

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.245/RJT/2018
Assessment Year: 2013-14**

Shri Rani Tower Flat Owners Association, C/o. D.R. Adhia, "Om Shri Padmalaya", Beside Trikamraiji Haweli, Opp. Hotel Imperial Palace, 16, Jaganath Plot, Dr. Yagnik Road, Rajkot. [PAN – AAAAR 4560 M] (Appellant)	vs.	The Asstt. Commissioner of Income Tax (CPC), Bangalore. (Respondent)
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Appellant by	:	Written Submission
Respondent by	:	Shri B.D. Gupta, DR

Date of hearing	:	02.08.2022
Date of pronouncement	:	31.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 23.04.2018 passed by the CIT(A), Jamnagar for the Assessment Year 2013-14.

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

- "1. The Ld. CIT(A) has erred in law and facts in confirming tax liability of Rs.17,700/- as against refund claimed of Rs.71,971/- the intimation needs cancellation with direction to accept the refund as determined.*
- 2. The Ld. CIT(A) has erred in law and facts in confirming tax liability without giving any opportunity to the assessee. The same needs cancellation.*
- 3. The Ld. CIT(A) has erred in law and facts in confirming tax liability in violation of principals of natural justice. The same needs cancellation.*

4. *The Ld. CIT(A) has erred in law and facts in confirming tax liability without giving cogent reason for such determination. The same needs cancellation.*
5. *Without prejudice, the order confirmed by the Ld. CIT(A) is passed by the Ld. A.O. beyond limitations prescribes needs cancellation.*
6. *Without prejudice, the order confirmed by the Ld. CIT(A) is passed in excess of his judicial and statutory powers of the Ld. A.O. needs cancellation.*
7. *Taking into consideration the legal, statutory, factual and administrative aspects, determination of income tax liability ought to have been confirmed as per return of income without any modification, the same being in order.*
8. *Without prejudice, the Ld. CIT(A) ought to have order or grant refund of Rs.71,970/- as claimed in respect of TDS made from his income.*
9. *Without prejudice, the intimation being bad in law deserves annulment.*
10. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at the time of assessment stage. The intimation needs annulment.*
11. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at the time of appellate stage. The intimation needs annulment.*
12. *Without prejudice, the determination is framed beyond statutory time limit. The intimation needs annulment.”*

3. The assessee filed return of income declaring income of Rs.3,17,290 on 23.11.2013 showing tax liability of Rs.12,081/-, TDS of Rs.84,502/- and claimed refund of Rs.71,970/-. The assessee also filed revised return of income on 11.11.2014 showing income of Rs.3,17,290/- and tax liability of Rs.12,081/- as well as refund of Rs.71,970/-. The Assessing Officer determined tax liability at Rs.98,043/- as against Rs.12,081/- and also charged interest under Sections 234A, 234B & 234C of the Act of Rs.3,711/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee but written submissions were filed by the Ld. AR Shri D.R. Adhia. The same is taken on record and reproduced as below:

“Written Submissions:

Kind attention is invited to the hearing fixed of the above matter on 02.08.2022 which is fully covered also by the decision of Hon. ITAT Rajkot mentioned at 5.2. below and copy of the order dated 13.07.2022 thereof is also enclosed.

2. *The assessee furnished return of income mentioning status as any other AOP/BOI and mentioned code no. 8. The Ld. A.O. CPC however change the status to any other AOP/BOI artificial judicial person and thus change the status. Which is not permissible as per details given below.*

3. *Beside above as per return income of Rs.3,17,290/-, since the AOP is not liable to tax up to Rs.2,00,000/- was shown tax due at Rs.1,020,81/-. Through intimation U/s.143(1) and 154. As against this the Ld. A.O. suo-moto change the status without legal authority and required the assessee to make the payment of tax of Rs.1,02,208/-*

4. *As regards change of status as mentioned at para 2 above the assessee humbly submit that the same is not permissible in view of the following decisions:*

1. 142 ITR 183 (All.) - J.K. Shrivastava
2. 118 Taxman 234 (Mad.) - Nayan Engineering Works.
3. 173 ITR 407 (Raj.) - Sureshchandra Gupta.
4. 358 ITR 373 (Kara.) - Children's Education Society

5.1. *The Hon. ITAT Calcutta in the case of Radharaman Jew Trust Fund in ITA No. 1632 (Col.) of 2016 dated 12-4-2017 also held that change of status is not permissible U/s. 143(1).*

5.2. *The Hon. ITAT Rajkot in the case of Jalia Sevak Samaj in ITA No. 24/Rjt/2018 dated 13-7-2022 (Copy enclosed) also held that change of status is not permissible U/s. 143(1).*

6. *The assessee also humbly rely on decisions of Hon. Apex Court in the case of the Mavilayi Service Co operative Bank Ltd. U ORS vs. CIT , dated January 12, 2021. Where it is provided that a debatable issues is beyond the scope to be disallow while processing the return U/s.143(1). In the instant case the law does not provide a separate column in the return of income for mentioning the status and since the assessee has claim the status as trust at least the Ld. A.O. ought to have given notice seeking clarification on the issue involve. Thus even without giving notice the basic requirement contain in the Finance Act has remain to be followed.*

7. *It is therefore submitted that an intimation U/s.143(1) As rectified U/s. 154 may kindly be cancelled and the Ld. A.O. may be directed to tax the status as per return of income and delete the demand raised.*

8. *Moreover this is a case of Flat Owners Associations. Without Their fault some technical errors appears to be incurred is punished with raising such huge demand of Rs.1,02,208/- is a blow which can be turned as burned as hot and cold since such an Association collecting maintenance amount is certainly without their fault since even if such technical error is there this person do not know if it incurred at a level of filling return of income by their A.R, moreover in all subsequent years no such demand is raised nor intimation nor an opportunity has been given , at least it will be most judicial to restore the matter so that technical error can be solved and Association can be helped taking broad view with the Ld. A.O. may consider after verifying the trust deed and other relevant materials.”*

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A)

7. We have heard the Ld. DR and perused all the relevant material available on record along with written submissions filed by the Ld. AR. Since the CIT(A) has passed ex-parte order without giving proper opportunity to the assessee, it will be appropriate to remand back the entire issue to the file of the CIT(A) for proper adjudication of the issue contested by the assessee on merit. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice.

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

Order pronounced in the open Court on this 31st day of August, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st day of August, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot*