

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'SMC' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member  
&  
Shri Anikesh Banerjee, Judicial Member**

**I.T.A. No. 1372/KOL/2023  
Assessment Year: 2020-2021**

***Aashirvad Villa Limited,.....Appellant  
21A, Belvedere Road,  
Kolkata-700027  
[PAN: AAEC5659N]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-4(3), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Puja Somani, C.A., appeared on behalf of the assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : February 13, 2024**

**Date of pronouncing the order : February 13, 2024**

**O R D E R**

**Per Anikesh Banerjee, Judicial Member:-**

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income Tax (appeals), ADDL/JCIT(A)-5 Chennai [in brevity ld.'CIT(A)'] dated 08.11.2023 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act')

for assessment year 2020-21. The impugned order was emanated from the order of the Id. Income Tax Officer, CPC, Bengalure (in brevity the 'AO') passed u/s. 143(1) of the Act dated 23.12.2021.

2. The assessee has taken the following grounds of appeal as well as additional ground of appeal:

*(1) That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in upholding the action of the Ld. A.O., CPC in computing the total income of Rs.2,77,370/- as against income declared by the assessee of Rs. 1,90,230/-.*

*(2) That, the learned CIT(A) erred in upholding the action of the Ld. A.O., CPC on facts and in law in not allowing Loss from House Property of Rs.87,143/- declared in the ROI to be set off against Long Term Capital Gains of Rs.2,83,950/- u/s 71 of the Act.*

*(3) That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the action of the Ld. A.O., CPC in not considering that the loss from House Property of Rs.87,413/- was automatically set off with Long Term Capital Gains by the income tax portal itself at the time of filing the Income Tax Return - Schedule CYLA.*

### **Additional Ground**

*"That on the facts and in law, the learned CPC in the intimation issued u/s 143(1) of the Act dated 23-12-2021 erred in not following the mandate as required by first proviso to section 143(1) of the Act which says that no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode".*

3. Brief facts of the case are that the assessee filed its return of income electronically under section 139(1) of the Income Tax Act on 15.02.2021. The assessee adjusted the loss during the year in house property amounting to Rs.87,143/-, which was set off with

the long-term capital gain and the business loss of Rs.6,578/- which was also adjusted with the long-term capital gain. During the processing of the return under section 143(1), the ld. Assessing Officer assessed the total income of the assessee at Rs.2,77,370/- by not allowing loss from house property to be set off against capital gains without giving any intimation to the assessee and rejected the loss from house property amounting to Rs.87,143/-. Being aggrieved, the assessee filed appeal before the ld. CIT(Appeals) but ld. CIT(Appeals) upheld the intimation of the ld. Assessing Officer. Aggrieved, the assessee filed appeal before us.

4. The ld. A.R. vehemently argued at the time of hearing before us and filed written submissions, which are kept in the record. The ld. A.R. first invited our attention in the computation of total income, which is inserted as below: -

*The assessee filed the return of income for A.Y. 2020-21 on 15.02.2021, declaring total income of Rs.1,90,230/-. The computation of total income as provided by the assessee in its ROI was as under:-*

<i>Rent from House Property</i>	<i>Rs.27,000/-</i>
<i>Less: Corporation Tax</i>	<i><u>Rs.1,14,143/-</u></i>
<i>Loss from House Property(A)</i>	<i>Rs.87,143/-</i>
<i>Business Loss (B)</i>	<i><u>Rs.6,578/-</u></i>
<i>Total Current Year Losses (A plus B)</i>	<i>Rs.93,721/-</i>
<i>Long-term Capital Gain</i>	<i>Rs.2,83,950/-</i>
<i>Less: Loss as mentioned above set off from CG</i>	<i><u>Rs.93,721/-</u></i>
<i>Balance Long Term</i>	<i>Rs.1,90,229/-</i>

<i>Capital Gains subject to tax</i>	
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The ld. A.R. further argued that the assessee claimed the loss amounting to Rs.87,143/- in the return of income, which was reflected in **page 73 of the paper book**. During the year, the intra-head adjustment of the loss in respect of house property and the business loss was duly adjusted with the capital gain, which was permitted under section 71(2) of the Act. Ld. A.R. further argued that the Revenue has contravened the proviso to section 143(1) of the Act and without giving reasonable opportunity to the assessee rejected the loss claimed in the return of income. The proviso is inserted as below: -

*“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:]”*

5. The ld. D.R., on the other hand, vehemently argued by relying on the orders of revenue authorities and prayed that the order of ld. CIT(Appeals) be upheld.

6. We have heard the rival contentions and perused the records placed before us. The assessee has adjusted intra-head loss with the gain of long-term capital gain during the assessment year under consideration. The assessee has claimed this loss in the return of income, which was rejected by the Id. Assessing Officer without giving reasonable opportunity to the assessee and issued intimation under section 143(1). The Id. D.R. relied on the order of this Tribunal dated 30<sup>th</sup> May, 2023 in the case of **Income Tax Officer (Exemption) -vs.- Camellia Educare Trust reported in [2023] 152 taxmann.com 304 (Kolkata-Trib.),**

*."Considering the facts on record and the perusal of the provisions contained in sec. 143(1)(a) of the Act, we find that on both the aspects, the revenue fails. This position has not been controverted by Ld. Sr. DR also. Even if we assume for a moment that such an intimation was given to the assessee in accordance with the 1st proviso, then the second proviso stipulates that if any response is received from the assessee then, the same should be considered before making any adjustment or disallowance. In case, where there is no response received from the assessee then, within thirty days of the issue of such intimation, department is free to make such adjustment or disallowance. The documentary evidence placed on record and the e-proceedings downloaded from the Income-tax portal, no where suggests that such a process has been followed. Thus, we find that the impugned intimation issued u/s. 143(1)(a) of the Act, dated 30-11-2021 is not in compliance with the 1st proviso to section 143(1)(a) of the Act and thus, the impugned intimation is invalid under the Act."*

Here, the Bench has taken the same view that without giving reasonable opportunity, the rejection is bad in law. Accordingly, we rely on the order of this Tribunal in the case of **Camellia**

**Educare Trust** (supra) and treated the intimation, passed by the ld. Assessing Officer under section 143(1) as bad in law. In our considered view, the loss claimed by the assessee amounting to Rs.87,143/- is liable to be allowed.

**7. In the result, the appeal filed by the assessee bearing ITA No. 1372/KOL/2023 is allowed.**

Order pronounced in the open Court on 13/02/2024.

Sd/-

Sd/-

**Rajesh Kumar)**  
**Accountant Member**

**(Anikesh Banerjee)**  
**Judicial Member**

**Kolkata, the 13<sup>th</sup> day of February, 2024**

*Copies to :(1)Aashirvad Villa Limited,  
21A, Belvedere Road, Kolkata-700027*

*(2) Income Tax Officer,  
Ward-4(3), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),  
ADDL/JCIT(A)-5 Chennai;*

*(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.**