

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 995/Bang/2024
Assessment Year : 2016-17

Shri Ramalingaiah Ramesh, Teachers colony, Near Old Bus Stand, Behind BSNL office, Maddur – 571 428. PAN: BGTPR3235C	Vs.	The Income Tax Officer, Ward 1 & TPS, Mandya.
APPELLANT		RESPONDENT

Assessee by	:	Shri K.V. Srinivas Prasad, Advocate
Revenue by	:	Shri Ganesh R. Ghale, Advocate, Standing Counsel for Dept.

Date of Hearing	:	06-08-2024
Date of Pronouncement	:	21-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 29.01.2024 passed by the Ld.CIT(A)-5/NFAC, Mumbai for A.Y. 2016-17.

2. At the outset, the Ld.AR submitted that assessee is aggrieved by the rejection of the application to rectify the revised return

filed on 03.01.2018 wherein assessee declared income of Rs.3,29,560/-, erroneously paid tax of Rs.3,89,850/- on 28.03.2018 and Rs.4,13,550/- on 02.07.2018.

3. Brief facts of the case are as under:

3.1 The assessee is a semi-literate and is engaged in business/profession as a tailor cum trader in Textile fabrics. He is from an agriculture family, having considerable income from agriculture. The assessee declared gross total income of Rs.2,45,000/- during Assessment year, 2016-17. The Ld.AO issued notice dated 30/11/2017 under Section 142(1) of the Income Tax Act,1961 to prepare true and correct return of income for AY 2016-17 & 2017-18. The auditor of the assessee furnished the income and as per the direction of the ITO and a revised return of income tax for the AY 2016-17 was filed on 03.01.2018 declaring income of Rs.3,29,560/- on which the assessee paid tax of Rs.10,820/- under acknowledgement number 354891220030118.

3.2 However, the auditor erroneously deposited Rs.3,89,850/- on 28.03.2018 and Rs.4,13,550/- on 02.07.2018 for the reasons best known to him. Later, the assessee came to know that the demand was payable by some other client of the auditor and auditor erroneously deposited in the PAN for the assessee. The auditor informed the assessee that the said amount will be refunded after assessment. The assessee thereafter did not receive order under section 143(1) of the Income Tax Act, 1961 and there was no additions/deletion made to returned income. It

is submitted that the auditor failed to claim refund of the excess amount deposited in the revised return filed for AY 2016-17 and also not filed form-30 to claim refund. It is submitted that the auditor kept the assessee in dark by making false promise regarding issuance of refund ordered.

3.3 It is submitted that, as the refund was not credited to assessee's account, even after five years, the assessee approached another tax consultant who verified the records in the light of the returns filed and advised the assessee to apply for rectification of mistake as refund was not claimed in the regular / revised return filed. Further, it is submitted that since, there is no provision to apply for rectification online for AY 2016-17 assessee submitted physical application dated 07.04.2023 to ITO, Mandya for rectification of mistake and for issuance of refund of Rs.4,13,550/-, Rs.10,820/- and Rs.3,89,850/-.

3.4 Subsequently, the assessee received e-mail with DIN No. ITBA/COM/17/2023-24/1052529002(1) dated 02/05/2023, wherein it was informed that the revised return was not accepted, as it was filed after expiry of one year from the end of assessment year or before the completion of assessment whichever is earlier. It was also informed that the assessee has paid self assessed tax of Rs.3,89,850/- and Rs.4,13,550/- for A.Y.2016-17 which is not claimed in the original return or revised return and refund cannot be granted.

3.5 The said e-mail was shown to the representative who advised the assessee to file appeal against the order. The assessee waited for receipt of the speaking order and no such order was served on the assessee. On the advise of the representative, the assessee visited the income tax office at Mandya and ITO informed the assessee that no order will be issued.

Aggrieved by the rejection of application for rectification of mistake, the assessee preferred appeal before the Ld.CIT(A) based on the letter dated 02/05/2023.

4. The Ld.CIT(A) /NFAC vide DIN and Order-In-Appeal No. ITBA/APL/S/250/2023-24/1060224755(1) rejected the appeal based on

- a) The appeal is time barred
- b) The letter issued by the ITO is not an order .
- c) The CPC not processed the revised return and rectification is not allowed.

We have perused the facts based on the records placed before this *Tribunal*.

5. It is noted that, the original return filed by the assessee was processed by the CPC on 12/09/2017. However, it was found from form 26 subsequently that assessee revised the return u/s. 139(5) on 03/01/2018 and self assessment tax was paid at Rs.10,820/-. Subsequently, the assessee once again paid SA tax which was not as per the returns so filed. The self assessment

tax paid does not arise out of either the revised return or the original return filed by the assessee. In the interest of justice, we are of the opinion that assessee is to file rectification application before the Ld.AO which the Ld.AO shall consider without considering any limitation issue that may be applicable. There is bonafides on the part of the assessee as the assessee was erroneously misled to deposit taxes which is not in consonance with the income for the year under consideration. It is a trite law that no tax can be collected without the authority of law. Based on this principle, we direct the Ld.AO to consider the rectification petition filed by the assessee. The Ld.AO shall verify the returns filed by the assessee and shall compute the income in the hands of the assessee in accordance with law. Assessee shall furnish all relevant evidences in support of its claim. We may once again bring it to the notice of the authorities that the 154 petition filed by the assessee shall not be dismissed on the ground of limitation and shall process the return in accordance with law.

Accordingly, the present appeal filed by the assessee stands disposed of.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 21st August, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st August, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore