

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-II, NEW DELHI

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1542/DEL/2016
Assessment year : 2012-13

Shri Rohit Kapoor, Flat No.754, 7 <sup>th</sup> Floor, Gaur Grandeur, Sector 119, NOIDA (U.P.) – 201 301. <b>PAN: ADWPK 1492R</b>	Vs.	The Assistant Commissioner of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Rajakumar, Advocate
Respondent by	:	Shri S.K. Jain, Sr. DR

Date of hearing	:	15.09.2016
Date of Pronouncement	:	21.09.2016

**ORDER**

This appeal is preferred by the assessee against the order of the CIT(Appeals)-I, Noida dated 27.01.2016 on a solitary ground that the CIT(Appeals) has erred in confirming the initial order passed u/s. 143(1) of the Income-tax Act, 1961 ["the Act"] and dismissing the appeal.

2. During the course of hearing, my attention was invited to the order of the CIT(Appeals) with the submission that the assessee has filed an appeal against the order passed by the AO u/s. 143(1) of the act before the CIT(Appeals). It was further contended that during the course of pendency of appeal before the CIT(Appeals), the assessee has made a request for

withdrawal of the appeal, but instead of allowing withdrawal of appeal, the CIT(Appeals) has dismissed the appeal of the assessee.

3. Now the assessee is in appeal with the submission that against the order passed u/s. 143(1), the assessee has filed an application for rectification u/s. 154 of the Act before the AO and the AO has disposed of the application granting relief to the assessee. In the light of these facts, the assessee did not intend to prosecute his appeal filed before the CIT(Appeals) and expressed his desire to withdraw the same. But the CIT(Appeals) did not allow it to be withdrawn, rather it was dismissed and the order passed u/s. 143(1) of the Act was confirmed, which causes confusion in the mind of the AO. The Id. counsel for the assessee further contended that once the initial order passed u/s. 143(1) of the Act is modified, the present appeal did not survive and for this reason also, the assessee intended to withdraw the appeal, but the CIT(A) did not allow it to be withdrawn and confusion has been created.

4. The Id. DR placed reliance upon the order of CIT(Appeals).

5. Having carefully examined the order of CIT(Appeals) in the light of rival submissions, I find that undisputedly before the CIT(Appeals) the assessee moved an application for withdrawal of the appeal for the reason that under rectification, the AO has rectified the order and assessee got the relief. But while disposing of the request of the assessee, the CIT(Appeals) has dismissed the appeal of the assessee resulting into a

confirmation of the initial order passed u/s. 143(1) of the Act. Since the assessee got relief u/s. 154 of the Act, there should not be any adverse order against him on account of the CIT(A)'s order disposing of the request of assessee for withdrawal of the appeal. I, therefore, clarify that the dismissal of appeal by the CIT(Appeals) would not have any impact on the order passed u/s. 154 of the Act by the AO. Accordingly, the order of the CIT(Appeals) is modified to the extent that appeal filed before the CIT(Appeals) is dismissed as withdrawn.

6. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 21<sup>st</sup> day of September 2016.

Sd/-  
(SUNIL KUMAR YADAV )  
Judicial Member

New Delhi,  
Dated, the 21<sup>st</sup> September, 2016.  
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Assistant Registrar,  
ITAT, New Delhi.