

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.669/Ahd/2023
Asstt.Year : 2018-19

Rajalben Hirenbbhai Patel Nirma House Nr. Income Tax Circle Ashram Road Ahmedabad. PAN : AFIPP 0507 N	Vs	DCIT, Circle-2(1)(1) Vejalpur Ahmedabad.
--	----	--

(Applicant)	(Responent)
Assessee by : Shri Hemanshu Shah, AR	
Revenue by : Shri V.K. Mangla, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 04/12/2022

घोषणा की तारीख /Date of Pronouncement: 06/12/2023

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as ld.CIT(A)] under section 250(6) , dated 27/07/2023,upholding the rejection by the Centralized Processing Centre (CPC), dated 26/07/2019 ,of the rectification application of the assessee made u/s 154 of the Act pertaining to Asst.Year2018-19.

2. The grounds raised by the assessee are as under:

- 1. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in points of law and facts.*
- 2. In law and in the facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in*

confirming the addition of Rs.50,65,550 made by Ld. AO treating as dividend u/s. 10 (34) of IT Act. However appellant earned income from mutual fund which is exempt u/s. 10(35) of I T Act.

3. *In law and in the facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in confirming the addition of Rs 50,65,550, though in the intimation u/s. 143(1) dt 23rd January 2019 this income was considered as exempt and income was assessed for Rs Nil which was returned income.*
4. *In law and in the facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in confirming the addition of Rs 50,65,550 though original intimation u/s 143(1) was passed on 23rd January 2019 accepting returned income of Rs Nil. Later on, rectification order was passed u/s 154 of I T Act on 27th June 2019 though notice u/s 154 was not issued to appellant. The order passed on 27th June 2019 is, therefore, is null and void having no legal effect.*
5. *In law and in the facts and circumstances of the Appellant case, interest u/s.234C was charged for Rs 21,013. Appellant considered this income as exempt u/s. 10(35) of I T Act and hence not liable to pay interest u/s. 234C of I T Act. Interest u/s. 234C is chargeable on returned income of Rs Nil and not on assessed income.”*

3. Brief facts of the case are that the assessee had filed return of income determining NIL income . The return was processed under section 143(1) of the Act accepting the returned income. Later on Central Processing Centre (CPC) enhanced the assessee's income to Rs.40,65,550/-in a rectification order passed under section 154 of the Act. The assessee in turn filed a rectification application u/s 154 of the Act against this order of the CPC, which was rejected by the CPC vide order dated 26/-7/2019. Aggrieved by the dismissal of its rectification application, the assessee went in appeal to the ld.CIT(A) who confirmed the dismissal order of the CPC. The assessee has now come before the Tribunal in this back-ground.

4. I have heard both the parties. I have also gone through all the documents which were placed before me, and after going through of the same, I hold that the assessee's application for rectification of the CPC's order needs to be allowed; I find that there was a clear

mistake in the CPC's order of which the assessee had sought rectification. My reasons for holding so follow.

But before proceeding with the reasons, I shall first bring out necessary facts relating to the issue.

5. The order of the CPC u/s 154 of the Act against which the assessee had moved the rectification application first needs to be considered so as to understand the rectification sought by the assessee which was denied. The same was placed before me at PB Page No.7 to 10, but for the purpose of adjudication of issue before me, the computation of income in the rectification order of the CPC is only relevant, which is placed at PB Page No.7 & 8 before us and is reproduced hereunder:

आय कर संगणना		INCOME TAX COMPUTATION (In Rupees)		
क्रम संख्या Sl.No.	विवरण Particulars	विवरण देने वाले शीर्ष Reporting Heads	करदाता द्वारा आय विवरण में दिए गये As Provided by Taxpayer in Return of Income	धारा 154 केअधीन संगणित (रुपयोंमें) As Computed Under Section 154
1	आय शीर्ष HEADS OF INCOME	वेतन से आय INCOME FROM SALARY	0	0
2		गृह संपत्ति से आय INCOME FROM HOUSE PROPERTY	0	0
3		पूंजी अमलाय INCOME FROM CAPITAL GAINS **	0	0
4		अन्य स्रोतों से आय INCOME FROM OTHER SOURCES **	37,796	37,796
5		अंतरशीर्ष समायोजन INTRA HEAD ADJUSTMENTS	NA	0
6		कुल (शीर्ष के अंतर्गत समायोजन के बाद) TOTAL (AFTER INTRA HEAD ADJUSTMENTS) 6=(1+2+3+4)-5	37,796	37,796
7		6 केविरुद्ध मुजरा की जाने वालीचालू वर्ष की हानियाँ LOSS OF CURRENT YEAR SET OFF AGAINST 6	0	0
8		6 केविरुद्ध मुजरा किए जाने केलिए अग्रणीत की गई हानियाँ BROUGHT FORWARD LOSSESS SET OFF AGAINST 6	0	0

