

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH : COCHIN**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
Ms. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.612/Coch/2022
Assessment Year : 2017-18

Mrs. Shabana Akbar, 16/826 B Arora Tourist Home, Railway Station Link Road, Calicut – 673 002. <b>PAN : DTFPS 8909K</b>	Vs.	The CPC, Bangalore / The Income Tax Officer, Ward 1(4), Kozhikode.
APPELLANT		RESPONDENT

Assessee by	:	Shri G. Surendranath Rao. CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	06.12.2022
Date of Pronouncement	:	19.12.2022

**ORDER**

*Per Padmavathy S, Accountant Member:*

This appeal is against the order of CIT(A), National Faceless Assessment Centre, Delhi [NFAC] dated 22.3.2022 for the assessment year 2017-18. The grounds of appeal are as follows:-

“1.The order of the Commissioner of Income Tax (Appeals) is against law and facts.

2. The Commissioner of Income Tax (Appeals) NFAC, should have appreciated that though the appellant had electronically filed a rectification request under Sec 154, the rectification sought by the appellant was summarily rejected by the CPC and the intimation originally issued on 25.03.19 was reissued in response to the s. 154 request. Thus. technically an order u/s 154 could be said to be issued by the Assessing Officer, it cannot be

said that the intimation u/s 143(1) merged with order u/s 154. The Commissioner of Income Tax (Appeals) NFAC should have appreciated that the appellant cannot be left high and dry without any remedy for an unauthorized prima facie adjustment made in the intimation and consequent demand raised on him. When the petition for rectification of the intimation has been rejected at the threshold, there is no merger or subsuming of the intimation with the intimation reissued.

3. The Commissioner (Appeals), NFAC should have appreciated that the amount shown in Form 26AS represents incentive given by the supplier as a specific percentage of MRP as per distributor agreement. However, the supplier had paid the same by deducting TDS under section 194H and also issued credit notes. When appellant pointed out that the TDS provisions are not applicable on such incentives, the principal stopped deducting TDS from June 2018. It was not correct for the Commissioner (Appeals), NFAC to ignore the purchase agreement and credit notes filed by the appellant in support of the claim and confirm the addition made by the CPC even after the relevant ledger accounts showing clearly that the amount of Rs. 1,16,380/- has been set off against the purchases for the year

4. The Commissioner (Appeals), NFAC, is not justified in upholding the disallowance made in the intimation u/s 143(1) as a prima facie adjustment since the amount so proposed to be adjusted represents incentive given by the supplier as a specific percentage of MRP which was already netted off against purchases and consequently reflected in the profit for the year. The Commissioner (Appeals), NFAC should have noted that since the amount is already netted off against an expenditure, assessing the same as income again will result in duplication of income. The Commissioner (Appeals), NFAC should have noted that the same will not form part of turnover for the purpose of presumptive taxation since the same is a reduction in purchase cost only and not an incentive given for achieving a particular sales target or volume.

#### PRAYER

For these grounds and such other grounds as may be urged at the time of hearing it is prayed that the addition made in the assessment order be deleted.”

2. The assessee is an individual engaged in trading of mattresses, pillows and allied products. The assessee filed the return of income for the AY 2017-18 on 31.3.2018 declaring a total income of Rs.10,59,530. A notice u/s. 143(1)(a) was issued on 22.3.2019 in

which Rs.11,16,380 was proposed to be adjusted on account of inconsistency between the income from other sources in the return of income and Form 26AS. Subsequently a notice u/s. 143(1) was issued on 25.3.2019 with an addition 11,16,380. Aggrieved, the assessee filed appeal before the CIT(A) against the prima facie adjustment made in the intimation u/s. 143(1)(a). The assessee also in the meanwhile uploaded a request to rectify the intimation on 24.4.2019. In response to the rectification, the CPC reissued the intimation originally issued without considering the submissions of the assessee.

3. The CIT(Appeals) dismissed the appeal of the assessee on the ground that once the intimation was rectified u/s. 154, the intimation u/s. 143(1)(a) stands subsumed and merged in order u/s. 154 and hence the appeal against the intimation has become infructuous.

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. The Id. AR submitted the detailed written submissions during the course of hearing the extract of which is as given below:-

“The Commissioner of Income Tax (Appeals) NFAC, should have appreciated that though the appellant had electronically filed a rectification request under Sec 154, the rectification sought by the appellant was summarily rejected by the CPC and the intimation originally issued on 25.03.19 was reissued in response to the s. 154 request. Thus, though technically an order u/s 154 could be said to be issued by the Assessing Officer, it cannot be said that the intimation u/s 143(1) merged with order u/s 154. The Commissioner of Income Tax (Appeals) NFAC should have appreciated that the appellant cannot be left high and dry without any remedy for an unauthorized prima facie adjustment made in the intimation and consequent demand raised on him. When the petition for rectification of the intimation has been rejected at the threshold, there is no merger or subsuming of the intimation with the intimation reissued.”

6. We heard the rival submissions and perused the material record. We will recapitulate the facts once. The assessee has computed the income u/s.44AD declaring the profits at 8% and had filed the return of income accordingly. The assessee has received certain incentives from Shobha limited on which tax was deducted at source by the payer. In the intimation u/s.143(1) the said income has been considered as income from other sources based on form 26AS. It is submitted by the Id AR that the assessee has submitted a response to the intimation stating that the said incentive is already adjusted against the purchases of the assessee and therefore there is no requirement for a separate addition towards the same and that the final intimation was sent without considering the submissions. We notice that the assessee also had filed a petition for rectification u/s.154 and in the order u/s.154 also, the said submission of the assessee has not been considered.

7. The reason, as given by the CIT(A) for rejection of the appeal filed by the assessee is that the appeal is filed against the intimation u/s.143(1) which has been subject to rectification u/s.154 and that once the intimation is rectified the appeal could be filed only against the rectification order u/s.154 and not the intimation u/s.143(1). We are unable to appreciate this contention of the CIT(A) stating that the intimation gets subsumed in to the order u/s.154. In our considered view these are two separate orders and order u/s.154 does not take away the right of the assessee to seek remedy under appellate proceedings against the intimation u/s.143(1). Clause (vi) of section 143(1) talks about addition of income appearing in Form 26AS which

has not been included in computing the total income in the return and the second proviso to the said clause states that the response received from the assessee, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation then such adjustments shall be made. In assessee's case it is submitted that the CPC while passing the final intimation has not considered the submissions of the assessee with regard to the incentive income having already been adjusted against the purchases. We notice that the CIT(A) while adjudicating has not considered these submission made before him and has not gone into the merits to examine the same. We therefore think it fit remit this back to the CIT(A) to consider the contentions of the assessee with regard to the impugned adjustment and the CIT(A) is directed to keep in mind the provisions of section 143(1) as stated herein above. The appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 19<sup>th</sup> day of December, 2022.

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Sd/-  
( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 19<sup>th</sup> December, 2022.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,  
ITAT, Bangalore/Cochin.