

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.138/Coch/2017
Assessment Year : 1998-99

M/s. Trivandrum Club, Vazhuthacaud, Trivandrum. [PAN:AABFT 4635P]	Vs.	The Assistant Director of Income- tax (Exemptions), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Rajeev R., CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	15/01/2019
Date of pronouncement	16/01/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Trivandrum dated 14/02/2017 and pertains to the assessment year 1998-99.

2. The assessee has raised lengthy grounds in this appeal which mainly relates to the rectification of order dated 14/03/2007 giving effect to the order of the Tribunal dated 5.3.2004 stating that there is no mistake apparent from record to invoke the provisions of section 154 of the I.T. Act by ADIT(Exemptions) vide order dated 03/06/2008.

3. The facts of the case are that the Tribunal vide its order dated 5.3.2004 directed to tax receipts from non members and TMBT's of the assessee club on the basis of separate sets of books of account maintained by them. Accordingly, effect for the said order was given on 14.03.2007 treating the entire amount of income determined as exempt from tax. Then, finding that no separate sets of books of account to distinguish the receipts from members and non members had been maintained for the years prior to AY 1998-99 and in those assessments, the Assessing Officer treated only 50% of the receipts as exempt from tax, rectification order for the year under consideration has since been passed on 03.06.2008 withdrawing 50% of the excess income which was wrongly allowed in the appeal effect given order dt.14.03.2007 as exempt, due to the reason that no separate sets of books of account so as to distinguish the receipts from members and non members had been maintained for the year under consideration as well.

4. On appeal, the CIT(A) observed that the Assessing Officer, by virtue of section 154 of the Act, can rectify any mistake apparent from the record. If it is a mistake which requires to be established by a complicated process of investigation, argument or proof it cannot be regarded as a mistake apparent from the record. The CIT(A) observed that after giving effect to the ITAT order vide order dated 14.03.2007, the entire income was exempted from tax by the Assessing Officer without considering the fact that no separate sets of books of

account so as to quantify the receipts from non-members and TMBT's had been maintained by the assessee. According to the CIT(A), the mistake inadvertently crept in which is very much apparent from the record and cannot be construed as argumentative in nature and does not further involve complicated process of investigation, argument and proof. Hence, the CIT(A) held that the rectification order passed on 03.06.2008 was very well within the permissible limit of the Act and does not require further interference. According to the CIT(A), it is not the case of the assessee that they actually had maintained separate sets of books of account to distinguish the receipts from members and non members during the year under consideration. It is also not the case of the assessee that the principle of mutuality is applicable to the income determined in the rectification order passed. The CIT(A) observed that to the income of Rs.19,70,050/- which was brought to tax after allowing direct and indirect/common expenses as directed by the ITAT, the principle of mutuality would not apply since it has direct nexus to the receipts from the individuals who were not members of the assessee club. In view of the above, the CIT(A) confirmed the rectification order passed u/s. 154 of the Act.

4.1 The CIT(A) observed that another ground of appeal that the proceedings were barred by limitation of time was factually incorrect since the rectification order was rightly passed within four years from the end of the financial year in which the order sought to be amended was passed. As effect to the order of the

ITAT was given on 14.03.2007 and same was the order sought to be amended, the CIT(A) held that the rectification order passed on 03.06.2008 was within the prescribed time limit and hence, dismissed this ground.

5. Against this, the assessee is in appeal before us. The contention of the Ld. AR is that the rectification order passed u/s. 154 of the Act is illegal and should be quashed as there is no mistake apparent from record.

6. On the other hand, the Ld. DR relied on the order of the CIT(A).

7. We have heard the rival contentions and perused the record. Originally, the Assessing Officer passed the order on 14/03/2007 giving effect to the order of the ITAT, Cochin Bench in ITA No. 285/Coch/2003 dated 05/03/2004 wherein he had given deduction as follows:

Gross Income	27,50,082	
Less: 50% of receipts treated as exempt	13,75,041	
Gross total income		13,75,041
Less: Direct expenses allowed in the order dated 22/03/2002	3,12,795	
Indirect expenses/ common expenses @10%	4,55,784	
Depreciation	<u>11,457</u>	<u>7,80,036</u>
Total Income		<u>5,95,010</u>

7.1 However, the Assessing Officer passed the rectification order on 03/06/2008 withdrawing the deduction towards 50% of receipts as exempt at Rs.13,75,041/- and determined the income at Rs.19,70,050/- instead of Rs.5,95,010/-.

7.2 Now the contention of the Ld. AR is that deduction was granted to the assessee in terms of ITAT order in ITA No. 285/Coch/2003 dated 05/03/2004 wherein it was held as follows:

"7(2) As far as the apportionment is concerned, we direct the Assessing Officer to treat 50% as taxable and the balance 50% as exempt.

7(6) As far as the assessment years 1997-98 and 1998-99 are concerned, the assessing officer may bring to tax the receipts from non-members and TMBT's on the basis of the separate accounting made by the assessee-club. This is subject to verification to be made by the assessing officer. Therefore, there is no need of any estimation for these two assessment years as far as taxable receipts are concerned."

7.3 Contrary to this, the Id. DR made the submission that in the assessment years prior to the assessment year 1997-98, the Club did not maintain separate accounts for the receipts from members/non members and in those assessments, 50% of the receipts were treated as exempt, as the receipts from non members were not discernible. Therefore, the treatment of exempted 50% of taxable receipts was a mistake. Since the order dated 14/03/2007 was an order giving effect to the Tribunal order dated 05/03/2004, the mistake is also apparent from record. This contention of the Ld. DR cannot be accepted as it is a debatable issue. Under section 154 of the I.T. Act, the Assessing Officer can

rectify the mistake if it is a mistake apparent from record. In other words, it must be an obvious patent mistake and not something which can be established by a long process of reasoning on points on which there may be conceivable two different opinions and hence, it is a debatable issue. It was not a mistake apparent from record. Hence, rectification is not possible since in this case, the issue was taken up by the Assessing Officer in the proceedings u/s. 154 of the Act dated 03/06/2008 which is a debatable issue. Thus, the Assessing Officer is not justified in rectifying the mistake vide the impugned order. Accordingly, we quash the rectification order passed u/s. 154 dated 03/06/2008.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on this 16th January, 2019.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 16th January, 2019

GJ

Copy to:

1. M/s. Trivandrum Club, Vazhuthacaud, Trivandrum.
2. The Assistant Director of Income-tax (Exemptions), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

