

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'C' NEW DLEHI

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 703 & 704/Del/2020
Assessment Year: 2014-15 & 2015-16**

International Commission on
Irrigation & Drainage Employees
Provident Trust, 48, NyayaMarg,
Chanakyapuri, New Delhi.
PAN: AABTI0119A
(Appellant)

Versus DDIT (E) Trust, Circle-2
New Delhi.
(Respondent)

Appellant by : Shri Rahul Khare, Ld. Adv.
Respondent by : ShriAnujGarg, Ld. Sr. DR

Date of hearing : 11.07.2022
Date of order : 26.08.2022

ORDER

PER N.K. CHOUDHRY, J.M.

These appeals have been preferred by the Assessee against the orders even dated 12.12.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-40, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2014-15 and 2015-16 respectively.

2. As the facts and issue involved in the instant appeals are exactly similar, therefore, for the sake of brevity by this composite order, we are adjudicating ITA No. 703/Del/2020 as a lead case, the result of which shall apply mutatis mutandis to ITA No. 704/Del/2020 as well.

3. Brief facts, relevant for adjudication, are that the return of income was filed by the Assessee on dated 28-09-2014 in ITR Form-7 and in column pertaining to section under which exemption claimed, section 11 was mentioned. It was also mentioned in the relevant columns that the institution is not registered under section 12A and gross income was shown at Rs.37,85,665/- and no amount was shown to have been applied for charitable purposes in India either on revenue account or capital account in the relevant columns in the return of income. Further no deemed application was also shown. In column 14 of the return under part-B-TI, the amount of gross receipts was shown to be exempt under various provisions of section 10 of the Act.

3.1 The CPC processed the return u/s. 143(1) and computed the income of the Assessee at Rs.37,85,665/-.

3.2 The Assessee being aggrieved with the intimation u/s. 143(1)(a) of the Act, filed an rectification application u/s 154 of the Act, online on dated 03.06.2016 in the CPC on the premise that the Assessee had filed its ITR in ITR-7 for A.Y. under consideration on 28.09.2014 declaring total income of Rs.37,85,665/- consisting of interest earned on deposit of Provident Fund of Rs.9,90,499/- and contribution by the employees of the Assessee towards PF of Rs.27,95,166/-. However, while filing the return, the staff of the counsel of the Assessee inadvertently claimed Income-tax

exemption under incorrect section, i.e., section 11 in part A-Gen of the ITR form, whereas the income of the Assessee being a trust was wholly exempt u/s. 10(25)(ii) of the Act. The staff of the appellant's counsel due to inadequate knowledge, also made some other innocuous mistakes in choosing correct section or correct column in Income Tax Return (ITR-7), although total income of the Assessee was exempt u/s. 10(25)(ii) completely and undisputedly.

3.3 The CPC vide order dated 07.06.2016 rejected the Assessee's application filed u/s 154 of the Act, on the grounds stated below:

"On verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for rectification under section 154 is rejected for the following reasons (if any)".

The CPC further gave the reasoning which is as under:

"As seen from the e-filed return of income, the assessee has claimed deduction u/s. 10 without mentioning the provision under which the claim is made in ITR-7 for the claim of exemption of section 10 is not allowable, the details of Approving/ Registering Authority and section under which exemption claimed has to be furnished properly in the SCH Part-A GEN/RETURN and SCH Filing status. The claimed amount of deduction/Exemption u/s. 10 has to be made in SCH PART – BTI in the row relating to the section of claim. If the tax payer is a 'University/Educational Institution/ Hospital/ Other institution u/s. 10(23C)(iiia) and 10(23C)(iiib) claiming of exemption of Section 10(23C)', the aggregate annual receipts has to be furnished in SCH Other Details PART-B TI.

NOTE: Fresh claim of addition/education of income or other details in the return shall not be made in rectification request. Assessee has to file a Revised

Return for all fresh claims or any fresh details in the schedules.

In view of the above, this rectification application is treated as disposed."

4. The Assessee being aggrieved challenged the said order passed u/s. 154 of the Act, before the Id. Commissioner, who affirmed the same by concluding as under:

*4.3 From the provisions as reproduced above it is apparent that income or loss is computed under section 143(1)(a) after making the adjustments as per sub-clauses (i) and (ii) and there is no provision for issue of notice before making such adjustments which are based entirely on the information given in the return of income. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in tire case of *Kvaverner John Brown Engg. (India) (P) Ltd. vs. ACIT [(2008) 305 1TR 103]*, wherein has been held as under:*

One of the main conditions stipulated by way of the first proviso to section 143(1)(a), as it stood during the relevant time, referred to prima facie adjustments. The first proviso permitted the department to make adjustments in. the income or loss declared in the return in cases of arithmetical errors or in cases where any loss carried forward or deduction or disallowance which on the basis of information available in such return was, prima facie admissible, but which was not claimed in the return or in cases where any loss carried forward, or deduction or allowance claimed in the return which on the basis of information available in such return was, prima facie inadmissible.

4.4 In the case under consideration it was claimed in the return that exemption was being claimed under section 11 but no income was applied for charitable purposes subject to which exemption under section 11 is available. It was also mentioned that the assessee is not registered under section

12A. *The appellant had submitted that its income is exempt under section 10(25)(ii) but the said exemption has not been claimed in the return of income and exemption has been claimed under section 11 and information given in the columns pertaining to income from other sources and voluntary contributions. As noted above processing under section 143(1)(a) is done on the basis of information available in the return of income and adjustments have to be made in the said processing on account of incorrect claim, if such incorrect claim is apparent from any information in the return. On the basis of the information available in the return of income and the claim of exemption having been made under sections 10(21), 10(22B), 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), as is evident from column 14 Part-B-TI of the return of income which was not admissible, the order passed under section 143(1) could not have been rectified to allow exemption under section 10(25)(ii).*

Section 154 provides for rectification of mistake which is apparent from record. The Hon'ble Supreme Court in T.S. Balaram, ITO vs. Volkart Brothers & others [(SC) 82 ITR 50] have held that mistake must be obvious and patent and not something which can be established by a long drawn process of reasoning on points on which there may be two opinions. In the case under consideration it is apparent that no claim of exemption was made under section 10(25)(ii) and the claim was under specific clauses of section 10, i.e., 10(21), 10(22B), 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via). Hence, in view of the facts of the case and position of law as discussed above, it is held that there is no infirmity in the order of the CPC. The only ground of appeal is dismissed."

5. The Assessee being aggrieved is in appeal before us and at the outset claimed to have admitted the inadvertent mistake of its advocate's staff for claiming the benefit of section 11 in filing of the return due to inadequate knowledge. The Assessee further claimed that the Ld. Commissioner of Income Tax-VIII, New Delhi vide its order dated 24.07.1985 has duly recognized the Assessee as

Provident Fund Institution under Rule 3(i) of Part 'A' of the 4th schedule of the Act, and therefore, as per the provisions of section 10(25)(ii) of the Act, income received by the Assessee on behalf of the recognized Provident Fund is not required to be included in computing the total income of the Assessee.

5.1 The Assessee also claimed that as per Article 265 of the Constitution of India, no tax shall be levied except by authority of law, hence, only legitimate tax can be recovered from the Assessee and the tax authorities do not have any authority to recover more than what is due under the law.

5.2 Further, the CBDT vide its circular No. 14(XL 35) dated 11.04.1955 has also clarified that the officers of the department must not take advantage of ignorance of the Assessee as to their right. In the said circular, it is embodied to draw the attention of the Assessee to any refunds or reliefs to which they appear to be clearly entitled but they have omitted to claim for some reason or other.

6. On the contrary, the Id. DR supported the orders passed by the authorities below.

7. We have heard the parties and perused the material available on record and given our thoughtful consideration to the facts and circumstances of the case. The Assessee in the instant case, claimed to be recognised Provident Funds Institution for the benefit of employees of International Commission on Irrigation and Drainage (ICID) and by filing its return of income in ITR-7 for the assessment year 2014-15 on dated 28.09.2014, declared total income of Rs.37,85,665/-, consisting of interest earned on deposits

of Provident Fund of employees and contribution by and for the employees of the Assessee Trust Provident fund to the tune of Rs.9,90,499/- and Rs.27,95,166/- respectively. The Assessee while filing the said return of income, claimed exemption u/s. 11 of the Act, which was processed by the Revenue Department by intimation dated 28.02.2016 u/s. 143(1)(a) of the Act, whereby the addition of Rs.37,85,670/- was made to the income of the Assessee.

7.1 The Assessee subsequently changed its stand as taken in its return of income and claimed that while filing the return, the staff of the Counsel of the Assessee inadvertently claimed Income-tax exemption under incorrect section, i.e., section 11 in part A-Gen of the ITR form, whereas the income of the Assessee being a trust was wholly exempt u/s. 10(25)(ii) of the Act. Further due to inadequate knowledge, also made some other innocuous mistakes in choosing correct section or correct column in Income Tax Return (ITR-7), although total income of the Assessee was exempt u/s. 10(25)(ii) completely and undisputedly.

7.2 The issue as involved in the instant appeal relates to the situation wherein the Assessee claimed the exemption by mentioning wrong provisions of law, in its return of income, which was processed u/s. 143(1) of the Act and resulted into the making of additions and subsequently without revising its return of income within due date as prescribed under the Statute, sought the rectification of the order by filing the application u/s. 154 of the Act which stands dismissed and affirmed by the Ld. Commissioner.

7.3 In the case of Goetz (India) Ltd. vs. CIT (2006) 284 ITR 323, the Hon'ble Apex Court laid down the dictum that the assessee cannot be allowed to make a claim of deduction other than filing the revised return. The Hon'ble Apex Court further held that the issue in this case is limited to the power of the Assessing Officer and does not impinge on the powers u/s. 254 of the Act.

From the dictum of the Hon'ble Apex Court inference can be drawn that the Assessee cannot make a claim before the Assessing Officer for deduction other than filing of revised return. However, the Appellate authorities are not restricted to do so in entertaining the fresh claim of deduction which is based on the facts and documents already on record, even without revising return of income by the Assessee.

7.4 The Hon'ble apex Court in the case of DIT vs. Pooran Mal & Sons, 96 ITR 390 (SC) held that a person cannot be taxed on the principle of estoppels. Further, Article 265 of the Constitution of India prescribes that no tax can be levied except by authority of law.

7.5 The Hon'ble Allahabad High Court in the case of Pt. SheoNath Prasad Sharma Vs Commissioner Of Income-Tax, 66 ITR 647 (Alld) reminded that the law empowers the Income-tax Officers to assess the income of an Assessee and determine the tax payable thereon in accordance with law. The Hon'ble High Court further observed that just because the Assessee has shown the receipt as income in his return, it does not make him liable to tax thereon. If the Income-tax Officer assesses an Assessee upon a receipt which is not taxable in law, it is also open to the Assessee to take the case in

Appeal or in Revision thereafter. Further, the Assessee is within his right in requiring the Appellate or Revisional Authority to examine the validity of assessment of tax on receipt, which is admitted by him, but not taxable in law.

7.6 The Hon'ble Apex Court in the case of NTPC Ltd. vs. CIT, 229 ITR 383(SC) laid down the dictum that the purpose of assessment proceedings before the taxing authorities is to assess correctly the tax liability of an Assessee in accordance with law.

7.7 The Hon'ble Apex Court in the case of CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 also reminded that the Appellate Authority also has co-terminus powers with that of the Income Tax Officer.

7.8 From the judgments referred above, it is clear that the purpose of assessment proceedings before the taxing authorities is to assess correctly the tax liability of an Assessee in accordance with law. No tax can be levied on the principle of estoppels or except by authority of law. Just because the Assessee has shown the receipt as income in his return, it does not make him liable to tax thereon. If the Income-tax Officer assesses an Assessee upon a receipt which is not taxable in law, it is also open to the Assessee to take the case in appeal or in Revision thereafter and the Assessee is within his right in requiring the Appellate or Revisional Authority to examine the validity of assessment of tax on receipt, which may not be taxable in law but admitted taxable or exempted mistakenly or inadvertently under wrong provisions of the Statute which are not applicable.

7.9 The CPC while processing the return u/s. 143(1) of the Act, has limited jurisdiction and empowered to process the return as per material available and/or claim made by the Assessee in return of income which has been done in this case. The mistake apparent from record can be rectified u/s. 154 of the Act but mistake must be obvious and patent and not something which can be established by a long drawn process of reasoning on points on which there may be two opinions. Mistake as such though apparently not visible from the order of process u/s 143(1) of the Act in this case, however, considering the peculiar facts and circumstances of the case as claimed by the Assessee and not refuted by the Ld. DR that the Assessee has been duly recognized as Provident Fund Institution under Rule 3(i) of Part 'A' of the 4th schedule of the Act, by the Ld. Commissioner of Income Tax-VIII, New Delhi vide its order no. 3 of 1985 dated 24.07.1985 and in consequence thereof in the previous and subsequent years treated as exempted u/s 10(25)(ii) of the Act and no such addition has ever been made by the Department and the Ld. Commissioner has co-terminus powers with that of the Income Tax Officer and is fully empowered to permit the Assessee to entertain the fresh claim of deduction and to examine the validity of assessment and to modify the assessment order, and therefore, for the ends of substantial justice and just decision of the case, we deem it appropriate to set aside the impugned order and to remand the case to the file of Ld. CIT(A) for examining the case of Assessee afresh, in accordance with law and the dictums laid down by the Hon'ble Apex Court and Hon'ble High Court in the judgements referred above, suffice to say by giving reasonable opportunity of being heard to the Assessee. The Assessee shall also be at liberty to place the relevant documents and raise the appropriate issues/claims before the Ld. Commissioner in accordance with law.

8. Consequently the appeal i.e. ITA No. 703/Del/2020 is allowed for statistical purposes.

9. ITA no. 704/Del/2020

In view of decision in ITA No. 703/Del/2020, ITA no. 704/Del/2020 is also liable to be allowed on the same terms.

10. In the result, both the appeals filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 26/07/2022.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-