

## **ITAT: Sec.143(1) adjustment inconsequential sans corresponding addition in assessment order; Doctrine of Merger applicable**

Oct 17, 2023

National Stock Exchange of India Limited [TS-611-ITAT-2023(Mum)]

### **Conclusion**

Mumbai ITAT holds that the adjustments made under Section 143(1) do not survive if no corresponding addition is made in the assessment order since the CPC intimation merges into the assessment order; ITAT observes that the case of NSE (Assessee) was subject to complete scrutiny and further queries could have been raised during the course of assessment proceedings, however no query on the issue pertaining to adjustment under Section 143(1) was ever raised during the assessment proceedings; Thus, holds that the final order is the assessment order passed under Section 143(3) r.w. Section 144B and not the intimation passed by CPC under Section 143(1); Observes that *“as the case of assessee was scrutinized u/s. 143(2) and assessment order u/s. 143(3) was passed, technically the doctrine of merger comes into picture, therefore the impugned adjustment by CPC gets merged into order passed u/s. 143(3) of the Act and order passed u/s. 143(3) only survives”*; Opines that, *“Effectively, when order passed by AO u/s. 143(3) r.w.s. 144B of the Act is final and therein no such addition is there, whole issue becomes academic including the appeal order passed by the Ld. CIT (A) U/s. 250”*; Assessee filed its return of income for AY 2020-21 declaring income of Rs.2049.74 Cr. which was processed under Section 143(1); CPC issued an intimation determining the total income of Assessee at Rs.2084.98 Cr., which was confirmed by CIT(A); Aggrieved, Assessee preferred the present appeal; ITAT notes that the Assessee was also subjected to scrutiny assessment, however, no query on the issues covered by the intimation was ever raised during the assessment proceedings, despite it being a complete scrutiny; Further notes that the Assessee filed its objection against the proposed adjustments but received no response from the CPC; Further observes that the Assessee subsequently filed a rectification application under Section 154 to rectify the mistake apparent from record on the ground that the proposed adjustments do not fall within the purview of Section 143(1) as it pertains to the legal/debatable issue that requires a thorough verification, however, no order under Section 154 came to be passed; Thus, opines that neither Assessee’s response to proposed adjustment was considered nor the application under Section 154 was disposed off by the CPC while passing the intimation, which is in violation of proviso 1 and 2 of the Section 143(1), and said violation makes the whole action null and void; Remarks that even though the proposed adjustment was based on the opinion of the tax auditor appointed by the Assessee, the auditor’s independent opinion is not binding on either the Assessee or the Revenue; Thus, allows Assessee’s appeal.:ITAT Mum

### **Decision Summary**

The ruling was delivered by the Division Bench of ITAT Mumbai comprising Shri Kuldip Singh, Judicial Member and Shri Gagan Goyal, Accountant Member.

Senior Advocate Jehangir Mistri appeared for the Assessee while the Revenue was represented by Mr. S. Sribivasu.

### **Case Law Information**

#### **Taxpayer Name**

- National Stock Exchange of India Limited

#### **Judicial Level & Location**

- Income tax Appellate Tribunal Mumbai

**Appeal Number**

- ITA No. 732/Mum/2023 (A.Y.2020-21)

**Date of Ruling**

- 2023-09-22

**Ruling in favour of**

- Assessee

**Section Reference Number**

- 143(1)
- 143(3)
- 143(2)

**Nature of Issue**

- adjustment 143(1)
- Assessment - Procedural issues

**Judges**

- Kuldip Singh, Judicial Member
- Gagan Goyal, Accountant Member

**Counsel for Tax Payer**

- Mr. Jehangir Mistri

**Counsel for Department**

- S. Sribivasu