स्थायी खाता संख्या		PAN:	Name	निर्धारण वर्ष	A.Y.	आदेश की तिथि	Date of order
AFIPP0507N			RAJALBEN HIRENBHAI PATEL	2018-19		27-06-2019	
क्र. संख्या	विवरण	विवरण देने वाले शीर्ष	करदाता द्वारा आय विवरणी में दिए ब्यौरे	धारा 154			
SI.No.	Particulars	Reporting Heads	As Provided by Taxpayer in Return of Income	केअधीन संगणित (रुपयों में)	As Computed Under Section 154		
9		सकल कुल आय GROSS TOTAL INCOME 9=6-(7+8)	37,796		41,03,348		
10	10(i).	विशेष दर पर टैक्स के लिए आय का शुल्क 115BBE के तहत INCOME CHARGEABLE TO TAX AT SPECIAL RATE UNDER SECTION 115BBE	0		0		
	10(ii).	विशेष दर पर टैक्स के लिए आय का शुल्क 115BBE के अलावा INCOME CHARGEABLE TO TAX AT SPECIAL RATE OTHER THAN 115BBE	0		40,65,552		
11	DEDUCTIONS UNDER CHAPTER VI A	अद्वय VI ए के अधीन कुल कटौतियाँ TOTAL DEDUCTIONS UNDER CHAPTER VIA	37,796		37,796		
12		कटौतियों के बाद कुल आय TOTAL INCOME AFTER DEDUCTIONS 12 =(9 - 11)	0		40,65,550		
13		शुद्ध कृषि आय /दर के प्रायोजन के लिए कोई अन्य आय NET AGRICULTURAL INCOME/ANY OTHER INCOME FOR RATE PURPOSE	0		0		
14		संकलित आय AGGREGATE INCOME	0		0		
15		अधिनियमित होने के लिए चालू वर्ष की हानियाँ LOSS IN CURRENT YEAR TO BE CARRIED FORWARD	0		0		
16		साधारण आय पर कर TAX AT NORMAL RATE ON 14	0		0		
17	कर से ब्यौरा TAX DETAILS	17(i). 115BBE के तहत आय पर कर TAX ON 115BBE	0		0		
		17(ii). 115BBE के अलावा विशेष आय पर कर TAX ON SPECIAL INCOME OTHER THAN SECTION 115BBE	0		4,06,555		
18		कृषि आय पर छूट REBATE ON AGRICULTURAL INCOME	0		0		
19		शुद्ध संदेय कर NET TAX PAYABLE 19=(16+17(i)+17(ii)-18)	0		4,06,555		
20		छूट यु/एस 87A REBATE U/S 87A	0		2,500		
21		टैक्स के पश्चात् संदेय योग्य कर TAX PAYABLE AFTER REBATE 21=(19-20)	0		4,04,055		
22		अधिमार्ग SURCHARGE					
		(i) 25% of Deemed Income chargeable U/S 115BBE	0		0		
		(ii) On [(22) - (Tax on Deemed Income chargeable u/s 115BBE)] (applicable if 14 exceeds 50 lacs)	0		0		
		(ii) [(22) पर 25% कर योग्य u/s 115BBE)					
	(iii) Total i + ii	0		0			
23		माध्यमिक एवं उच्च शिक्षा उपभार सहित शिक्षा उपभार EDUCATION CESS (SECONDARY & HIGHER) ON (21+22(iii))	0		12,122		
24		कर राहत से पूर्व सकल कर दायित्व GROSS TAX LIABILITY 24=(21+22(iii)+23)	0		4,16,177		
25	कर राहत	धारा 89 के अधीन राहत RELIEF U/S 89	0		0		
26	TAX RELIEF	धारा 90/90A के अधीन राहत RELIEF U/S 90/90A	0		0		
27		धारा 91 के अधीन राहत RELIEF U/S 91	0		0		
28		कुल कर राहत TOTAL TAX RELIEF 28=(25+26+27)	0		0		

6. As is clear from the above, the assessee had filed return declaring income of Rs.37,796/- and claimed the same as deduction under Chapter VIA, thus returning NIL income for taxation. The same is revealed in first column of the tax computation made by the CPC under section 154 of the Act reproduced above. The second column of the said computation brings out rectification made by the CPC. A bare perusal of the second column reveals that under the different heads of Income no rectification was made. The income returned by the assessee of Rs.37,796/- as income from other sources was the same income computed under section 154 of the Act also. It is only in the gross total income that the income has been computed at Rs.41,03,348/- as against Rs.37,796/- returned by the assessee. Clearly the returned income has been accepted as such in the income computed under section 154 of the Act by the CPC. There is no correction of any mistake vis-à-vis income returned by the assessee.

7. With no rectification of income returned by the assessee under different heads, how the gross total income has been shown of Rs.41,03,348/- is not coming out from the rectification order. Even as per the formula applied in the order of calculating the gross total income i.e. $9 = 6 - (7 + 8)$, the income does not come to Rs.41,03,348/-, since income in column-6 in the income computed under section 154 is Rs.37,796/- and there is "0" figure mentioned against column no.7 & 8. Therefore, even as per the formula applied for calculating the gross total income under section 154 of the Act, the income ought to have been Rs.37,796/- only.

