

**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH "SMC", RANCHI**

BEFORE SH. S.S.GODARA, JUDICIAL MEMBER

**ITA No.289 & 290/RAN/2018
[Assessment Year: 2009-10 & 2010-11]**

Seva Bharti, Seva Niketan, Prakash Nagar, Birsa Chowk, Hinoo, Ranchi-834002. PAN-AAFTS7016R	vs	ITO, (Exemption) Ward, Ranchi.
(Appellant)		(Respondent)
Appellant by	Sh. Devesh Poddar, Adv.	
Respondent by	Sh. P.K.Mondal, JCIT	
Date of Hearing	07.01.2019	
Date of Pronouncement	09.01.2019	

ORDER

PER SH. S.S.GODARA, JUDICIAL MEMBER

These two assessee's appeals for AY 2009-10 & 2010-11 arise against the order dated 08.06.2018 passed by the CIT(A), Ranchi in Appeal No.CIT(A), Ranchi/10187/2017-18 and CIT(A), Ranchi/10188/2017-18 respectively, in proceedings u/s 154 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. Ld. Counsel at the outset takes me to CIT(A)'s identical discussion upholding the Assessing Officer's action declining its section 154 petition with the following reasoning:-

5. *"The appellant stated that the appellant is a charitable institution having registration u/s 12AA of the Act. Income of the appellant was exempt in the past and in the future Assessment Years. For the current year too the surplus of income over expenditure was less than 15% and thus the surplus was not taxable. The appellant stated that the exemption should have been allowed and should not have been rejected on technical grounds. The appellant also stated that it should be held liable for payment of taxes for the error of the Authorised Representative.*

5.1. *Facts as noted in the order of rectification by the Ld. Assessing Officer have been stated in para 2 above.*

5.2. *I have considered the submissions of the appellant and have also perused the assessment order. There are two issues involved in this case which need to be considered. The first is the issue on merit that is whether the claim of the appellant was allowable u/s 154 of the Act? The second is the technical issue of whether the Ld. Assessing Officer could have rectified the intimation u/s 143(1) of the Act beyond the limitation placed by section 154 of the Act? If the answer to the second question is in the negative, then the first question becomes infructuous.*

5.3. *As per section 154(7) of the Act no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed. In the present case the return was filed on 30.09.2009. Though the date of processing is not stated in the 154 order of the appeal memo, the second proviso to section 143(1) states that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made. This means that the intimation was issued u/s 143(1) on or before 30.09.2010. Thus the limitation u/s. 154 ended on 31.03.2015. The application for rectification was filed on 12.06.2017 which was clearly beyond the limitation date. The Ld. Assessing Officer, accordingly was justified in not allowing the application of the appellant. Ground of appeal are dismissed."*

3. Learned Counsel vehemently contends during the course of hearing that the impugned error took place because of assessee's Accountant's mistake and therefore, both the lower authorities ought not to have declined its rectification petition in the two assessment years. It has cause on record that this assessee's impugned rectification petition(s) had been filed very well beyond statutory time limit of or after the expiry of four years from the end of financial year in which the assessment in issue had been framed. I therefore affirmed the CIT(A)'s action under challenge in both the impugned assessment year that these rectification are time barred u/s 154 of the Act. The assessee's identical sole substantive ground is rejected accordingly. Mr. Devesh Poddar at this stage submits that the AO has not computed section 234B interest as per hon'ble jurisdictional high court is deciding in *Ajay Prakash Verma vs ITO in T.A.No.38 of 2010 dated 25.07.2012* that the same

has to be calculated on the returned than assessed income. Suffice to say, that the AO is directed to compute the impugned interest strictly in conformity with hon'ble jurisdictional high court's decision.

4. These two assessee's appeals are partly allowed for statistical purposes in above terms.

Order pronounced in the open court on 09.01.2019.

Sd/-

**(S.S.GODARA)
JUDICIAL MEMBER**

Date:- 09.01.2019

Amit Kumar

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1. Appellant- Seva Bharti, Seva Niketan, Prakash Nagar, Birsa Chowk, Hinoo, Ranchi-834002.
2. Respondent- ITO, (Exemption) Ward, Ranchi.
 1. CIT-Ranchi
 2. CIT(Appeals)-Ranchi
 3. DR: ITAT-Ranchi Benches

Sr.P.S./H.O.O
ITAT, Ranchi