



IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 4435/DEL/2024 [A.Y. 2018-19]

The India Thermit Corporation Ltd
World Mark 3, 5th Floor, Office 503
Asset 7, Aero City, New Delhi

Vs.

The Dy. C.I.T
Circle 25(1)
New Delhi

PAN - AAAC 7462 Q

(Applicant)

(Respondent)

Assessee By : Shri Vipin Jain, CA

Department By : Shri Amit Katoch, Sr. DR

Date of Hearing : 05.03.2025

Date of Pronouncement : 12.03.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

This appeal by the assessee is preferred against the order of the Id.
CIT(A), Noida dated 31.08.2024 for A.Y 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. That delay in filing the appeal before the CIT(A) on account of Covid 19 be condoned and that the appeal of the assessee company be heard on merits and on legal grounds.

2. That in view of the notice dated 22.09.2019, issued u/s 143(2) of the Income Tax Act, 1961, and the law explained by The Hon'ble Supreme Court of India, in "Commissioner Of Income-Tax vs Gujarat Electricity Board, 260 ITR 84 SC", intimation dated 25.12.2019 issued u/s 143(1)(a) was not required to be framed and that the income determined and the tax demand created vide intimation dated 25.12.2019 u/s 143(1)(a) is bad in law and is required to be deleted.

3. That variance made to income in proceedings u/s 143(1) without first confronting the assessee...

4. That on the facts and in the circumstances of the case and in law, the Ld. DCIT CPC Bangalore has erred in determining the income of the appellant company u/s 143(1)(a) at Rs. 97,27,61,400 as against the return filed showing income at Rs. 90,20,78,855, after making variance (addition/ disallowance) to the income declared as under:

Exempt income:

Profit from AOP:	Rs 1,37,989
Wealth Tax Refund:	Rs 14,159
Liabilities written back:	Rs 28,65,697
Profit on sale of fixed assets:	Rs 3,70,779
Fair Value change in Financial Assets:	Rs 7,51,01,192
Dividend on investment:	Rs 3,22,555
Interest from AOP:	Rs 3,69,610
Total:	Rs 7,91,81,981
Less LTCG on sale of shares	Rs 1,15,15,323
Net:	Rs 6,76,66,658
Addition on account of alleged delay in deposit of ESI & PF Amounts (Rs 34,21,039 Rs 4,05,153):	Rs 30,15,886
Total addition to income:	Rs 7,06,82,544

5. That the assessee company craves leave to amend, delete, modify all or any of the grounds of appeal above, and or incorporate fresh ground of appeal, at any time before or during the appeal proceedings."

3. In addition to the above, the assessee has filed an application for raising additional ground of appeal which reads as under:

"That in view of the notice dated 22.09.2019, issued u/s 143(2) of the Income Tax Act, 1961, read with the law explained by The Hon'ble Supreme Court of India, in "Commissioner Of Income-Tax vs Gujarat Electricity Board, 260 ITR 84 SC", intimation dated 25.12.2019 issued u/s 143(1)(a) could not be passed was not required. The income and the tax demand intimated vide intimation dated 25.12.2019 issued u/s 143(1)(a) is bad in law and is required to be deleted."

4. As the issue raised vide additional ground goes to the root of the matter, we allow the additional ground to be raised.

5. Vide Ground No. 1, the assessee has prayed for condonation of delay on account of Covid 19 and subsequent lockdown. An affidavit has been filed in this regard by the Managing Director of the company and furnished on record. Considering the affidavit and submissions of the ld. counsel for the assessee, we find that there is reasonable cause for delay in filing the appeal. We, therefore, condone the same and admit the appeal.

6. The assessee vide ground no 2 and the additional ground has raised the issue that as the assessee was issued as notice u/s 143(2) of the Income-tax Act, 1961 [the Act, for short] for scrutiny assessment, the AO subsequently can not process the return u/s 143(1) of the Act for making adjustment of income.

7. The assessee vehemently argued that two proceedings cannot be initiated simultaneously and once proceedings u/s 143(2) has been initiated, proceedings u/s 143(1) cannot be undertaken. For this proposition, the ld. counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of Gujarat Electricity Board order dated 12.11.2002 reported in 260 ITR 84(SC).

8. Per contra, the ld. DR relied upon the orders of the authorities below.

9. We have heard the rival submissions and have perused the relevant material on record. We find force in the contentions of the ld. counsel for the assessee. We find that the assessee company filed

its return on 29.11.2018. The Assessing Officer issued notice on 22.09.2019 u/s 143(2) of the Act to verify the issue under CASS with regard to claim of amounts allowable as deduction in Schedule BP and defaults in TDS as well as duty draw back. The DCIT, CPC-Bangalore, subsequent to the issue of notice u/s 143(2), has processed the return of income and has issued intimation u/s 143(1)(a) of the Act dated 25.12.2019. The issue for adjudication is whether once the scrutiny assessment u/s 143(3) has commenced vide notice u/s 143(2), can the AO conduct processing of the return u/s We find that the Hon'ble Supreme Court in the case of Gujarat Electricity Board [supra] has decided this issue in favour of the assessee as follows:

"Even otherwise, the view taken by the Gujarat High Court seems to be correct on principle. There is no dispute that [Section 143\(1\)\(a\)](#) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under [Section 154](#). Apart therefrom, the provisions of [Section 143\(1\)\(a\)\(i\)](#) indicate that the intimation sent under [Section 143\(1\)\(a\)](#) shall be without prejudice to the provisions of Sub-section (2). The Legislature, therefore, intended that, where the summary procedure under Sub-section (1) has been adopted, there should be scope available for the Revenue,

either suo motu or at the instance of the assessee to make a regular assessment under Sub-section (2) of [Section 143](#). The converse is not available; a regular assessment proceeding having been commenced under [Section 143\(2\)](#), there is no need for a summary proceeding under [Section 143\(1\)\(a\)](#).”

10. Respectfully following the Hon’ble Apex Court decision in the above case, we hold that where regular assessment proceedings, having been commenced u/s 143(2) of the Act, there is no need for summary proceedings u/s 143(1) of the Act and delete the adjustment u/s 143(1).

11. In the result, the appeal of the assessee in ITA No. 4435/DEL/2024 is allowed.

The order is pronounced in the open court on 12.03.2025.

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 12th MARCH, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Despatch of the Order</i>	