

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.5541/MUM/2025
(A.Y.2018-19)**

Rohit Amritlal Kapadia 102-B, Paradise Apartments, Nepeansea Road, Mumbai-400006.	Vs.	DCIT, Circle 16(3), Deputy Commissioner of Income Tax, Circle 16(3), Aayakar Bhavan, Mumbai400006.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABPK0215A		
Appellant	..	Respondent

Appellant by :	Shri. Apurva Shah
Respondent by :	Shri Annavarani Kosuri, Sr. AR

Date of Hearing	10.11.2025
Date of Pronouncement	17.11.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] dated 08.07.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2018-19.

2. The grounds of appeal are as follows:

“The National Faceless Appeal Centre NFAC has erred as under:-

1. In merely holding that as no addition was made u/s 143(3) no appeal lies against the said order.

2. In not adjudicating that while the AO made no addition during the assessment, he commenced the calculation with income as determined while processing the return u/s 143(1). He erred in not appreciating that an addition if any has to be made after discussion in the scrutiny assessment and that a 143(1) intimation is merely a processing but not an assessment. Any addition to returned income must be discussed in the 143(3) proceedings.

3. Erred in therefore confirming the inclusion of a sum of Rs. 4,02,29,136 being capital gains as a part of Business Income - the same had to be excluded from Profits as per Profit and Loss account. The taxable capital gains after indexation amounted to Rs. 1,44,19,088 and the same was already taxed as Capital Gains.

4. In not appreciating that a request for rectifying the 143(1) intimation was made. The rights were transferred to the AO who thereafter rejected the request without serving any order on the appellant and went ahead and assessed the appellant basis the income determined u/s 143(1) which was a complete denial of natural justice and also incorrect in any case as mentioned in earlier grounds.

The Appellant craves leave to add, alter or amend the grounds as may be advised from time to time."

3. Brief facts of the case are that the assessee filed return for A.Y. 2018-19 on 28.09.2018 declaring total income of Rs. 13,19,96,470/-. It was processed u/s. 143(1) by the CPC and total income of Rs. 17,22,25,610/- was determined.

Subsequently, the case was selected for scrutiny through CASS and assessment was completed at the total income of Rs. 17,22,25,610/- [same as determined earlier u/s. 143(1)]. The assessee is appeal against the order was dismissed by Id. CIT(A) holding that as no addition was made during scrutiny assessment, no appeal lies against the said order. Aggrieved, the assessee has filed an appeal before the Tribunal.

4. Ld. AR has argued before us that once the case is selected for scrutiny, Id. AO is required to compute the income after due enquiry and if any addition to the returned income is to be made, the same should have been discussed in the assessment order. During scrutiny proceedings, Id. AO

issued notices u/s. 142(1) on 01.12.2019 and 17.11.2020 calling for the relevant details which were duly submitted by the assessee vide replies dated 07.12.2020 and 10.12.2020. After considering these, ld. AO issued a show cause notice dated 26.03.2021 to which the assessee filed response on 02.04.2021.

After considering the assessee's submissions but without recording any findings, ld. AO completed the assessment at an income of Rs. 17,22,25,610/- as against returned income of Rs. 13,19,96,470/- by adopting the income determined u/s. 143(1) of the Act.

It is further submitted by ld. AR that a rectification request was also filed online in respect of 143(1) adjustments but the rectification rights were transferred by CPC to the ld. AO on the ground that the case was already selected for scrutiny.

Under these circumstances, the assessee presumed that the impugned additions would be considered by the ld. AO during scrutiny proceedings, as the assessee had submitted requisite details in response to various notices issued by him.. in view of above factual matrix, ld. CIT(A) ought to have considered the grounds of appeal on merits and merely because ld. AO did not elaborate on the impugned addition in the body of the order does not imply that these have not been considered by him while finalising the assessment.

Ld. DR, on the other hand, has strongly relied on the orders of the lower authorities.

5. We have heard the rival submissions and perused the material on record. It is seen that against the returned income of Rs. 13,19,96,470/-, income was computed u/s. 143(1) at Rs. 17,22,25,610/- after making an adjustment of Rs. 4,02,29,136/- on account of capital gains vide intimation dated 06.03.2020. Thereafter, a rectification request was filed on 18.03.2020 by the assessee as evident from a copy of the screenshot filed.

Apparently, this request was transferred by the CPC to the jurisdictional assessing officer (JAO) on 20.03.2020 and the same was rejected on 27.05.2020. Since the case was already under scrutiny at that time, and the issues pertaining to capital gains were before the ld. AO, it was expected that these would be considered and decided on merits while finalizing the order. On his part, the assessee submitted the requisite details in response to the notice u/s. 142(1) dated 17.11.2020 issued by ld. AO seeking such details. Copies of the notice and assessee's reply have been placed on record in the form of a paperbook. However, ld. AO, after making verification, passed a cryptic order wherein nothing was mentioned with regard to the impugned addition. Ld. AO simply adopted the total income as computed u/s. 143(1) and assessed the same u/s. 143(3) r.w.s 144B of the Act.

5.2 After considering the entire factual matrix in the light of material placed before us, we are of the considered view that the impugned addition was a part of the assessment order as this order had been passed after making enquiries into the issue of computation of capital gains and adding the amount of Rs. 4,02,29,136/- to the returned income. Simply because the ld. AO passed a non speaking order, ld. CIT(A) cannot refuse to decide the issue on the ground that the issue did not arise from the assessment order.

We, therefore, set aside the order of Ld. CIT(A) and direct him to decide the issue on merits after giving due opportunity to the assessee.

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

Order Pronounced in Open Court on 17.11.2025

Sd/-
(BEENA PILLAI)
(JUDICIAL MEMBER)

Sd/-
(RENU JAUHRI)
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 17.11.2025

Anandi.Nambi/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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