8. The computation of income under section 154 of the Act by the CPC at Rs.41,03,348/- is clearly a patent mistake and the assessee's rectification application therefore against this order u/s 154 of the

Act passed by the CPC, I hold, ought to have been entertained and allowed.

9. Be that so, the ld.counsel for the assessee has pointed out that this intimation under section 154 of the Act was made by the AO computing the assessee's income (though incorrectly) at Rs.40,65,552/-, without even giving opportunity of hearing to the assessee; that no notice was given to the assessee prior to the passing of this order computing the assessee's income under section 154 of the Act. The ld.DR was unable to controvert the same. In view of the impugned order passed by the CPC being in gross violation of the principles of natural it is not sustainable in law, I hold.

10. Without prejudice to what has been stated above, on receipt of this computation of income by the CPC under section 154 of the Act, computing the income of assessee at Rs.40,65,552/- chargeable to tax at special rate, the assessee had moved an application seeking rectification in the said order pointing out that **she had earned dividend income from mutual funds during the year, which were exempt from taxation under section 10(35) of the Act.**

11. The relevant application filed by the assessee is produced before me at page no.12 as under:

Rectification Details:

<i>Rectification Request Type</i>	:	<i>Return data correction (XML)</i>
<i>Reason selected</i>	:	<i>Others</i>
<i>Other Reason</i>	:	<i>Mutual Fund Dividend Rs.50,65,552 is exempt income us.10(35) of the IT Act. Hence this income should not be added in total income.</i>

12. To the Ld.CIT(A) the assessee had pointed out that **income from dividend earned from the domestic companies , which was otherwise exempt from tax under section 10(34) of the Act, if exceeded Rs 10lacs, it was chargeable to tax at a special rate under section 115BBDA at the rate of 10%. That the assessee having not earned dividend exempt u/s 10(34) of the Act, therefore the invocation of section 115BBDA of the Act to the dividend income earned by the assessee was a mistake needing rectification.**

13. The Ld.CIT(A) however, without dealing with the contention of the assessee upheld the rejection of the rectification application of the assessee by the CPC, thus confirming the addition made by the AO.

14. I have gone through the relevant provisions of law and I find merit in the contention of the assessee. For clarity the provisions of section 115BBDA, 10(34) and 10(35) of the Act are reproduced hereunder:

“115BBDA. (1) Notwithstanding anything contained in this Act, where the total income of a specified assessee, resident in India, includes any income in aggregate exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company or companies on or before the 31st day of March, 2020, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends in aggregate exceeding ten lakh rupees, at the rate of ten per cent; and

(b) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.

(2) No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1).

Explanation.—For the purposes of this section,—

- (a) "dividend" shall have the meaning assigned to it in clause (22) of section 2 but shall not include sub-clause (e) thereof;
- (b) "specified assessee" means a person other than,—
- (i) a domestic company; or
 - (ii) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
 - (iii) a trust or institution registered under section 12A or section 12AA or section 12AB.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

.....

(34) any income by way of dividends referred to in section 115-O :

Provided that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA:

Provided further that nothing contained in this clause shall apply to any income by way of dividend received on or after the 1st day of April, 2020 other than the dividend on which tax under section 115-O and section 115BBDA, wherever applicable, has been paid;

(35) any income by way of,—

- (a) income received in respect of the units of a Mutual Fund specified under clause (23D); or
- (b) income received in respect of units from the Administrator of the specified undertaking; or
- (c) income received in respect of units from the specified company:

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be:

15. It is clear from a bare reading of the above provisions that section 115BBDA of the Act levies special rate of tax **only on dividend income earned from domestic companies if exceeding Rs.10 lakhs**. This dividend income is exempt upto Rs.10 lakhs under section 10(34) of the Act. The assessee has claimed to have

earned dividend income from mutual fund which are exempt under section 10(35) of the Act. Evidence to this effect was also filed by way of statement of Mutual Fund. The assessee Ifind had clearly demonstrated the inapplicability of section 115BBDA of the Act to the facts of her case.

16. In the light of the same theLd.CIT(A)'s order upholding the rejection of her application seeking rectification to this effect is clearly untenable more particularly since I find that the Ld.CIT(A) has not even cared to deal with the contention of the assessee before upholding the order of CPC .

17. For the aforesaid reasons therefore, we hold, the rectification application filedby the assessee needs to be allowed.

In view of the above the order of the CPC/AO, rejecting the assessee's rectification application seeking deletion of addition made to her income of dividend income earned from mutual fund and subjected to tax at 10%, is set aside.The CPC/ AO is directed to allow the rectification application of the assessee and delete the adjustment made to her income to the tune of Rs.40,65,550/-, taxed at the rate of 10%.

The grounds of appeal of the assessee are allowed.

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

Order pronounced in the Court on 6th December, 2023 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 06/12/2023

vk*