

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. No. 25/Rjt/2018
(निर्धारण वर्ष / Assessment Year : 2015-16)

Jalia Sevak Samaj At. Post Samaj, Via Babapur Jalia, Dist. Amreli	बनाम/ Vs.	The ACIT - CPC Bangalore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATJ1440R		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Written Submission
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr. DR

सुनवाई की तारीख / Date of Hearing	31/05/2022
घोषणा की तारीख /Date of Pronouncement	24/08/2022

ORDER

PER WASEEM AHMED - AM:

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Rajkot ('CIT(A)' in short) vide Appeal No. CIT(A)-2/10118/(2016-17)/2017-18 dated 22.11.2017.

2. The grounds of appeal raised by assessee read as under:

- "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. 39,693/-. 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. 39,693/- 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. 39,693/- 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. 39,693/- 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. 39,693/- 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 nonnal rate of Rs. 39,693/- 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. 39,693/- 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. 39,693/- 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. 39,693/- 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 InCOñi6-tax payable at normal rate of Rs. 39,693/- 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. 39,693/- ought to have been confirmed. The same need deletion."*

3. The only issue raised by the assessee is that the learned CIT(A) erred in sustaining the demand raised by the AO/CPC by changing the status of the assessee and thereby applying the maximum marginal rate of tax instead of slab rate of tax as applicable to an individual.

4. The assessee being a cooperative society furnished return of income dated 07-09-2015 by treating itself as "any other association of person (trust)". The assessee for the year declared an income of Rs. 1,09,742/- and by applying the slab rate of tax computed tax liability at Rs. nil as the income was less than the basic exemption limit of Rs. 2 Lakh under slab rate of tax, thus claimed refund of Rs. 11,360/- on account tax deducted at source.

5. However, the computerized processing cell of income tax (CPC) while processing the return under section 143(1) accepted the income declared by the assessee at Rs. 1,09,742/- but applied maximum marginal rate of tax i.e. 30% of the income without basic exemption. Thus, the CPC calculated the tax liability at Rs. 32,922/- and levied the interest under section 234A, 234B and 234C for Rs. 5783/- only. Thus, the CPC/AO after giving setoff of TDS for Rs. 11360 raised demand for balance amount of Rs. 28,331/- only.

6. The aggrieved assessee preferred an appeal before the CIT(A) and submitted that AO/CPC changed its status from "any other association of person (trust)" to "AOP/BOI artificial person" without having valid jurisdiction to do so and without providing opportunity of being heard and thereby calculated tax liability as per maximum marginal rate and levied interest which needs to be deleted as it is being cooperative society liable to tax under slab rate of income tax. The assessee in support of its contention also relied upon of various case laws.

7. However the learned CIT(A) rejected the appeal of the assessee by observing as under:

"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 134A,, 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.**"*

8. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

8.1 The learned AR before us filed a written submission wherein it was contended that the AO has no power to change the status of the assessee without giving the opportunity. But the AO has done so by applying the maximum marginal rate of tax which amounts to exceeding his jurisdiction. Accordingly, the learned AR contended that the assessee is eligible for basic exemption limit and rate of tax on the income, if any, should be charged on slab rate of tax.

8.2 On the contrary, the learned DR vehemently supported the order of the authorities below.

9. We have heard the learned DR and considered the written submission filed by the assessee. From the preceding discussion, we note that the assessee itself has filed its return of income treating itself as any other association of person which is nothing but the AOP. Thus, it appears to us that there was no change as far as status of the assessee is concerned. The controversy whether the assessee is eligible for basic exemption and slab rate of tax as applicable to an individual has not been answered by the authorities below neither the learned AR for the assessee has brought anything on record suggesting that the assessee was eligible for basic exemption limit and slab rate of tax as applicable to an individual. It is equally important to note that it appears that the opportunity of being heard has not been offered by the AO before applying the maximum marginal rate of tax on the income declared by the assessee. Thus, in the interest of justice and fair play we are inclined to restore this issue to the

file of the AO for fresh adjudication as per the provisions of law. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

10. In the result, appeal filed by the assessee is allowed for the statistical purposes.

This Order pronounced in Open Court on 24/08/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 24/08/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

True Copy

S.K.SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot