

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 387/MUM/2023**  
**Assessment Year: 2017-2018**

Shilpa Prabhakar Kulkarni,  
3 Neel Sagar, 1280 Prabhadevi  
Seaface Prabhadevi,  
Mumbai-400025.

**PAN No. BRHPK 8129 D**  
**Appellant**

DCIT Centralized Processing  
Centre,  
**Vs.** Bengaluru-560 500.

**Respondent**

**Assessee by** : Ms. Chandni Shah & Kinjal Patel  
**Revenue by** : Mr. A.N. Bhalekar, DR

Date of Hearing : 03/05/2023  
Date of pronouncement : 11/05/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 14.12.2022 passed by the Ld. Commissioner of Income-tax – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] in relation to rectification order passed by the Ld. Central Processing Centre (CPC), Bangalore u/s 154 of the Income-tax Act, 1961 (in short ‘the Act’) for assessment year 2017-18. The grounds raised by the assessee are reproduced as under:



1. *On the facts and in the circumstances of the case, and in law, the NFAC erred in upholding the adjustment made by the A by adding an amount of Rs.55,26,484 under the head Salaries*

*The Appellant prays that such adjustment should be deleted.*

2. *On the facts and circumstances of the case and in law, the NFAC erred in levying additional interest under Section 234B of the Act.*

*The Appellant prays that the additional interest levied under Section 234B of the Act ought to be deleted.*

3. *On the facts and circumstances of the case and in law, the NFAC erred in levying additional interest under Section 234C of the Act.*

*The Appellant prays that the additional interest levied under Section 234C of the Act ought to be deleted.*

4. *On the facts and in the circumstances of the case, and in law, the NFAC erred in upholding the adjustment made by the AO of adding an amount of Rs. 35,26,484 which is not an income of the Appellant*

*The Appellant prays that the income of the Appellant to be correctly computed.*

5. *On the facts and in the circumstances of the case, the order passed by the NFAC is bad in law as it is passed without providing an opportunity of being heard to the assessee Prayer*

*The Appellant prays that the CIT(A) order to be considered as bad in law and void ab initio.*

6. *On the facts and in the circumstances of the case and in law, the NFAC erred in not quashing the rectification order passed under section 154 of the Income-tax Act, 1961 (the Act) (the rectification order) by the Learned Deputy Commissioner of Income Tax, CPC Bangalore ("AO") and not treating the same as bad in law and void ab initio.*



*Prayer*

*The Appellant prays that the rectification Order is bad in law and void a initio and therefore, liable to be quashed.*

*7. On the facts and in the circumstances of the case, and in law, the NFAC erred in not treating the rectification order passed by the AO as void ab initio, insofar as it has been passed in complete disregard of the principles of natural justice as, inter alia, the Appellant has not been provided with any opportunity of being heard.*

*The Appellant prays that the rectification order is declared as void ab initio as it is passed without providing any opportunity of being heard to the Appellant.*

*8. On the facts and in the circumstances of the case and in law, the NFAC erred in not treating the rectification order bad in law to that extent the income of the Appellant and the tax and the interest thereon have been computed erroneously based on erroneous conclusions and assertions of facts.*

*The Appellant prays that rectification order is declared as bad in law.*

2. In the grounds raised, the assessee is mainly aggrieved with the rejection of claim of rectification of the assessee and upholding the disallowance of Rs.35,26,484/- i.e. which was claimed by the assessee as various allowances exempted under the provisions of the Act.

3. Briefly stated, the assessee a salaried individual , filed her return of income on 01.08.2017 declaring total income of Rs.1,00,13,220/- out of which salary income offered to tax was of



Rs.99,53,508/-. The return of income filed by the assessee was processed by the CPC vide order dated 27.03.2019, wherein the income under the head 'salary' was computed at Rs.1,35,19,922/- as against the income from salary declared by assessee at Rs.99,53,508/-. In this manner total income was determined at Rs.1,35,41,560/- instead of Rs.1,00,13,220/- disclosed by the assessee. The assessee further filed rectification on 27.06.2019, wherein the assessee requested that the assessee earned gross salary of Rs.1,35,19,992/- and out of which claimed exemption u/s 10 of the Act of Rs.35,26,484/-, which was inadvertently not reported in the relevant column of the return of income filed i.e. **“Schedule 5; details of income from salary”**. According to assessee, this was a mistake apparent from record, in the intimation issued u/s 143(1) of the Act and therefore, same was to be rectified by the CPC. However, in the rectification order passed on 27.06.2019, the Assessing Officer rejected the request of the assessee in respect of claim of the exemption of the allowance of Rs.35,20,484/-. Aggrieved , the assessee filed appeal before the Ld. CIT(A) but the Ld. CIT(A) rejected the contention of the assessee observing as under:

