

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4684/MUM/2024**

**(Assessment Year : 2006-07)**

**Kavita Srichand Bajaj**

17, Saideep, Cuffe Parade, Colaba,

Mumbai - 400005

PAN - AEKPB4925K

..... Appellant

v/s

**Income Tax Officer - 25(1)(1),**

Kautilya Bhavan, C-41 to C-43, G-Block,

Bandra Kurla Complex, Bandra (East),

Mumbai - 400051

..... Respondent

Assessee by : Shri Shekhar Gupta

Revenue by : Shri Hemanshu Joshi, Sr. DR

Date of Hearing - 23/01/2025

Date of Order - 27/01/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The assessee has filed the present appeal against the impugned order dated 29/07/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2006-07.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer rejecting the application u/s. 154 of the Income Tax Act.*

*2. The learned CIT (Appeals) has erred in law and on the facts of the case in not appreciating the fact that the assessee had filed the application for rectification within 4 years from the date of passing of the intimation u/s. 143(1)."*

3. Vide application dated 13/01/2025, the assessee raised the following additional ground of appeal: -

*"The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer u/s. 143(1) although there was no provision for making an adjustment to the income and varying the returned income of the assessee."*

4. Since the issue raised by way of additional ground of appeal is a legal issue and goes to the very root of the matter, which can be decided on the basis of material available on record, therefore the same is admitted in view of the ratio laid down by the Hon'ble Supreme Court in NTPC v/s CIT, reported in [1998] 229 ITR 383 (SC).

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual and filed her return of income for the year under consideration on 31/07/2006 declaring a total income of INR 3,09,753. The return filed by the assessee was processed vide intimation dated 30/08/2007 issued under section 143(1) of the Act, determining the total income of INR 86,11,610 after disallowing exemption of long-term capital gains amounting to INR 32,29,925 earned on the sale of shares of Infosys Ltd. and denying the deduction claimed under Chapter-VIA of the Act.

6. Against the intimation issued under section 143(1) of the Act, the assessee filed a rectification application on 21/12/2010. Since the said rectification application was not disposed of even after 13 years, the assessee filed repeated reminders from March to November 2023. However, no action was taken by the AO. The assessee again filed a letter on 10/11/2023 seeking rectification of the intimation issued under section 143(1) of the Act. However, vide order dated 15/02/2024, the Assessing Officer ("AO") rejected the rectification application on the basis that the same is time-barred as per the provisions of section 154(7) of the Act. In further appeal, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the ITO, Ward-12(2), Mumbai, while processing the return of income filed by the assessee vide intimation dated 30/08/2007 issued under section 143(1) of the Act disallowed the exemption claimed under section 10(38) of the Act in respect of long-term capital gains earned by the assessee and also disallowed deduction claimed under Chapter-VIA of the Act, which is outside the purview of section 143(1) as it existed prior to its amendment by the Finance Act, 2008 w.e.f. 01/04/2008.

8. Before proceeding further, it is relevant to note the provisions of section 143(1), as they existed on the date of issuance of intimation under section 143(1) of the Act. We find that prior to its amendment by the Finance Act, 2008 w.e.f. 01/04/2008, the provisions of section 143(1) of the Act read as follows: –

*"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,—*

*(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and*

*(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee:*

*Provided that except as otherwise provided in this sub-section, the acknowledgement of the return shall be deemed to be an intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him:*

*Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made:*

*Provided also that where the return made is in respect of the income first assessable in the assessment year commencing on the 1st day of April, 1999, such intimation may be sent at any time up to the 31st day of March, 2002."*

9. Without going into the issue of whether the disallowances, as noted above, made vide intimation issued under section 143(1) of the Act were permissible after the amendment by the Finance Act, 2008 w.e.f. 01/04/2008, from the perusal of the provisions of section 143(1) of the Act prior to the aforesaid amendment, it is ostensible that these disallowances are completely outside the ambit of adjustment as contemplated under the aforesaid provisions of section 143(1) of the Act. Since the AO has transgressed the authority granted under the Act to make the adjustment to the return of income filed by the assessee and issued intimation under section 143(1) of the Act contrary to the provisions of the section, the intimation dated

30/08/2007 issued under section 143(1) of the Act is hereby quashed. As a result, the additional ground of appeal filed by the assessee is allowed.

10. In view of our aforesaid findings, the other issues raised by the assessee, in the present appeal, are rendered academic and therefore, are left open.

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

Order pronounced in the open Court on 27/01/2025

**Sd/-**  
**RENU JAUHRI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27/01/2025**  
*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai