

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH LUCKNOW**



2. Before pitching into underlying grounds of appeal, the facts of the case showcasing the string of events which had occurred until this present appeal is filed are depicted beneath;

2.1. The assessee is a Society registered under the Society Registration Act, 1860 and has obtained the registration u/s 12A of the Act on 24/07/2007. In relation to assessment year under consideration the assessee filed its ITR u/s 139(1) of the Act in the relevant form ITR-7 on 30/08/2018.

2.2. While processing said ITR, the Central Processing Centre, Bangalore [Now onwards 'Ld. CPC'] u/s 143(1) of the Act made twofold disallowances (a) denying the claim of exemption u/s 11 of the Act and (b) disallowed the claim for deduction of expenses incurred / applied for its main object against the income earned/accrued to it and consequently determined the net tax liability after giving credit TDS to ₹11,60,810/-.

2.3. In response to intimation, the assessee approached Revenue u/s 154 of the Act on 23/03/2022 with a request to reprocess by correcting mistake in (a) denying exemption (b) disallowing expenditure against the income. The Revenue rejected the request *in limine* on 16/09/2022 stating that, 'latest return for the same PAN & AY has been transferred to AST, hence **aborted and closed the processing**. There is no mistake apparent from record in the intimation /order u/s 143(a)/154 EFL/1819/T13/ITR000226179561 which is sought to be rectified. Hence your rectification request is rejected'.



2.4. Accessing the statutory remedial measure available u/s 246A of the Act, the assessee filed an appeal with Ld. CIT(A) against the former rejection. Nevertheless, it ended up with no relief from the Ld. CIT(A) who dismissed the appeal with following observation;

*“Under the Part B-TI (iv) (Total Income) of return of income in form ITR-7 has been examined. An **amount applied during the PY utilisation of surplus accumulated during an earlier year is shown as NIL.** The Audit details column in ITR is blank, **the remedy lies in filing revised and correct return of income.** Therefore, there is no mistake apparent in proceedings and rejection of rectification, hence appeal is dismissed.”*

2.5. The aggrieved assessee presented itself in the present case as being deprived of fair adjudication on as many as five argumentative grounds;

**1. NOT ALLOWING THE AMOUNT OF RS. 45,45,050.00 APPLIED FOR THE PURPOSE OF THE OBJECT OF THE ASSOCIATION**

*(i) That the Ld. Commissioner of Income tax (Appeals) has erred in law and in fact to **observe** that:*

*The Part- B-TI (iv) (Total Income) of return of income in form ITR-7 has been examined which is as under - An amount applied during the PY utilisation of surplus accumulated during an earlier year is shown as NIL.*

*Whereas the amount of Revenue Expenses of Rs. 45,45,050 was duly disclosed at Part B-TI (i) of Return of Income in form ITR-7 being amount applied during the previous year – Revenue account 24(A) of Schedule ER.*



*(ii) That Ld. Commissioner of Income tax (Appeals) has erred in law and in fact to held that the audit details Column in ITR is Blank without any enquiry during the appeal proceedings and ignored the fact that the Audit Report in Form 10B was duly uploaded on the Portal on 30.08.2018 i.e. on the date of idling of Income Tax Return.*

*(iii) That Ld. Commissioner of Income tax (Appeals) has erred in law and in fact by not considering that the disallowance of total amount applied towards the objects of the Association do not fall under the provisions of Section 143(1)(a) of the Act*

*(iv) That Ld. Commissioner of Income tax (Appeals) has erred in law and in fact by not considering the fact that amount of Rs. 45,45,050 was actually applied towards the objects of the Association and thus ignored the substance of the matter. Neither the LD Assessing Office before rejecting rectification application under section 154 nor the Ld Commissioner of Income tax (Appeals) before dismissing the appeal, raised any query on procedural/clerical lapses in ITR.”*

*(iv) The appellant prays that he may be allowed to add, amend, alter forego any of the grounds at the time of hearing. Any other relief, which your good self may deem fit.”*

3. The Ld. AR at the outset submitted that, though the grounds raised in the appeal memo are argumentative & thus inconsonance with rule 8 of ITAT-Rules, 1963, however these grounds collectively seek to agitate two bullet issues viz; (a) rejection to rectify mistake of denial of exemption and (d) disallowance of expenditure incurred in earning total income/receipt as against the commercial principle and then denying to rectify the said mistake in response to rectification application.



4. We have heard the rival submission and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records and considered the facts in the light of settled position of law.

5. In advancing the matter we first witnessed that the assessee has filed its ITR reporting loss of ₹11,14,221/- with the total receipts of ₹34,30,828/- as against the total expenses amounting to ₹45,45,050/- during the year under consideration. The Ld. CPC while processing the ITR has in first place denied to grant the benefit of exemption and then disallowed the deduction of total expenses incurred by the assessee. This resulted into bringing to tax entire gross income without permitting deduction of expenditure incurred in relation to gross income so earned by or accrued to the assessee. When case sailed in first appeal, the Ld. CIT(A) merely recorded the perusal of documents and dismissed the appeal in haste by jumping onto the conclusion without dilating on issue based on the facts discovered and as appearing in the ITR filed by the assessee. The Ld. CIT(A) perfunctorily dismissed the appeal solitarily based on the NIL reporting of the amount applied during the year from the amount of surplus accumulated during the earlier years co-relating it with Audit Report and figures in ITR column thus suggesting filing of revise return.

