

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.34/Jab/2023
(ASSESSMENT YEAR- 2011- 2012)**

Ramesh Prasad Yadav, 01, Sharma Ward, Khurai, Madhya Pradesh-470117.	vs	CPC, Bangalore ITO, Bina.
(Appellant)		(Respondent)
PAN No.AAFPY2747R		

Assessee By	Shri H.S.Modh, Adv.
Revenue By	Shri Shiv Kumar, SR.DR
Date of hearing	18/09/2023
Date of Pronouncement	22/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

This appeal by the assessee is directed against order dated 29.12.2022 passed by Ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)"] for the assessment year 2011-12, raising following grounds of appeal:-

1. *"That the Ld NFAC, Delhi, has grossly erred in the facts and circumstances of the case to reject the appeal treating the application file by the Assessee for allowing credit of TDS at Rs. 19,687/- is barred by limitation.*

2. *That the rejection of request to allow credit of TDS as appearing in 26AS at Rs. 19,687/- as against the claim as advance tax is arbitrary and bad in law.*
3. *That the interest charged at Rs. 3,033/- for non-payment of Tax without considering the TDS at Rs. 19,687/- is arbitrary and bad in law.”*

2. Briefly stated facts of the case are that the assessee is a retired employee of State Bank of India. During the year under consideration, the assessee had earned income from pension amounting to Rs.3,32,842/- and interest on FDR amounting to Rs.1,55,303/-. The assessee filed his return of income manually before the Income-tax Officer (ITO), Ward-3, Bina, on 26.07.2011. In the return of income filed, the assessee by mistake claimed Tax deducted at source (“TDS”) of Rs.19,687/- deducted on pension under the column of advance tax. The return was processed by the ITO, Ward-3, Bina and a demand of Rs.22,720/- was raised against the assessee. But according to the assessee, no intimation of demand u/s 143(1) of the Income Tax Act, 1961 (in short “the Act”) was received by the assessee. Subsequently, the assessee received demand notice u/s 245 of the Act from CPC, Bangalore dated 19.09.2015 for Rs.22,720/-. The assessee came to know to the said notice and filed rectification request on 12.10.2015 which was rejected by the Assessing Officer (in short “AO”) on 08.08.2016

stating that same has not been a mistake apparent from the record and confirmed the demand of the assessee. The assessee again filed rectification request on 24.11.2017 u/s 154 of the Act and again on 13.04.2018 which was disposed off on 16.07.2018. On the ground that order u/s 143(1) cannot be rectified u/s 154 of the Act as the same was time barred and the mistake was not apparent from the record. On further appeal, Ld.CIT(A) also upheld the findings of the AO by observing as under:-

5. “Decision: *“I have considered the order passed by the LAJO and submissions made by the appellant. In this case, the appeal is against order passed u/s.154 of the Income Tax Act. The appeal pertains to the return of the appellant filed for A.Y. 2011-12. The appellant had claimed TDS of Rs.19,687/- as Advance Tax. The return was processed u/s.143(1) and demand of Rs.22,720/- was raised. The contention of the appellant is that it did not receive intimation u/s.143(1), but after uploading of the demand on income tax portal, it received a demand notice u/s.245 from CPC, Bangalore on 19/09/2015. Hence, the contention of the appellant is that intimation period of 4 years will start from 19.09.2015 and hence its application u/s.154 is not barred by limitation. The Assessing Officer has rejected the application u/s.154 of the appellant, filed on 13/04/2018, barred by limitation.*

5.1 I have gone through the grounds of appeal, statement of facts and submissions filed by the appellant. Sub section 7 of Section 154 clearly states "no amendment under this section

shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed." It is a fact that the appellant received notice from CPC on 19/09/2015 for payment of demand, but order sought to be amended was passed much earlier. Hence, 4 years will start from the date of passing of the order u/s.143(1), not on receipt of demand notice by CPC, Bangalore which is not passing of the order.

5.2 Hence, the Assessing Officer is correct in rejecting the application of 154 by the appellant which is barred by the limitation of 4 years. The order of the Assessing Officer is upheld and the appeal of the appellant is dismissed."

3. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the relevant material available on record. We find that the assessee in the return of income mistakenly reported the amount of TDS as advance tax. But in the total, no excess claim of the tax has been made by the assessee. At the first instance, we do not understand why the AO raised a demand in intimation u/s 143(1) of the Act without giving credit of the amount of the TDS which was already appearing in form no. 26AS. A copy of said form has been filed by the assessee before the AO alongwith rectification application. Ignoring the TDS credit available to the assessee, and then raise the demand is abuse of the authority. The order of the AO passed u/s 143(1) of the Act is in gross negligence of his duty. Further, when the assessee filed a

rectification application stated that the order passed by the AO u/s 143(1) of the Act was not received by him and only this fact of not allowing the credit of TDS was came to his knowledge on demand raised by the CPC, Bangalore. **Firstly**, we note that in the case, neither in the order of the AO nor in the order of Id CIT(A) date of passing order u/s 143(1) has been provided nor such order has been placed on record by the Revenue. It was the onus of the AO to provide atleast a copy of the order passed u/s 143(1) to the assessee before rejecting his application u/s 154 of the Act. The assessee has stated that said order was not received by him, therefore, it was not possible for him to file rectification within the stipulated period. **Secondly**, we note that as per section 254 (2) of the Act, an assessee or revenue can make an application for rectification before the Tribunal at any time within six months from the end of the month in which the order was passed . But Hon'ble Bombay High Court **in Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT (2021) 277 Taxman 155/ 200 DTR 417/ 320 CTR 456 (Bom.)** has taken the view that, *six months should reckon from the date, when assessee got knowledge of order.* The wording of section 154(7) is *pari-materia* to section 154(7) of the Act which reads as “*no amendment under the section shall be made after expiry of four year from the end of the financial year in which*

the order sought to be amended was passed". Thus, respectfully, following the decision of Hon'ble Bombay High Court (supra), the period of four years for rectification of the order as stipulated in section 154(7) of the Act should be reckoned from the date from which the said order came to the knowledge of the assessee. In that case the application of the assessee would be within the limitation period. Further, we find that the Coordinate Bench of the Tribunal, Ahmedabad in **ITA No. 337/Ahd/2010 in Liberty Pesticides & Fertilizer Ltd Vs ACIT** held that the "*Revenue cannot reject the rectification application on the ground that it was time barred, as A.O. failed to send intimation to the assessee specifying the sum so payable which was not the fault of assessee, hence application entertained*". In the instant case also, there is no evidence on record that intimation u/s 143(1) was sent to the assessee, therefore, respectfully following the decision of Tribunal (supra), the Assessing officer is not justified in rejecting the rectification application of the assessee invoking section 154(7) of the Act. It is not in dispute that tax deducted by the employer on the pension of the assessee has already gone to the exchequer of the Government of India and now denying the credit of the same to the assessee is gross injustice to the assessee. In the facts and circumstances of the case, we set aside the order of Ld.CIT(A) on

the issue in dispute and direct the AO to carry out necessary rectification order and give credit of the TDS against the tax liability of assessee. The Grounds raised by the assessee are accordingly, allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 22/09/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
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Asstt. Registrar
Jabalpur Bench