-700017, West Bengal*

*(2) Income Tax Officer,
Ward-10(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

(3) ADDL/JCIT(A)-12, Mumbai;

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.