6. Further analysis of facts in the light of grounds presented by the assessee for adjudication paves way to nucleus issues are;



(a) *whether the CPC was correct in rejecting the request for rectification when it misplaced its jurisdictional over the assessee for the year under consideration?*

(b) *whether the Revenue is correct in denying the exemption u/s 143(1) of the Act and then rejecting to rectify such mistake u/s 154?*

7. Let us first deal with question (a) above; the course of proceedings it also unveiled from the records and as fortified by the Ld. DR that jurisdictional rights over the PAN, return for the assessment year under consideration & pending rectification application were transferred from Ld. CPC to Ld. JAO [jurisdictional assessing officer]. That being the case, Ld. CPC ceased to have any jurisdiction to vouch the pending rectification application. The Ld. CPC could have simply forwarded the same to the Ld. JAO once it was within its knowledge that it is no more vested with the jurisdiction over the PAN, return and the pending rectification application. *Per contra*, after aborting the processing the Ld. CPC communicated the rejection quoting therein that ‘*There is no mistake apparent from record in the intimation /order u/s 143(a)/154 EFL/1819/T13/ITR000226179561 which is sought to be rectified. Hence your rectification request is rejected*’. This action of rejection being extra-territorial calls-off and deserves to be set-aside, ergo ordered accordingly. The respective ground assailed in the present appeal by the assessee is accordingly stands allowed.



8. Now coming to question (b) above; relating to scope of section 143(1) of the Act in disallowing of expenditure incurred by the assessee. We note that, during proceedings, the Ld AR strongly pressing into service the CBDT Circular No. 689 dt. 24/08/1994 defied the rejection of rectification request. This circular has thrown light on kind of adjustments permitted u/s 143(1) of the Act which are self-evident and are prima facie error which should be patent obvious or apparent on record and it also guides the aggrieved assessee the wholesome right to seek rectification under section 154 of the Act if such adjustment falls outside the ambit of Section 143(1) of the Act. The Ld AR has also relied on the CBDT Circular No. 669 dt.25/10/1993 and CBDT Instruction no. 1814 dt. 04/04/1989 drawing our attention to prima facie disallowances that is permissible u/s 143(1)(a) of the Act.

9. It is a trite law that, the Revenue cannot in unilateral proceedings disallow expenditure without affording an opportunity to the assessee. What cannot be done u/s 154 of the Act on the ground of debatability cannot be done u/s. 143(1) of the Act to the assessee's claim on which two views are possible. A debatable issue cannot be a subject matter of adjustment u/s. 143(1) of the Act. In arriving such conclusion reliance can be placed on '*Bajaj Auto Finance Ltd. Vs CIT*' [2018, 404 ITR 564 (Bom)] wherein their lordship have categorically held that debatable claim cannot be disallowed by way of summary assessment u/s 143(1) of the Act.



10. In the present case, the assessee reporting loss of ₹11,14,221/- with the total receipts of ₹34,30,828/- as against the total expenses amounting to ₹45,45,050/-. The Ld. CPC disallowed the entire expenditure grossly without putting assessee to notice of such adjustment. This unilateral act of the Revenue in our considered view is not in consonance with the provisions of law and the former judicial precedents; hence cannot continue to stand. Thus this (b) question and the ground no (iii) stands answered.

11. In the ITR filed for assessment year 2018-19, the assessee has reported the incurrance of expenses anent to its objects which are revenue in nature amounting to ₹45,45,050/- as against the total revenue receipts during the previous year amounting to ₹34,30,828/-. Therefore, the assessee has failed to report the source of expenses incurred net of receipts. Ideally the bifurcation of expenses incurred from current year receipts & from the surplus accumulated during the earlier years was expected in point 18 of Schedule ER of the ITR. In the progress of proceedings, the assessee has presented the audit report dt. 30/08/2018 filed online in the prescribed Form 10B. We are surprised to find that tax authorities below failed to take cognizance of audit report filed by assessee and apply implicit test before arriving at negative conclusion by obtaining corroborative evidence and providing an opportunity to assessee. It is the claim of assessee that it has e-filed the mandatory audit report in prescribed form & the proof thereof has been placed on record which the Ld. DR could hardly disprove.





Consequently, the non-reporting or non-appearance of audit details under the head 'Audit details, Sr No. M2' of ITR should be seen as an error in processing return of income by the Ld. CPC. Thus, qualifying for rectification either suo-motu or an application by the assessee in this regard. This answers first two grounds of appeal of the appeal accordingly.

12. Lastly coming to ground (iv) of the appeal; since we have already set-aside rejection of rectification application as extra-territorial devolving deeper into issue application of expenditure on the objects and rejection of assessee's request to rectify such disallowance u/s 154 of the Act in our considered view is unwarranted.

13. In view of the former discussion, we set-aside the impugned order of first appellate authority and remit the matter back to the file of Ld. JAO with a bullet direction to rectify the mistake in above terms and allow the claim of expenditure to the assessee in accordance with law.

14. **In result the appeal of the assessee is ALLOWED in above terms.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 19<sup>th</sup> day of September, 2024

**-S/d-**

**SUBHASH MALGURIA**  
**JUDICIAL MEMBER**

Lucknow ; दिनांक / Dated : 19<sup>th</sup> day of September, 2024

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

1. अपीलार्थी / The Appellant.  
4. The Concerned CIT

2. प्रत्यर्थी / The Respondent.  
5. DR, ITAT, Bench 'SMC', Lucknow

**-S/d-**

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

3. The CIT(A)- NFAC, Delhi (India)  
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, लखनऊ/ ITAT, Lucknow.