



IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No. 1698/Ahd/2024
Assessment Year: 2020-21**

Lesso Buildtech Private Limited Communication address 5 th Floor, Building-2, Vatika Business Park Solma Road, Section-49, Gurugram, Haryana-122018 PAN: AACCL4075H (Appellant)	Vs	The Dy.CIT, Circle-2(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Siddhesh Chaugule, A.R.
Revenue Represented: Shri Prathvi Raj Meena, CIT-DR**

Date of hearing : 26-02-2025
Date of pronouncement : 03-04-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the final order dated 27.07.2024 passed under section 143(3) r.w.s. 144C(13) and 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2020-21.

3. Brief facts of the case is that the assessee is a Private Limited Company engaged in the business of trading related to plastics & sanitary ware, building materials, cutleries, plastics profiles, modular kitchen, kitchen appliances, etc. The assessee company filed its Return of Income for the Asst. Year 2020-21 on 22-02-2021 declaring a loss of Rs.30,65,00,117/- under normal provisions of the Income Tax Act. The return was said to be processed u/s. 143(1) on 10-08-2021 determining the total loss at Rs.28,91,48,057/-, however the said intimation was not served on the assessee. It is thereafter the case was taken for complete scrutiny assessment. A reference was made to Transfer Pricing Officer for determining the Arm's Length Price of International transaction. The TPO made Transfer Pricing upward adjustment of Rs.43,29,60,041/-. Thereafter the Assessing Officer passed draft assessment order u/s. 144C(1) vide order dated 18-09-2023 determining the income at Rs.14,38,41,948/- as follows:

Sr. No.	Description	Amount (in Rs.)
1	Total loss as per Return of Income filed u/s. 139 on 12-02-2021	(-) 30,65,00,117/-
2	Total loss as Computed u/s. 143(1) on 10-08-2021	(-) 28,91,18,057/-
3	Variation proposed in respect of issue on TP Adjustment vide order u/s. 92CA(3) of Ld. TPO dated 16.06.2023	(+) 43,29,60,041/-
4	As per Ld. TPO downward adjustment in cost resulting increasing in Profit determining the Total Income as per the above proposal as per normal provisions	(+) 14,38,41,984/-

4. Assessee filed objection in Form 35A before Dispute Resolution Panel on 16-10-2023. The DRP vide its order dated 05-06-2024 deleted the TP adjustment made by TPO. However on the issue of

adjustment made u/s. 143(1) of the Act, the DRP held that the adjustment made u/s. 143(1) will not come under the scope of Section 144C(1) and the issue have not emanated from draft assessment order and not pertains to the findings of Assessing Officer. Therefore not adjudicated the adjustment made u/s. 143(1) of the Act. Pursuant to the DRP order, the Assessing Officer passed the final assessment order determining the total income of Rs. (-) 28,91,18,057/-.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and in the circumstances of the case and in law, the Hon'ble Dispute Resolution Panel ('DRP') and the Ld. AO (hereinafter collectively to be referred as "Revenue") have erred in assessing the loss of the Appellant at INR 289,118,057 while framing the assessment order basis the intimation order under section 143(1) of the Act as against the total loss of INR 306,500,117 as disclosed by the Appellant in its return of income.

2 On the facts and in the circumstances of the case and in law, the Ld. AO has erred in reducing the current year loss of the Appellant by an amount of INR 1,73,82,060 without providing any basis reason for the said adjustment and by merely relying on the intimation order passed under section 143(1) of the Act, thus rendering the assessment order non-speaking in nature.

3. On the facts and in the circumstances of the case and in law, the Revenue has erred in completely ignoring the Appellant's submission that the intimation order under section 143(1) was not received by the Appellant as the status of processing of return on the income tax portal is appearing as 'under processing". The Ld. AO also ignored the Appellant's request to provide the intimation order during the course of assessment proceedings.

4. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in assessing the loss of the Appellant basis the intimation order which is barred by limitation as the intimation order

has not been received by the Appellant within the timelines prescribed under the provisions of section 143(1) of the Act

5. On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in not adjudicating on the merits of the impugned adjustment. The Hon'ble DRP also incorrectly observed that the Appellant failed to file an appeal against the intimation order thereby implying that the Appellant has accepted the adjustment proposed in the intimation order without appreciating the fact that the intimation order was never issued to the Appellant despite filing of grievances and requests with the tax authorities.

6. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in passing the assessment order by violating the principles of natural justice by not issuing any show cause notice as contemplated in section 141B of the Act, resulting in denial of opportunity to the Appellant to submit a response, place documents on record in support thereof and to be heard before passing the assessment order.

7. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in facts and in law in not allowing credit of tax deducted at source ("TDS") amounting to INR 277,599 as claimed by the Appellant in its return of income.

4. We have heard rival submissions and perused the materials available on record. The assessee filed its Return of Income claiming the loss of Rs. 30.65 crores. The CPC vide its intimation u/s. 143(1) dated 10-08-2021 determined the loss of Rs. 28.91 crores. However the said intimation was never served on the assessee. The assessee filed grievance petitions and requesting copy of the intimation on 08-01-2024, 30-04-2024, 25-06-2024, 05-09-2024, 02-10-2024 and 08-01-2025. It is thereafter copy of the 143(1) order served on the assessee on 13-01-2025 by Jurisdictional A.O. through email to the assessee.

4.1. The 1st proviso to Section 143(1) provides that an intimation shall be sent to the assessee in case where the loss declared in the

return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to him. And the 2nd proviso to Section 143(1) provides that no intimation under sub-section shall be sent after the expiry of nine months from the end of the financial year in which the return was made.

4.2. In this case, the intimation u/s. 143(1) dated 10-08-2021 determining the loss at Rs.28,91,80,057/- was made by CPC but the same was not communicated to the assessee. As per 1st proviso to Section 143(1), the intimation shall be sent to the assessee declaring the loss assessed/adjusted but no tax, interest or fee payable or no refund due to the assessee. However, in this case, the intimation was never served on the assessee, after repeated grievance petitions before various authorities, the assessee was served with copy of the intimation through email on 13-01-2025. In the meanwhile, regular assessment and notice u/s. 143(2) was issued on 29-06-2021. After issuance of the 143(2) notice, there is no question of making intimation u/s. 143(1). Therefore the so called intimation dated 10-08-2021 is invalid in law, which was not served to the assessee as per 1st proviso to Section 143(1) of the Act. Therefore the A.O. is not correct in determining the loss at Rs.28.91 crores while computing the final assessment based on a non-existing 143(1) intimation. Therefore the Final assessment order is liable to be modified as that of the returned loss of Rs. 30.65 crores made by the assessee. Thus the Ground Nos. 1 to 6 raised by the Assessee are allowed.

5. Ground No. 7 of non-allowance of tax credit of Rs. 2,77,599/- is not arising in the final assessment order. Hence the same cannot be adjudicated. It is open to the assessee to make necessary rectification application before the Assessing Officer.

6. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced in the open court on 03-04-2025

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 03/04/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद