

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.703/MUM/2024  
(Assessment Year :2014-15)**

**&**

**ITA No.704/MUM/2024  
(Assessment Year:2015-16)**

Lok Everest Co-op HSG Society Limited B2 Mezzanine Floor Lok Everest, JSD Road, Mulund (W), Mumbai - 400080	Vs.	Asst. Commissioner Centralized Processing Center Income Tax Department Post Bag No. 2, Electronic City Post Office, Bangalore Karnatak - 560100
<b>PAN/GIR No. AAAAK6797K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Devendra Jain
Revenue by	Ms. Kakoli Ghosh
<b>Date of Hearing</b>	<b>27/06/2024</b>
<b>Date of Pronouncement</b>	<b>28/06/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeals have been filed by the assessee against order of even date 25/02/2019 passed by CIT(A)-40, Mumbai for the A.Y.2014-15 and 2015-16 in relation to the adjustment made u/s.143(1) for claim of deduction u/s.80IP.

2. At the outset, the appeal of the assessee is time barred by 1758 days. The ld. Counsel informed that against the intimation u/s.143(1), the assessee had filed petition for rectification u/s.154 before the CPC. Once there was no response, the assessee also filed physical copy of petition u/s.154 before the ld. AO through speed post. Against such adjustment made u/s.143(1), appeal was filed before the ld. CIT(A) who held as under:-

*“The appellant society filed its return of income on 31.3.2016 which was processed on 30.6.2016 whereas the appellant filed the appeal on 5.10.2016. This is only a processing of return u/s. 143(1) and **hence, the appropriate forum would be filing of rectification application before the AO by filing appropriate details for rectification and hence the assessee is directed to file a rectification petition before the AO. Therefore, the appeal filed by the appellant is dismissed for statistical purpose.**”*

3. It was informed that after the order of the ld. CIT(A) and direction to the ld. AO, assessee once again filed the rectification but no such rectification was carried out. Since assessee is a co-operative housing society and Management Committee had changed from time to time, it was not aware that appeal was to be filed, since rectification was still pending before the ld. AO despite the direction of the ld.CIT(A), it could not file the appeal in time. It was when demand was pressed, the assessee society approached the Chartered Accountant, and then appeal has been filed. Thus, the appeal in could not be filed before the Tribunal due to these bonafide reasons.

4. After hearing both the parties, we find that assessee had filed petition for rectification u/s.154 before the CPC and then also in the physical form. The reason for condonation of delay has been stated as under:-

*“1. The return of income was processed vide Intimation under section 143(1) dated 30/06/2016 denying deduction under section 80P and raising demand of Rs. 9,32,760/-. As against this, appeal was filed before CIT (A) on 05/10/2016. The Ld. CIT (A) in its order dated 25/02/2019 directed to file rectification application under section 154 before the Ld. Assessing Officer.*

*2. That, upon receipt of CIT(A) order, dated 25.02.2019, the rectification application under section 154 dated 30/05/2019 was filed before the Ld. Assessing Officer by registered post sent on 03/06/2019.*

*3. That in between the managing committee of the society changed several times and there was no dedicated person to take care of the technical income tax issues and we were of the opinion that the grievance would be resolved by the rectification application.*

*4. That, the rectification application under section 154 is not decided by the Ld. Assessing Officer till date. It is still pending to be disposed of. Recently, a recovery of demand notice was raised for AY 2014-15.*

*5. That, upon receipt of such notice, we approached a professional expert to seek advice on the aforesaid matter. It was only then, we were advised to file an appeal before the Hon'ble Income Tax Appellant Tribunal. Thus, the appeal is now being filed against the CIT(A) order dated 25.02.2019.”*

5. Looking to the fact that despite direction given by the CIT(A), the ld. AO has not passed any rectification, therefore, assessee was under a bonafide belief that ld. AO will pass the rectification order. Since, it was not passed for several years, assessee filed

the appeal before the Tribunal and therefore, delay in filing of appeal is condoned.

6. On merits, we find that prima facie adjustment for disallowance u/s.143(1) has been made on the ground that assessee has not filed the return of income during the due date. The assessee being a Cooperative Housing Society. First of all for the A.Y.2014-15 and 2015-16 there was no such provision for making disallowance u/s.143(1)(a) because the adjustment which was permissible was with respect to 10AA, 80AIA, 80IAB, 80IB, 80IC, 80ID or Section 80IE. It was only by the Finance Act 2021 w.e.f. A.Y.2021-22, now the prima facie adjustment is permissible under Chapter VIA if the assessee has not filed the return of income on the due date. Thus, for the A.Y.2014-15 and 2015-16 there was no provision for making such adjustment, accordingly, adjustment made by the assessee is allowed.

**7. In the result, appeals of the assessee for A.Y.2014-15 and 2015-16 are allowed.**

Order pronounced on 28<sup>th</sup> June, 2024.

**Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Mumbai; Dated 28/06/2024  
KARUNA, *sr.ps*

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**