

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 24/Rjt/2018  
Assessment Year 2014-15**

Jalia Sevak Samaj, At. Post Samaj, Via Babapur Jalia, Dist. Amreli PAN: AAATJ1440R (Appellant)	Vs	The ACIT-CPC, Bangalore (Respondent)
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**Assessee by: Written Submission  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 30-06-2022  
Date of pronouncement : 13-07-2022

**आदेश/ORDER**

**PER BENCH:-**

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A)-2, Rajkot dated 22-11-2017, in Appeal No. CIT(A)-2/10117/(2016-17)/2017-18.

2. The assessee has raised the following grounds of appeal:-

*“1. The Ld. CIT(A) has erred in law and facts in not considering that the Ld. A.O. cannot change status under the provisions of section 143(1). The demand raised consequent thereof needs to be cancelled on account of non statutory actions of the Ld. A.O. as held by the Hon. ITAT, Calcutta that change of status is not permissible U/s. 143(1). The A.O's actions needs cancellation.*

*2. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/-. The determination needs deletion.*

*3. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without cogent reason. The determination needs deletion.*

*4. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without describing specific reason. The determination needs deletion.*

*5. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without applying specific rates of tax. The determination needs deletion.*

*6. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- based on presumption and surmises ignoring statutory position. The determination needs deletion.*

*7. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without giving any notice and giving any opportunity to submit the explanation. The determination needs deletion.*

*8. The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- ignoring principals of natural justice. The determination needs deletion.*

9. *The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- ignoring judicial guidelines. The determination needs deletion.*

10. *The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without considering past records of the assessee. The determination needs deletion.*

11. *The Ld. CIT(A) has erred in law and facts in confirming excess Income-tax payable at normal rate of Rs. 46,486/- without considering accepted position by the department in earlier years. The determination needs deletion.*

12. *Taking into consideration the legal, statutory, factual and administrative aspects, no determination of excess income-tax of Rs. 46,486/- ought to have been confirmed. The same need deletion.*

13. *Without prejudice, the intimation made is bad in law and deserves annulment.*

14. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at assessment stage. The intimation needs annulment.*

15. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at appellate stage. The intimation needs annulment.*

16. *Without prejudice, the determination is framed beyond statutory time limit. The intimation needs annulment.*

17. *The appellant craves leave to add/alter/amend and/or substitute any or all ground of appeal before the actual hearing takes place.”*

3. The brief facts of the case are that the assessee furnished return of income mentioning status as any other AOP/BOI as mentioned in code number 8. As per the assessee, the CPC changed the status of the assessee to

any other AOP/BOI artificial judicial person. Further, as per the return of income filed by the assessee for a sum of ₹ 1,50,437/-, the AOP is not liable to pay taxes upto ₹ 2 lakhs, and therefore, no tax was payable in the return of income filed by the assessee. However, as against this, the Ld. Assessing Officer, CPC *suo moto* changed the status without any legal authority and required assessee to make payment of taxes ₹ 54,330/-. The assessee filed an appeal against the 143(1) intimation before Ld. CIT(A). The Ld. CIT(A), however dismissed the appeal of the assessee with the following observations:

*“5. Decision*

*Having considered facts and circumstances of the case and rival contentions I find that this appeal is against intimation u/s. 143(1) by the CPC. There is no variation in the returned and assessed income. The only grievance of the assessee is as regards change in status and computation of tax and interest u/s 234A, 234B and 234C. I find no merit in contention of the assessee that the status of assessee has been changed by the Assessing Officer CPC. The status as mentioned by assessee in return of income and that shown in the intimation of CPC are the same.*

*As regards the computation of tax and interest u/s 234A, 234B and 234C, the assessee has not shown how the computations by CPC are wrong and not as per law. The grounds of appeal all relating to this single issue are therefore rejected. The assessee however is advised to approach Assessing Officer for rectification u/s 154 if it finds the tax computation wrong.*

*6. For statistical purpose, the appeal of the assessee is to be treated as dismissed.”*

4. Before us, the assessee has filed submissions in support of his contention. In the said submission, the assessee has reiterated the submissions made before Ld. CIT(A). The assessee has submitted that as per the return of income, the assessee filed return of income in the status of AOP/BOI and has shown income of Rs. 1,50,437/- against which no tax was payable at the time of filing of return of income. However, the AO has, in turn, raised the demand of ₹ 54,330/- against the returned income of ₹ 1,50,437/-. We note that for the impugned assessment year, AOP/BOI/artificial judicial person were exempt from payment of taxes up ₹ 2 lakhs and for incomes ranging between ₹ 2 lakhs to ₹ 5 lakhs, 10% of the amount exceeding Rs. 200,000/- was the rate of taxation as per applicable slab rates prevailing for assessment year 2014-15. Apparently, therefore it is not clear as to how this addition tax of ₹ 54,330/- became due, unless the assessee came to be taxed under a different “status” as compared to what was declared by him in the return of income. The Ld. CIT(A) in his order dismissed the appeal of the assessee by holding that the status of the assessee has not been changed by CPC. However, we note that, no enquiry was made by Ld. CIT(A) as to how this additional tax came to be levied on the assessee when the figure of returned income has not been disturbed by the AO, CPC, and the additional tax could not be levied if the rates applicable to AOI/BOI were to be applied to the assessee. Apparently, the assessee has been taxed at tax rates applicable to some other “status”, as against the rate applicable to AOP/BOI, which was the status in which the return of income was filed by the assessee. Therefore, in the interests of justice, we are restoring the file to the jurisdictional assessing officer, to ascertain as to how this additional tax came to be levied on the assessee, especially when the

status as the AOI/BOI has not been changed by CPC in the 143 (1) intimation issued to the assessee. Needless to say, it is well-settled law that change of status is not permissible under section 143 (1) of the Act. The Calcutta Tribunal the case of **Radharaman Jew Trust Fund [2017] 83 taxmann.com 159 (Kolkata - Trib.)** held that the Assessing Officer could not change status of assessee under section 143(1) of the Act. Therefore, if the status of the assessee has undergone a change i.e. additional tax has been levied by applying income tax rates applicable to any other “status” in 143(1) proceedings, the same is liable to be deleted. In the result, the appeal of the assessee is restored to the file of the assessing officer, CPC with the above directions. The assessee may also be provided due opportunity of hearing to present his case on merits.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13-07-2022

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Ahmedabad : Dated 13/07/2022

Sd/-  
(SIDHHARTHA NAUTIYAL)  
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot