

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
and  
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

**Stay Petn.No.167/Bang/2014  
(In ITA No.805Bang/2014)  
(Assessment year: 2005-06)  
AND  
ITA No.805Bang/2014  
(Assessment year: 2005-06)**

Karnataka Housing Board,  
3<sup>rd</sup> floor, Cauvery Bhavan,  
K.G.Road,  
Bangalore-560009.  
PAN:AAAJK0398K

... Petitioner/  
Appellant

Vs.

Deputy Director of Income-tax(Exemption)  
Circle 17(1),  
Bangalore.

... Respondent

Assessee by: Shri Padamchand Khincha, CA.  
Revenue by: Shri C.H.Sundar Rao(DR)

Date of hearing : 23/03/2015.  
Date of pronouncement: 31/03/2015.

**O R D E R**

**Per Smt. P.MADHAVI DEVI, JM:**

**ITA No.805/Bang/2014:** This is an appeal filed by the assessee against the order of the CIT(A), Mysore, dated 25/02/2014 rejecting the assessee's appeal against the order passed by the Assessing Officer (AO) u/s 154 of the Income-tax

Act, 1961 [hereinafter referred to as 'the Act' for short] for the assessment year 2005-06.

2. Learned counsel for the assessee submitted that the assessee had filed its return of income on 28/12/2005 declaring a total income of Rs.117,82,55,177/- claiming it as exempt u/s 11 of the Act. Subsequently, the assessee had filed a revised return of income on 30/10/2006 showing the same income but claiming a refund of Rs.30,23,919/-. The return was processed u/s 143(1) and a refund of Rs.25,34,220/- was granted. Subsequently, during the assessment proceedings u/s 143(3), the AO computed the taxable income after allowing the exemption u/s 11(1)(a) of a sum of Rs.21,14,30,333/-. Subsequently, the AO issued a notice u/s 154 of the Act stating that after perusal of the details filed by the assessee, it appears that the determination of refund was a mistake apparent from record and should be rectified. He observed that after giving a deduction of Rs.21,14,30,333/- there is a difference of Rs.1,98,50,108/- in application of income and this short fall is liable to be taxed. Thus observing, the AO held that the amount of Rs.1,98,50,107/- is treated as taxable income for the assessment year 2005-06 and revised the taxable income by order dated 27/12/2011.

3. Aggrieved, the assessee preferred an appeal before the CIT(A). The assessee's appeal against the order u/s 154 as well as the appeal for the assessment year 2010-11 against the

**Page 3 of 4**

order u/s 143(3) came up for before the CIT(A) and the CIT(A) disposed of both the appeals by a common and consolidated order. The learned counsel for the assessee submitted that the assessment u/s 143(3) for assessment year 2010-11 was completed pursuant to the proviso to sec.2(15) of the Act introduced w.e.f. 1/4/2009 and after discussing the issue at length, the CIT(A) had upheld the finding of the AO that the assessee is not eligible for exemption u/s 11 of the Act in view of the amended provision. He submitted that the CIT(A), overlooking the fact that the said amendment was not applicable to the assessment year 2005-06, has merely rejected the assessee's appeal against the order u/s 154 of the Act holding that the issue in both the appeals is common. The learned counsel for the assessee, thus submitted that the CIT(A) has not discussed the issue with regard to the order u/s 154 but has rejected the assessee's appeal without application of mind and therefore has to be set aside.

The learned Departmental Representative was also heard.

4. After considering the rival contentions as well as the material on record, we find the contentions of the assessee to be correct. The CIT(A) has not discussed the merits of the grounds raised by the assessee in its appeal against the order u/s 154 of the Act but has summarily dismissed the same holding that the issues in both the appeals are common. Therefore, we deem it fit and proper to set aside the order of the CIT(A) for the

Page 4 of 4

assessment year 2005-06 and remand the issue back to the file of the CIT(A) for re-consideration on merits in accordance with law.

5. In the result, the assessee's appeal is treated as allowed for statistical purposes.

6. **SP No.167/Bang/2014:** In view of the fact that the appeal itself has been disposed of by us, the stay petition has become infructuous and is accordingly rejected.

*Pronounced in the open court on 31<sup>st</sup> March, 2015.*

Sd/-  
**(Abraham P George)**  
**ACCOUNTANT MEMBER**  
*eksrinivasulu*

Sd/-  
**(Smt. P.Madhavi Devi)**  
**JUDICIAL MEMBER**

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore