

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No.2610/Mum/2022  
(निर्धारण वर्ष / Assessment Year: 2020-21)

M/s. S. M. Construction 112/113, Mittal Tower, B Wing, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	NFAC, Delhi Room No. 356, C. R. Building, New Delhi- 110002.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMFS8170P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Hari Raheja	
Revenue by:	Shri Abi Rama Karthikeyan (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 29/12/2022  
घोषणा की तारीख /Date of Pronouncement: 31/01/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 19.09.2022 for the assessment year 2020-21.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) dismissing the appeal preferred by the assessee against the action of the CPC which passed the intimation u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") on the reason that the assessee had filed another appeal against the same intimation order of CPC (for rectification of mistake u/s 154 of the Act).

3. At the outset, the Ld. AR of the assessee brought to our notice that the assessee had filed return of income on 03.02.2021 declaring total income of Rs.2,09,61,710/-. The AO/CPC processed the return of the assessee and passed the intimation u/s 143(1) of the Act and made



*ITA No.2610/Mum/2022*  
*A.Y. 2020-21*  
*M/s. S. M Construction*

adjustment/addition of Rs.46,69,158/- to the total income of the assessee. The CPC has made adjustment under the head “capital gain” amounting to Rs. 46,69,158/- whereby the capital gain has been reduced to Rs. 46 Lakhs as against the returned capital gain of Rs.92,16,158/- as declared by the assessee; and correspondingly enhanced the business income (block of assets) by Rs.46,69,158/- (which was reduced from head of capital gain). According to assessee, the CPC was not justified in disallowing indexation on the cost of the sale of the Long Term Capital Asset and ignored the claim of u/s 54EC of the Act amounting to Rs.50,00,000/-. According to the Ld. AR, the CPC u/s 143(1) of the Act while processing the returned income could not have adjusted the capital gain with business assets and wondered as to how the CPC could have set-off capital gain against block of asset and to buttress the aforesaid submission drew our attention to the return of income. We have perused the same and we find that the action of the CPC to make adjustment u/s 143(1) of the Act is per-se erroneous because it does not fall in any of the categories described in sub-clause (i) to (vi) of Sub-section 1A of Section 143 of the Act. Even though the Ld. DR submitted that the CPC may have taken the claim of the assessee as incorrect and therefore, sub-clause-2 could have been attracted. Though, we asked the Ld. DR to show us from the return of income [filed by assessee] as to whether the assessee had made any incorrect claim while filling up the return of income or whether there is any mis-match from any information in the return of income, the Ld. DR could not point out any such mistake. The Ld. AR



ITA No.2610/Mum/2022  
A.Y. 2020-21  
M/s. S. M Construction

submitted the reconciliation of the error which crept in the impugned intimation of the CPC which is given as under: -

“The income under the head business and profession has been assessed at Rs.2,42,57,785/-

The addition is Rs.4669158 (24257785 – 19588627 = 4669158)	
The adjustment is as follows: -	
Sale price of property	Rs.9450000
Add	
Sale price of motor car	Rs.150000- this is a part of Business income
Total sale value	Rs.9600000
Less Investment in Bonds	Rs.5000000
Capital gain as assessed	Rs.4600000
Sale price of property	Rs.9450000
Purchase price of property	Rs.180842 – Indexation Not allowed
Resultant actual gain	Rs.9269168
Less: capital gain as assessed	Rs.4600000
Balance added to Business Income	Rs.4669158

4. It was pointed out by the Ld. AR that the sale consideration of the motor car falls in the block of assets under the head “Income from Business”, and resultant sale price get adjusted in the block of assets whereby depreciation is allowed on the net block as per Section 50A of the Act. Whereas the capital gain of the property which being a capital asset has been sold by the assessee is assessable u/s 48 of the Act as long term capital gain as the capital gain on the sale of the property has to be assessed under the head ‘Capital Gain’ being a long term capital asset, whereas the motor car is to be assessed u/s 50A of the Act being an asset of business on which depreciation has been claimed and allowed in the past. Thus, we note that income under two



ITA No.2610/Mum/2022  
A.Y. 2020-21  
M/s. S. M Construction

different heads being capital on sale of assets and a depreciated asset in the block of asset have been adjusted which is per-se erroneous.

5. Therefore, the action of Ld. CIT(A) to dismiss the appeal of the assessee against the intimation passed by CPC u/s 143(1) of the Act on the ground that assessee has filed another appeal against rejection of rectification application by CPC is hyper technical; It should be borne in mind that procedure is the hand maiden of justice. When an assessee is aggrieved by the action of intimation by CPC u/s 143(1) of the Act, it has two choices (i) filing of rectification application u/s 154 of the Act. (ii) Appeal before the Ld. CIT(A). Even though in this case, the CPC has dismissed the rectification application on the ground that there was no mistake apparent on the record, no reason is discernable from such an action other than a bald assertion to that effect, which cannot in any manner redress the grievance of assessee. When the CPC has erred while processing the return of an assessee which causes tax liability on an assessee, then the appellate authorities should not cite procedure as a tool/ruse to deny the just claim of an assessee. As observed by the Hon'ble Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd. DCIT AIR 1992 SC 152 where in their Lordship observed “.....*A public authority cannot be estopped from doing its public duty, but it can be estopped from relying on technicality...Modern courts seek to cut down technicalities attendant upon a statutory procedure where they cannot be shown to be necessary to the fulfillment of the purpose of Legislation*”. And the



ITA No.2610/Mum/2022

A.Y. 2020-21

M/s. S. M Construction

Hon'ble Supreme Court in United Bank of India Vs. Naresh Kumar AIR 1997 SC 3 observed "*As far as possible, a substantive right should not be defeated on account of a procedure irregularity which is curable*". As per Article 265 of the Constitution of India Taxes cannot be imposed, without authority of law. In this case, we find that adjustment made by CPC does not fall under any of the permitted adjustments u/s 143(1) of the Act as discussed (supra). Therefore, we set aside the impugned action of Ld. CIT(A) and allow the appeal of the assessee subject to verification by AO of the reconciliation (supra) vis-à-vis the return filed by the assessee. If the reconciliation is found to be correct by AO, then no adjustment as made by CPC was warranted and it should be deleted.

**6.** In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31/01/2023.

Sd/-

**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 31/01/2023.  
Vijay Pal Singh, (Sr. PS)



ITA No.2610/Mum/2022

A.Y. 2020-21

M/s. S. M Construction

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**