

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 441/Asr/2019
Assessment Year: 2015-16

M/s Shree Amar Nath Jain
Memorial Charitable Trust,
B-XXIV-4632, Jain Mandir
Road, Ludhiana

[PAN: AADTS 4396N]
(Appellant)

Vs. Income Tax Officer
(Exemptions),
Ward Jalandhar

(Respondent)

Appellant by : None

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 13.10.2022

Date of Pronouncement: 21.10.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order dated 24.04.2019 passed by the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar (hereinafter referred to as 'the CIT(A)', in respect of Assessment Year 2015-16.

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

- “1. That the appellate order of the CIT (A)-2, Jalandhar and grounds of decision u/s 250(6) of the Income Tax Act, 1961 dismissing the appeal is arbitrary, unjustified and gives a foul smell of carelessness.
2. That dismissal of appeal simply on the basis of technical & typographical mistake is nothing but denying the justice & genuine prayer of the appellant in the other word it was excessive use of pen /power by the appellate authority.
3. That the appellant has been assessed as AOP (Individual) in the past and accordingly the order of the Income Tax Officer (Exemptions), Jalandhar charging tax in the case u/s 164(i) of the I.T. Act is illegal, arbitrary and unjustified and order of the CIT appeal stepping in to the shoe of assessing officer on mere technical mistake is nothing but indicates the excessive and ill- intended mensrea to increase litigation between the assessee and the department.
4. That the order of Ld. Income Tax Officer disallowing basic exemption is excessive, against equity and natural justice.
5. That appeal is within time.
6. That appellant craves right to add /amend any grounds of appeal at the time of hearing.”

3. None appeared for the assessee, however after hearing the Ld. DR and considering the facts on record it is decided to hear and dispose of the appeal.

4. The Ld. DR submitted that the Assessing Officer (in short “the AO”), clearly stated that the mistake must be something which appears to be so ex-facie and is incapable of argument or debate. Accordingly, he mentioned in 154 order that a decision on a debatable point of law or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification. In the present case under consideration, the basic exemption has been disallowed by the Assessing Officer by resorting to the provisions of section 164 of the Income-tax while making assessment under section 143(3) of the Income-tax Act, 1961 on 21.11.2017. Since the issue of exemption to Trust is a question of law that

required, the AO's due application of mind and that too while making assessment under section 143(3) of the Income-tax Act, 1961. This finding of the assessing officer does not fall within the purview of 'mistake apparent from record' for the purpose of section 154 of the Income-tax Act, 1961.

5. The Ld. CIT(A) while confirming the finding of the AO, has observed as under:

"4.2 I have gone through the rectification order passed by the AO u/s 154 of the IT Act, submissions filed by the appellant and find that primary issue for consideration is the claim of basic exemption which is available to an AOP was disallowed by the AO vide order passed u/s 143(3) of the IT Act and tax liability was computed after applying the provisions of section 164(1) of the IT Act. The appellant had filed an application for rectification of the order before the AO which has been rejected on the ground that denial of basic exemption has been specifically discussed in the order passed and therefore, is beyond the powers available u/s 154 of the IT Act.

4.3 The appellant has reiterated the contentions and submitted that order has to be rectified and claim of basic exemption has to be allowed. It is also stated that it is the settled position and orders were passed in the preceding as well as in the succeeding years wherein the claim of basic exemption was allowed.

4.4 Having considered the material available on record, I find that it is not denied by the appellant that a specific finding has been given by the AO while passing the order for this year u/s 143(3) of the IT act that claim of basic exemption is hereby disallowed. Therefore, it can only be considered by the appellate authority, if an appeal is filed against the order passed by the AO u/s 143(3) of the IT Act.

4.5 I find that AO was right in holding that there is no mistake apparent from the record in the order passed by the AO u/s 143(3) of the IT Act. Accordingly, the order passed by the AO u/s 154 of the IT Act is upheld as there is no mistake which is prima facie rectifiable in the order passed u/s 143(3) of the IT Act."

6. Having heard the Ld. Addl/Joint CIT (DR), perusal of impugned order and material facts on record, it is fact on record that the AO has

adjudicated the issue of exemption to trust and has given specific finding of facts while passing the order for assessment year u/s 143(3) of the IT act that claim of basic exemption is hereby disallowed. The Ld. CIT (A) has therefore, rightly sustained the order of the AO by holding that AO was right in holding that there is no mistake apparent from the record in the order passed by the AO u/s 143(3) of the IT Act. Accordingly, the order passed by the AO u/s 154 of the IT Act is upheld as there is no mistake which is prima facie rectifiable in the order passed u/s 143(3) of the IT Act. The remedy available to the appellant is to file, an appeal against the order passed by the AO u/s 143(3) of the IT Act.

7. In the view of above, we find no merit and substance in the ground of appeal of the assessee. Since, we no infirmity or perversity in the order of the Ld. CIT(A), hence, we uphold the impugned order.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21.10.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order