

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1273/DEL/2021
Assessment Year 2019-20

CanLah Investments Pte. Ltd., C/o L&L Partners, 1 st Floor, Ashoka Estate, 24 Barakhamba Road, New Delhi.	Vs.	Assistant Director of Income Tax, CPC Bengaluru.
TAN/PAN: AAECH6224L		
(Appellant)		(Respondent)

Appellant by:	Shri Mayank Agarwal, Adv. Shri Anukrati Gupta, Adv Shri Naman Mittal, Adv.		
Respondent by:	Shri Sanjay Kumar, Sr.DR		
Date of hearing:	07	12	2022
Date of pronouncement:	15	12	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XLII, Delhi ['CIT(A)' in short] dated 03.08.2021 arising from the intimation dated 24.12.2020 issued by Centralized Processing Centre [CPC], Bengaluru under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. The grounds of appeal raised by the assessee read as under:

"1. The order dated August 03, 2021 under section 250 of income Tax Act, 1961 ("Act") passed by Commissioner of Income Tax (Appeals) ("CIT(A)") is bad in law and on the facts and circumstances of the case.

2. The CIT(A) has erred in law and on the facts and circumstances of

the case by rejecting the grounds raised by the appellant in a summary manner without going into the merits of the case.

3. The CIT(A) has erred in law and on the facts and circumstances of the case by not deleting the addition made by Assistant Director of Income Tax, CPC ("ADIT, CPC") in respect of capital gains without appreciating the facts that the same was exempt from taxes in India under the provisions of Paragraph 5 of Article 13 -Capital Gains of the DTAA between India and Singapore.

4. The CIT(A) and ADIT has erred in law and on the facts and circumstances of the case by including the amount of Capital Gains which was exempt from taxes in India under the provisions of Paragraph 5 of Article 13 - Capital Gains of the DTAA between India and Singapore in Schedule SI, as it deals with income chargeable to tax at special rates.

5. The CIT(A) / ADIT has erred in law and on the facts and circumstances of the case by not accepting the responses, electronically filed by the appellant.

6. The CIT(A) has erred in stating that the appellant has incorrectly filed its tax return.

7. The CIT(A) has erred in suggesting the option of rectification application u/s 154 on income tax e-filing portal without disposing off the grounds raised by the appellant on merits.

8. The CIT(A) has erred in law and on the facts and circumstances of the case by stating that the capital gain derived by the appellant in the derivatives (futures) transactions are not capital gain and would be taxed as business income.

9. The CIT(A) has erred in law and on the facts and circumstances of the case by incorrectly computing the interest under section 234B and 234C of the Act.

10. The above grounds of appeals are independent and without prejudice to one another."

3. As per its grounds of appeal, the assessee has essentially challenged certain adjustments made by the CPC towards income declared under the head Capital Gains (CG) arising from sale of Equity shares and income arising under derivative segment while processing the return under S. 143(1) of the Act.

4. Briefly stated, the assessee is a company incorporated in Singapore and claims to be engaged in the business of Investment activities. As per the Return of Income filed by the assessee for

the AY 2019-20 in question, the assessee declared its residential status as 'NRI- Non Resident' and also claimed it to be Foreign Institutional Investor (FII). As per ROI, the assessee claims to have earned income in the form of capital gains on sale of shares etc and income arising from derivative transactions in Stock Exchanges in India. In its return of income (ROI) for Assessment Year 2019-20 in question, the Assessee *inter alia* reported Short Term Capital Gains (STCG) at Rs.55,07,252/- on which tax was offered at a concessional rate of 7.5% on the basis of treaty entered between India And Singapore. This apart, the Assessee also reported income from derivative transactions to the tune of Rs. 1,81,68,855/- in the same head titled ' Schedule CG-Capital Gains'. The income from derivative transactions were however claimed to be not chargeable to tax in India at all as per DTAA.

5. The ROI so filed was processed under Section 143(1) of the Act. As noted, the income from derivative transactions amounting to Rs. 1,81,68,855 was reported under the head capital gains but declared as not chargeable to tax in India. While processing the ROI, the CPC identified this amount of Rs.1,81,68,855/- as variance/ inconsistency and included the same as chargeable income while computing the income under the head 'Capital Gains. As against the adjustments made, the assessee claims to have filed its objections electronically on 12.02.2020 and 13.10.2020 clarifying that the proposed variance pertains to Capital Gains arising in transactions carried out in derivatives (Futures) segment and the such derivative transactions are exempt from the purview of taxation in India in view of para 5 of Article 13 – 'Capital Gains' referred in DTAA between India and Singapore. The assessee thus claimed that it has correctly reported

the taxable income excluding profits arising from derivative transactions and adjustments as made by the CPC is not permissible in law. However, the CPC rejected the assessee's contention and issued intimation under Section 143(1) dated 24.12.2020 treating the aforesaid income arising from derivative transactions as chargeable to tax.

6. Being aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however did not pay heed to the submissions made on behalf of the assessee towards non taxability of gains arising from derivative transaction attributable to the status of Foreign Institutional Investors (FII). The CIT(A) brushed aside the grievance of the assessee towards adjustments made by the CPC on the ground that the assessee has not followed the due process for correction of mistake, if any, with CPC. The CIT(A) thus declined to interfere with the intimation determining the total income chargeable to tax and tax liability determined thereon.

7. Further aggrieved, the assessee preferred appeal before the ITAT.

8. The ld. counsel for the assessee argued in length and pointed out that the assessee is a Foreign Institutional Investor (FII) registered with SEBI and holds the status of a non-resident. While filing the return of income, the assessee *inter alia* declared Short Term Capital Gain of Rs.55,07,252/- under 'Schedule CG Capital Gains' at Serial No.9 which is chargeable to tax after giving concession of 50% to the applicable rate in terms of clause 4C Article 13 of the Indo-Singapore Treaty. The applicable rate of tax was thus shown at 7.5% thereon i.e. 50% of normal rate of 15% applicable to STCG. Coupled with this, in schedule CG Serial

No.9(2), the assessee also declared an amount of profits of Rs.1,81,68,855/- which arose from the 'derivative transactions' which are regarded as 'securities' under the Securities Contracts (Regulation) Act, 1956. Adverting to Section 2(14) of the Act, the ld. counsel pointed out that the securities held by Foreign Institutional Investors are regarded as capital asset defined under Section 2(14) of the Act and thus any gains arising from 'derivative transactions' by the FII are to be regarded as capital assets. The taxation of capital assets are subject to Article 13 of the Treaty and clause 5 thereof exempts taxation of such gains from taxation in India. It was alleged that the CPC has misconstrued the provisions of the Act and also the entries reflected in the return of income and unauthorisedly carried out impermissible adjustments.

9. The assessee also filed synopsis to defend its position which is reproduced hereunder for ready reference.

"This is in reference to captioned appeal heard by Hon'ble Members on December 07, 2022. During the course of the hearing, the Hon'ble Members directed the appellant to file written synopsis of the contentions raised during the hearing.

As directed, we, on behalf of and under the instructions of the appellant wish to submit a brief written synopsis of the contentions raised by the appellant as follows:

Background

The appellant is a company incorporated in Singapore and is non-resident in India under the provisions of Income Tax Act, 1961 ("the Act"). The appellant is a tax resident of Singapore and is entitled to claim the benefits of the Double Taxation Avoidance Agreement between India and Singapore ('India- Singapore DTAA'). The appellant is also registered as a Foreign Portfolio Investor ("FPI") in India with the Securities and Exchange Board of India.

During the AY 2019-20, the appellant undertook transactions for sale / purchase of equity shares and derivatives on the recognized stock exchanges of India. The appellant derived income in the form of short

term capital gains ('STCG') amounting to INR 1,81,68,855 on transaction in the derivatives (futures) segment and INR 55,07,252 on sale of equity shares.

In the income tax return for the relevant year, the appellant disclosed its residential status as non-resident and provided its FPI registration details in the ITR form (refer page 61 and 62 of the paperbook). In the income tax return, the STCG derived by the appellant was shown as follows: -

- STCG amounting to INR 55,07,252 on sale of equity shares offered for tax at the rate of 7.5% under the provisions of India-Singapore DTAA (refer page 107 of the paperbook):
- STCG amounting to INR 1,81,68,855 on derivative transactions were claimed as exempt under Article 13(5) of the India-Singapore DTAA (refer page 108 of the paperbook) and shown as income not chargeable to tax in India as per the DTAA.

The Assistant Director of Income Tax, Centralized Processing Center ('ADIT, CPC') while processing the return filed by the appellant, identified a variance amounting to Rs. 1,81,68,855 (i.e. STCG on derivative transactions) and added the same back while computing the income under the head capital gains.

With respect to this addition highlighted in the intimation u/s 143(1)(a) of the Act, the appellant filed responses electronically on February 12, 2020 and October 13, 2020 (refer to page 53 & 57 respectively of the paper book) clarifying the proposed variance and submitted that the income has been correctly reported in the ITR and hence the adjustments made by the ADIT, CPC are incorrect. The ADIT, CPC did not consider the responses filed by the appellant and passed an intimation order (refer to page 18 of the paper book) under section 143(1) of the Income Tax Act, 1961 ('the Act'). Later, appellant filed rectification application (refer to page 51 & 52 of the paper book) under section 154 of the Act for the mistakes apparent from record in the intimation, this application was not disposed by the ADIT, CPC.

The appellant also filed an appeal before the Commissioner of Income Tax (Appeals) ('Ld. CIT(A)') wherein the appellant challenged the adjustments made in the intimation order under section 143(1) of the Act. The appeal filed by the appellant was dismissed by the Ld. CIT(A) in a summary manner by stating that appellant should have filed online rectification application. The Ld. CIT(A) further observed that as per section 43(5) of the Act, profits and gains from the derivatives transactions carried out in a recognized stock exchange would be taxed as business income and not capital gains.

Aggrieved by the findings of the Ld. CIT(A), the appellant filed an appeal before the Honourable Income Tax Appellate Tribunal ('Hon'ble ITAT') challenging the order passed by the Ld. CIT(A). The key contentions of the assessee against the additions in the intimation u/s 143(1) of the Act are given hereunder:-

I. Gains derived by the appellant through the transaction in derivative (futures) should be treated as capital gain (instead of business income) exempt from taxes in India under the provisions of India-Singapore DTAA

The Ld. CIT(A) erred in stating that as per section 43(5) of the Act, profit and gains from derivative transactions carried out in recognized stock exchange would be taxed as business income and not capital gains.

In this regard, reference is made to the definition of 'Capital Asset' under section 2(14) of the Act which specifically provides that any securities held by a FPI should be treated as "capital assets". The relevant extract of the section is reproduced as under:

Section 2

"(14) "capital asset" means—

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992)..

The term "securities" is defined in explanation 2 of section 2(14) of the Act as follows: Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (It) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); "

Further, the term 'securities' is defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 to include derivatives within its ambit. The Relevant extract of section 2(h) is given below:

"(h) "securities" include

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

....."

Thus, on the basis of combined reading of the aforesaid sections, it is evident that securities (including derivatives) should be treated as "capital assets" in the hands of the FPI.

Section 115AD of the Act deals with income of the FPI from transfer of securities. As per section 115AD(1)(b) of the Act, income arising from the transfer of securities, shall be charged as short-term or long-term capital gain, depending upon the period of holding of such securities. Hence, it is submitted that the gains derived by the appellant on derivative transactions should be treated as "capital

gains" under the provisions of the Act and cannot be considered as business income (as incorrectly held by the Ld. CIT(A) in his order).

Taxability of capital under the India-Singapore DTAA

The STCG derived by the appellant on derivative transactions are exempt from taxes in India as per Article 13(5) of the India-Singapore DTAA. The relevant extract of Article 13(5) is reproduced below:

"ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

*4. 1[***]*

2[4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.

4B Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.

4C However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.!"

As evident from the aforesaid Article 13(5), gains from alienation of any property other than those listed in paragraphs 1, 2, 3, 4A and 4B derived by a tax resident of Singapore are only taxable in Singapore.

The transactions in derivatives are not covered in paragraphs 1, 2, 3, 4A and 4B and accordingly, the gains derived by the appellant from derivatives are exempt from taxes in India.

Capital Gains income was correctly reflected in the "CG Schedule" (Capital Gains) of the ITR filed by the appellant.

The Ld. CIT(A) has erred in that the appellant has incorrectly filed its tax return and that appellant has erred in not filling amount of LTCG at row no. 12 of the ITR form. The Ld. CIT(A) has failed to appreciate that the appellant had correctly filed its ITR form and made appropriate disclosures as required to be made under law in the ITR form.

As discussed in detail in point I above, the STCG derived by the appellant on derivative transactions is exempt from taxes in India under Article 13(5) of the India-Singapore DTAA. The appellant has accordingly claimed STCG amounting to INR 1,81,68,855 on derivative transactions as exempt under Article 13(5) of the India-Singapore DTAA (refer page 108 of the paperbook) and shown the same as income not chargeable to tax in India as per the DTAA. The relevant extract of the ITR is as follows:

9 Amount of STCG included in A1-A8 but not chargeable to tax or chargeable at special rates in India as per DTAA										
Sl. No.	Amount of income	Item no. A1 to A8 above in which included	Country Name, Code	Article of DTAA	Rate as per Treaty (enter NIL, if not chargeable)	Whether TRC obtained (Y/N)	Section of I.T. Act	Rate as per I.T. Act	Applicable rate [lower of (6) or (9)]	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
1	5507252	A3iie	SINGAPORE 65	13	7.5	Yes	111A	15	7.5	

Acknowledgement Number : 178571621260919

2		SINGAPORE 65	13	0	Yes	115AD	30	0		
a	Total amount of Short Term Capital Gain not chargeable to tax in India as per DTAA								A9a	81611855
b	Total amount of STCG chargeable to tax at special rate, n't India as per DTAA								A9b	5507252
10	Total short term capital gain (A1c+ A2c+ A3c+ A4a+ A4b+ A5c+ A6g+ A7+ A8-)								A10	5507252

As the STCG derived by the appellant on derivative transactions is not chargeable to tax in India under the provisions of the India-Singapore DTAA, the same is not required to be shown in 'Schedule SI' (refer to page 127 of the paper book) (income chargeable to tax at special rate) of the ITR. It is therefore, submitted that non-disclosure of STCG amount highlighted in the intimation u/s 143(1) of the Act is incorrect as Schedule SI deals with income chargeable to tax at special rates.

Further, row 12 of Schedule-CG (as referred by the Ld. CIT(A) in para 6.2 of his order) is also not applicable as the said column relates to disclosures for long term capital gains. As the appellant has not derived any long-term capital gains during the relevant year,

the findings given by the Ld. CIT(A) at para 6.2 of his order is incorrect in law and on facts of the case.

Hence, no adjustment shall be made in the instant case as the income has been correctly reported in the income tax return filed by the appellant.

III. The Ld. ADIT, CPC erred in law and on the facts and circumstances of the case by making adjustments to the total income of the appellant vide the impugned intimation order dated 24.12.2020 under section 143(1) of the Act.

The scope of section 143(1) is very clearly defined and only the listed adjustments under section 143(1)(a) of the Act are permissible under section 143(1) of the Act. The relevant extract of section 143(1) of the Act is as follows:-

"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a). the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the appellant of such adjustments either in writing or in electronic mode:

Provided further that the response received from the appellant, 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:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April 2018;"

It is evident from the above that only 5 adjustments listed in clause (i) to (v) of section 143(1)(a) are permissible under section 143(1) of the Act. Clause (vi) is also not applicable with effect from AY 2018-19 as per the above mentioned third proviso. In the instant case, the benefits of the India-Mauritius DTAA are effectively denied to the appellant in the intimation under section 143(1) of the Act which is outside the scope of the permissible adjustments under section 143(1) of the Act. Accordingly, the adjustment made in the intimation under section 143(1) of the Act should be deleted in the case of the appellant.

In this regard, reliance is placed on the following judicial precedents:

1) *The Hon'ble Allahabad High Court in the case of Commissioner of Income-tax, Meerut v. Modi Xerox Ltd. [2014] 41 taxmann.com 302 (Allahabad) held as follows:*

"17. We have very carefully considered the rival submissions. The scope of section 143(1)(a) of the Act is by now well settled. The assessing officer can make prima facie adjustments only in respect of issues which are not debatable and for which no further information required from the assessee other than that contained in the return of income and the accompanying documents. In other words where the claim admits of more than one interpretation or requires further facts and details, the same is outside the scope of the said section. We agree with the submissions of the learned counsel for the assessee that while adjudicating an appeal against intimation under sec. 143(1)(a) of the Act the CIT(A) is not empowered to call for further details at the appellate stage. The CIT(A) is required to see whether on the basis of the return or, the accompanying documents as filed before the assessing officer, any prima facie adjustment could be made. It is further not open to the CIT(A) to remit set aside the matter to the file of the assessing officer. The CIT(A) may either delete or sustain the prima facie adjustment. In the light of these observations the grounds of appeal raised by the assessee are adjudicated upon..."

2) *The Hon'ble Bombay High Court in the case of Khatau Junkar Ltd. v. K.S. Pathania, Dv. CIT 119921 196 ITR 55 (Bom.) held as follows:*

"23 In its literal sense, 'prima facie' means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then can it be disallowed under the proviso to s. 143(1)(a). If any further enquiry is necessary, or if the ITO feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-s. (2) of s. 143."

3) *The Hon'ble Delhi ITAT in the case of M/s. Ravi Baijai Design Pvt. Ltd., New Delhi v. ITO (CPC), Bangalore — ITA 926/De1/2012 has deleted the additions made in the intimation u/s 143(1) of the Act by referring to the decision of the Hon'ble Indore ITAT in the case of*

ACIT vs Som Distilleries & Breweries Ltd in ITA No. 248/ Ind/2012 wherein the Hon'ble Indore ITAT held as follows:

"5. ...It is trite that u/s 143(1)(a) prima facie adjustments is permissible only in respect of claims, the incorrectness of which is apparent from information in the return. Debatable claims are not liable to such prima lack adjustments. In the case of the appellant, under consideration, there is nothing in the return or in the computation of total income to suggest that the impugned LTA. 1937/De1/2017 Assessment year 2013-14 6 claim of set off of brought forward losses, was prima facie incorrect. In the given facts and circumstances of the case, the denial of the impugned claim, in my considered view, could be done only after issue of notice to the appellant, since the non-speaking unilateral denial of the impugned claim was clearly outside the ambit of prima facie adjustments envisaged in section 143(1)(a) of the Act and that the A.O. did not have sufficient material to hold that the impugned claim was prima facie inadmissible. Under the provisions of section 143(1)(a) of the Act, the A.O. was not entitled to allow or disallow the claim but could only make adjustment on a prima facie scrutiny of the return and the accompanying documents filed by the appellant. As already stated, since the impugned non-speaking unilateral denial of the appellants claim, was without issue of notice to the appellant, in my considered view, the A.O. travelled beyond the scope of the powers conferred upon him by section 143(1)(a) and thus wrongly disallowed the impugned claim which by no stretch of imagination could come within the ambit of prima facie adjustments u/s 143(1)(a) of the Act....."

1.2 The relevance of section 143(1)(a), under which the A.O. was acting, could not have been overlooked. The importance of scope of powers u/s 143(1)(a) lies in severe limitation of powers of the A.O. under this section. Any relief that he can grant or the disallowance he can make, under this section must be solely on the basis of material on record."

Hence, it is submitted that no adjustments can be made in the case of the appellant under section 143(1) of the Act.

IV. ADIT, CPC has erred in law in not accepting the responses filed electronically by the appellant

Two responses were filed by the appellant towards the communications received under 143(1)(a) of the Act (refer to page 57 & 53 respectively of the paper book). These responses were completely ignored before filing the intimation u/s 143(1) of the Act passed by the ADIT, CPC. Therefore, the additions made in the intimation order are not tenable and lacks application of mind by the ADIT, CPC and hence, shall be deleted.

V. No interest shall be charged under section 234B and 234C of the Act

The additions made to the income of the appellant pertains to STCG derived on derivative transactions. As discussed above in detail, the

STCG derived by the appellant on derivative transactions is exempt from taxes in India under Article 13(5) of the India-Singapore DTAA and thus, the demand raised against the appellant in the intimation u/s 143(1) of the Act alongwith corresponding interest u/s 234B and 234C of the Act is incorrect. Hence, the computation of interest under section 234B/234C of the Act should be appropriately modified.”

10. In the light of oral and written submissions, the ld. counsel urged that restoration of position was taken in the return of income.

11. The ld. DR for the Revenue by the assessee, on the other hand, relied upon the order of the CIT(A) and submitted in furtherance that even if the derivative income is regarded as ‘securities’ and, in turn, such securities deriving its value from underlying shares are akin to shares and thus alienation thereof is taxable in India.

12. We have considered the rival submissions and the material placed on record. While the assessee in the instant case declared certain amount arising from derivative transaction as totally exempt from tax liability and applied concessional rate for other capital gains in the light of the provisions of tax treaty, the CPC has made adjustments towards derivative income and enhanced the taxable income of the assessee. In the first appeal against such adjustments, the CIT(A) has also not examined the issue on merits and rejected the appeal of the assessee in a summary manner. The CIT(A) has denied the relief on the ground that the assessee has not followed the right course of action provided for CPC communication.

13. On appraisal of facts and totality of circumstances, we are of

the considered view that the matter needs to be remanded back to the CIT(A) for adjudication on merits after ascertaining the facts and applicable position of law thereon. Hence, without expressing any opinion on merits of exclusion of income from derivative transactions from chargeability claimed by the assessee in the light of treaty, the controversy is restored to the file of the CIT(A). The CIT(A) shall examine the facts on merit in accordance with law and in case being satisfied with the merits of the case, shall take appropriate measures to direct the CPC to carry out the rectification of the adjustments made in accordance with law. Reasonable opportunity shall be given to the assessee while doing so.

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

Order pronounced in the open Court on 15/12/2022.

Sd/-

**[SAKTIJIT DEY]
JUDICIAL MEMBER**

DATED: /12/2022

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**