*6. The grounds of appeal, statement of facts, submissions of appellant and orders/intimations us 143(1) and 154 passed by the CPC are considered. Ground No. 1 to 5 relates and confined to upward variance of income by Rs.35,26,484/- by the CPC. Accordingly, all the grounds of appeal are adjudicated simultaneously.*



6.1. Therefore, The appellant claims that this amount of Rs.35,26,484/- represents exemption of us 10 of the Act. The appellant submitted detailed working of her taxable income. In view of the said working, the gross total income of appellant for the year under consideration was Rs. 1,35, 19,992/-. This gross total income is inconformity with the submission of the appellant and details recorded in Form 26AS of the appellant. For the sake of clarity, relevant abstract of form 26AS is reproduced below:

Part-A Details of tax Deducted at Source					
Sr. No.	Name of Deductor	TAN of Deductor	Total Amount paid/credited	Total Tax Dedcuted	Total TDS Deposited
1.	Avezo Advisors Pvt. Ltd.	MUMA46120E	1351992.00	2852130.00	2852130.00

6.2 On the other hand, the appellant has declared gross income from salary at Rs.99,93,508/- in the return of income. For the sake of convenience, relevant disclosure in the ITR is reproduced below.

Part-B TI (Computation of total Income)		
1.	Salaries (6 of Schedule 5)	9993508

Further, it also pertinent to mention here that the appellant did not claim any exemption u/s 10 of the Act in the return of income. Relevant gist from the ITR is reproduced below:

Schedule S : Details of Income from salary					
1.	Name of Employer	Avezo Advisors Pvt. Ltd.	PAN of Employer (optional)		
	Address of Employer	11 <sup>th</sup> Fl. Nehru Centre	Town/City	Mumbai	
	State	Maharashtra	Pincode	400018	
	1.	Salary (Excluding all exempt/no-exempt allowances, perquisites & profit in lieu of salary as they are shown separately below)			9993508
	2.	Allowances not exempt (refer Form 16 from employer)			0
	3.	Value of perquisites (refer Form 16 from employer)			0
	4.	Profits in lieu of salary (refer Form 16 employer)			0
	5.	Deduction u/s 16 (Entertainment allowance by Government and tax on employment			0
	6.	Income chargeable under the head (1+2+3+4+5)			
	7.	Allowances exempt under section 10 (Not to be included in 6 above)			
		i.	Travel concession/assistance received (sec. 10(5))	0	
		ii.	Tax Paid by employer on non-monetary	0	



			perquisite (sec. 10(10CC)		
		iii.	Allowance to meet expenditure incurred on house rent [(sec. 10(13A)]	0	
		iv.	Other allowances	0	
2.	Total Income chargeable				9993508

6.3 Considering all the facts, it is culled that the appellant did not disclose gross total income in her ITR. Rather, net income (after claiming exemption Us 10 of the Act of Rs.35,26,484/-) was declared in the ITR. Therefore, the averments at para 2.17 of the submission of the appellant inasmuch as the appellant has claimed exemption under section 10 in the return of income is not correct and misleading.

6.3.1 The appellant has stated that she had included income appearing in Form 26AS in the return of income. The relevant paragraph 2.27 of the submission of the appellant is reproduced herein under:

Further, the appellant have included the income appearing in Form 26AS and Form 16 while filing the return of income for AY 2017-18. Thus, there is no income appearing in Form 16 or Form 26AS which has not been included in computing the total income of the appellant in the return of income. Accordingly, the adjustment under sub-clause (vi) of section 143(1)(a) should not be applicable.

In view of the above referred abstracts of IT, Form 26AS and relevant Schedule S, the averments of the appellant is not correct. On the other hand, while processing the IT, CPC found that income from salary of the appellant has been reported at Rs. 1,35,19,992/- in form26AS as against Rs.99,93,508/- declared in the IT. The CPC, while processing the IT, has thus, computed income from salary at Rs. 1,35, 19,992 - instead of Rs.99,93.508/- declared in the ITR. This action of CPC is in conformity with the provisions of section 143(1)(a)(vi) of the

6.4 It is also a matter of fact that the provisions of section 143(1)(a)(vi) of the Act empowers the CPC for adjustment of income in view of form 26AS, Form 16 and Form 16A of the Act.



*The appellant emphasised that the said section 143(1)(a)(vi) has been amended by a proviso below it, whereby such powers granted to CP regarding enhancement have been curtailed.*

*In this connection, it is very important to note that such powers have been withdrawn we.f. assessment year 2018-19. However, the year under consideration is A. Y. 2017-18. The CPC was empowered to make adjustment in the income on the basis of inter alia Form 26AS. The CPC has correctly enhanced income of the appellant.*

*6.4.1 So far as claim of the appellant is concerned about exemption us 10 of the Act, it is abruptly clear from the TR (reproduced above) that such claim was never made in the ITR. The appellant did not follow correct procedure for disclosing income and claiming exemption in ITR. The appellant must have declared correct income in the ITR, i.e. Rs. 1,35, 19,9921-.*

*Then the appellant can claim exemption u/s 10 of the Act in the relevant schedule of ITR. On the contrary, the appellant has reduced gross salary income by the amount of exemption u/s 10 of the Act and declared net amount in the ITR. On the basis of this material fact it is held that the judicial pronouncements relied upon by the appellant are on different set of facts which are not applicable to the facts and circumstances of the appellant's case. In the instant case, it is the assessee who did not fill ITR/ROI with correct values and make claim of exemption u/s 10 of the Act. The appellant had, rather, declared income after deduction of exemption u/s 10 of the Act. Such mistake is not a mistake within the purview of section 154 of the Act. The only recourse available with the appellant was to file revised return and fill correct values of income and exemption.*

*6.5 The provisions of section 154 of the Act are enacted for the purpose of any mistake apparent from record. This section is not meant for rectification of mistake made by the appellant while filing return of income. Such omission/rectification can only be rectified by filing revised return of income that too within the time allowed u/s 139 of the Act. The appellant has sought for*



*rectification of mistake on the claim of exemption which was never disclosed in the IT. The appellant has also failed to submit relevant documents in support of her claim of exemption during the present appeal proceedings. Mere claim of exemption in a submission/form 16 cannot entail allowability of such claim. Further, as discussed above, in the year under consideration, i.e. A.Y. 2017-18, the provisions of section 143(1)(a)(vi) of the Act empowered PC to make adjustment for income appearing in Form 26AS.*

*6.6 Considering all the facts of the case and pre-amended provisions of section 143(1)(a)(vi) of the Act, there isn't any mistake which is apparent from record. The upward adjustment made by the appellant is, thus, upheld. Accordingly, all the grounds at Sr. No. 1 to 5 of appeal related to section 154 and upward adjustment of income are hereby dismissed.”*

4. Before us, the Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 156.

5. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The issue in dispute in the case is whether there was any mistake apparent from the record in the order passed u/s 143(1) of the Act. The assessee has claimed to have received gross salary of Rs.1,35,19,992/-. According to the assessee this gross salary included allowance in the nature of house rent allowance, leave travel concession etc. amounting to Rs.35,26,484/-, which are exempted subject to provisions of section 10 of the Act. But we find that in the relevant column for the income from salary in the return of income, the assessee only declared salary income of Rs.99,93,508/- and under the relevant column for exempted amount Nil or zero amount has



been reported. The relevant part of the **'Schedule 5: details of income from salary'** of the return filed by the assessee is reproduced as under:

Schedule S : Details of Income from salary					
1.	Name of Employer	Avezo Advisors Pvt. Ltd.	PAN of Employer (optional)		
	Address of Employer	11 <sup>th</sup> Fl. Nehru Centre	Town/City	Mumbai	
	State	Maharashtra	Pincode	400018	
	1.	Salary (Excluding all exempt/no-exempt allowances, perquisites & profit in lieu of salary as they are shown separately below)			9993508
	2.	Allowances not exempt (refer Form 16 from employer)			0
	3.	Value of perquisites (refer Form 16 from employer)			0
	4.	Profits in lieu of salary (refer Form 16 employer)			0
	5.	Deduction u/s 16 (Entertainment allowance by Government and tax on employment)			0
	6.	Income chargeable under the head (1+2+3+4+5)			
	7.	Allowances exempt under section 10 (Not to be included in 6 above)			
		i.	Travel concession/assistance received (sec. 10(5))	0	
		ii.	Tax Paid by employer on non-monetary perquisite (sec. 10(10CC))	0	
		iii.	Allowance to meet expenditure incurred on house rent [(sec. 10(13A)]	0	
		iv.	Other allowances	0	
2.	Total Income chargeable				9993508

5.1 The assessee did not revise its return of income and after processing of the return of income, filed rectification application dated 27.06.2019 wherein the assessee filed the details of the income from the salary in Schedule V. The relevant part of said rectification request is reproduced as under:

Schedule S : Details of Income from salary					
1.	Name of Employer	Avezo Advisors Pvt. Ltd.	PAN of Employer (optional)		
	Address of Employer	11 <sup>th</sup> Fl. Nehru Centre	Town/City	Mumbai	
	State	Maharashtra	Pincode	400018	
	1.	Salary (Excluding all exempt/no-exempt allowances, perquisites & profit in lieu of salary as they are shown separately below)			9993508



2.	Allowances not exempt (refer Form 16 from employer)	0
3.	Value of perquisites (refer Form 16 from employer)	0
4.	Profits in lieu of salary (refer Form 16 employer)	0
5.	Deduction u/s 16 (Entertainment allowance by Government and tax on employment)	2500
6.	Income chargeable under the head (1+2+3+4+5)	9993508
7.	Allowances exempt under section 10 (Not to be included in 6 above)	
	i. Travel concession/assistance received (sec. 10(5))	72784
	ii. Tax Paid by employer on non-monetary perquisite (sec. 10(10CC))	0
	iii. Allowance to meet expenditure incurred on house rent [(sec. 10(13A)]	3417000
	iv. Other allowances	34200
2.	Total Income chargeable	9993508
Schedule HP: Details of Income from House Property		

5.2 The rectification request of the assessee has been rejected by the Assessing Officer on the ground that there was no mistake apparent from the record in the order passed u/s 143(1)(a) of the Act as no claim of the amount of the exempted allowance was made in the return of income and therefore, there being difference in the amount of salary appearing in the Form No. 26AS i.e. amount of salary appearing in the database in the Income-tax Department prepared on the basis of the information from the employer, and the salary income declared by the assessee in the return of income, the CPC adjusted salary income at the amount of Rs.1,35,99,992/- as against the salary income of Rs.99,93,508/- declared by the assessee in the return of income. Thus, in nutshell it can be said that assessee did not make any claim for exempted allowance of Rs.35,26,484/- in the return of income. In our opinion, omission was on the part of the assessee and therefore, there is no mistake in the order passed u/s 143(1) by the CPC. Accordingly, we uphold the



finding of the Ld. CIT(A) of rejecting the claim of rectification of order u/s 143(1)(a) of the Act.

5.3 However, before us an alternative plea was raised. It was submitted that the ld CIT(A) has rejected the claim of allowing relevant exemption on merit.,We find that the assessee made a fresh claim before the Ld. CIT(A) which was rejected by the Ld. CIT(A) on the ground that no relevant documents in support of exemption was filed during the first appellate proceedings before him and said claim of exemption was sought merely on the basis of the Form No. 16. But we are of the opinion that if the assessee is otherwise eligible for exemption under the provisions of the Act, she should not be deprived merely for the reason that she failed to report the claim properly in the form prescribed for filing return of income. The Ld. counsel of the assessee submitted that the assessee is willing to produce all the documents in support of exemption claimed, if matter is restored back to the Assessing Officer. In the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the Assessing Officer with the direction to the assessee to produce all necessary evidence in support of its claim of exemption of the allowances of Rs.35,26,484/-. The Ld. Assessing Officer is directed to examine the said claim and allow in accordance with law after due verification and enquiry if so required. The grounds of appeal of the assessee are accordingly allowed partly for statistical purposes.



6. In the result, the appeal of the assessee is allowed partly for statistical purposes.

**Order pronounced in the open Court on 11/05/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 11/05/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**