

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.2093/मुं/2021 (नि.व. 2015-16)
ITA NO.2093/MUM/2021(A.Y.2015-16)

Seth Pestonji Davar Charitable Trust,
209, Dr. D.N.Road, Fort,
Mumbai 400 001
PAN: AAATS-0521-J

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer(Exemptions)-2(3),
Room No.617, 6th Floor, Piramal Chambers,
Lalbaug, Mumbai – 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Sonali Godbole

प्रतिवादी द्वारा/Respondent by : Shri Anil Gupta

सुनवाई की तिथि/ Date of hearing : 18/05/2022

घोषणा की तिथि/ Date of pronouncement : 18/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against an ex-parte order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A) '] dated 30/09/2021, for the assessment year 2015-16.

2. Ms. Sonali Godbole appearing on behalf of the assessee submitted that the assessee is a Trust. The assessee filed its return of income for assessment year 2015-16 declaring surplus of Rs.2,03,757/- and claimed credit of tax

deducted at source (TDS) Rs.7,78,313/-. The assessee in return of income claimed refund of aforesaid TDS. The return of the assessee was processed under section 143(1) of the Income Tax Act, 1961 [in short 'the Act'] accepting the returned income, however, the TDS refund claimed by the assessee was restricted to Rs.17,828/-. The aforesaid adjustment was made by the Central Processing Centre (CPC), Bangalore while processing the return under section. 143(1) of the Act without issuing any notice/affording any opportunity of hearing to the assessee. The assessee filed rectification petition under section. 154 of the Act. The same was dismissed by CPC vide order dated 07/01/2020 without notice to the assessee. Aggrieved by the dismissal of rectification petition, the assessee filed appeal before the CIT(A) inter-alia assailing suo-motu adjustment of TDS without giving any notice to the assessee in proceedings under section 154 of the Act. The CIT(A) dismissed the appeal of assessee, in toto hence, the present appeal.

2.1 The Id.Authorized Representative of the assessee submitted that the Assessing Officer /CPC even in proceedings under section. 143(1) could not have restricted TDS refund claimed by the assessee without affording opportunity of hearing to the assessee. Non-granting of opportunity is against the principles of natural justice. The assessee had no option but to file rectification petition under section 154 of the Act, which was also rejected by the CPC in an unilateral proceedings. The CIT(A) has failed to adjudicate ground raised by the assessee assailing order on rectification petition under section 154 of the Act, without giving any notice to the assessee.

3. Shri Shri Anil Gupta representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. Both sides heard, orders of authorities below examined. The short point in present appeal for consideration before us is, whether the order under section 154 of the Act passed by CPC/Assessing Officer without notice to the assessee would render the order unsustainable in eye of law.

4.1 The assessee had filed return of income and claimed refund of TDS Rs.7,78,313/-. The return of assessee was processed under section. 143(1) of the Act by CPC and the refund claimed by assessee on account of TDS was restricted to Rs.17,828/-. The assessee filed rectification petition under section 154 of the Act however, the same was rejected without issuing notice or seeking any clarification from the assessee. Ostensibly no notice was served on the assessee at time of processing the return of income under section 143(1) of the Act or while deciding the application of assessee under section 154 of the Act. It is a cardinal principle of natural justice that opportunity of hearing/ to make submissions must be granted before making any adjustment which results in either increasing tax liability or reducing a refund claim. Even if the assessment is made under section 143(1) of the Act, CPC/Assessing Officer is under obligation to intimate the assessee of such adjustment proposed to be made. The notice has to be given either in writing or in electronic mode. The provisions of section 154(3) of the Act mandates that a reasonable opportunity of hearing shall be allowed to the assessee where an amendment has the effect of enhancing the assessment or reducing a refund or otherwise increasing the tax liability. In the present case we find that no notice was given to the assessee. The Id.Departmental Representative was given opportunity to place on record copy of notice if any served on the assessee before passing the order under section 154 of the Act, however, the Id.Departmental Representative

expressed his inability to trace any notice served on the assessee. Thus, in the light of the facts we are of considered view that there was absolute violation of principle of natural justice and the provisions of section 154(3) of the Act in not giving notice to the assessee and a reasonable opportunity of hearing before dismissing the application under section 154 of the Act in an unilateral action by the CPC/AO. Consequently, impugned order is set-aside and appeal of the assessee is allowed.

5. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Wednesday the 18th day of May, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/05/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai