

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. Nos. 923 & 924 /KOL/ 2015
Assessment Years: 2008-2009 & 2009-2010**

Shri Sourendra Nath Pal,.....Appellant
Flat No. G/3, Aswini,
Neelachal Abasan,
98, Rajdanga Gold Park,
Kolkata-700 107
[PAN: AGHPP 1463 B]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-52, Kolkata,
Now ITO, Ward No. 25(3), Kolkata,
Aayakar Bavan Dakshin,
2, Gariahat Road (South),
Kolkata-700 068

Appearances by:

Shri Sourendra Nath Pal, A.R. for the assessee
Shri Rajendra Prasad, JCIT, D.R., for the Department

Date of concluding the hearing : July 28, 2016
Date of pronouncing the order : September 28, 2016

O R D E R

These two appeals filed by the assessee are directed against two separate orders dated 11.09.2014 passed by the ld. Commissioner of Income Tax (Appeals)-XXXIII, Kolkata, whereby he dismissed the appeals filed by the assessee for assessment years 2008-09 and 2009-10 against the intimations issued by the Assessing Officer under section 143(1) by treating the same as not maintainable.

2. At the outset, it is noticed, there is a delay of 23 days on the part of the assessee in filing these appeals before the Tribunal. In this regard, the assessee has moved an application seeking condonation of the said delay and keeping in view the reasons given by assessee, I am satisfied that there was a sufficient cause for the delay of 23 days on the part of the assessee in filing these appeals before the Tribunal. Even the Id. D.R. has not raised any material objection in this regard. I, therefore, condone the said delay and proceed to dispose of these appeals filed by the assessee on merit.

3. The assessee in the present case is an individual, who filed his returns of income for both the years under consideration on 22.09.2008 and 31.07.2009 declaring total income of Rs.10,83,110/- and Rs.17,33,910/- for assessment years 2008-09 and 2009-10 respectively. The said returns were processed by the Assessing Officer and intimations under section 143(1) were issued by him for both the years under consideration. Thereafter, it was noticed by the assessee that there was an inadvertent mistake in the returns filed by him in declaring his gross professional receipts as the total income. He, therefore, moved his applications for rectification of the intimations issued by the Assessing Officer under section 143(1) and pending disposal of the same by the Assessing Officer, also filed appeals before the Id. CIT(Appeals). As noticed by the Id. CIT(Appeals) from the relevant provisions of section 143(1)(a) and 246A(1)(a), appeal against an intimation issued under section 143(1) could be filed by the assessee only where he objects to any adjustment made by the Assessing Officer while processing the return of income. Since in the case of the assessee, no adjustments whatsoever were made by the Assessing Officer while processing the returns of income filed by the assessee for both the years under consideration and the income as declared by the assessee in the said returns was accepted by him in the intimations issued under section 143(1), the Id. CIT(Appeals) held that the appeals filed by the assessee against the

intimations issued by the Assessing Officer under section 143(1) for both the years under consideration were not maintainable. He accordingly dismissed the said appeals. Aggrieved by the orders of the Id. CIT(Appeals), the assessee has preferred these appeals before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. I have also carefully read the relevant provisions of section 143(1)(a) and 246(1)(a), which make it abundantly clear that the appeal against the intimation under section 143(1) can be filed by the assessee before the Id. CIT(Appeals) only where he objects to any adjustment made by the Assessing Officer while processing his return of income. In the present case, no adjustment whatsoever was made by the Assessing Officer while processing the returns of income filed by the assessee for both the years under consideration under section 143(1) and since the income as declared by the assessee in the said returns was accepted by him in the intimations issued under section 143(1), I fully concur with the view taken by the Id. CIT(Appeals) in his impugned orders that the appeals filed by the assessee against the intimations issued by the Assessing Officer under section 143(1) for both the years under consideration before him were not maintainable. At the time of hearing before me, even the Id. counsel for the assessee has not been able to raise any material contention to dispute this position. He, however, has submitted that the applications filed by the assessee under section 154 for rectification of intimations issued by the Assessing Officer under section 143(1) for both the years under consideration are still pending and urged that the Assessing Officer may be directed to dispose the same. In this regard, it is observed that the Id. CIT(Appeals) in his impugned order passed for A.Y. 2009-10 has already directed the Assessing Officer to consider and dispose of the application filed by the assessee for rectification under section 154. Since the Assessing Officer has not complied with the said direction as pointed out by the Id. counsel for the assessee, I once again direct the Assessing

Officer to consider and dispose of the applications of the assessee for rectification under section 154 expeditiously.

5. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on September 28, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 28th day of September, 2016

- Copies to :
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Now ITO, Ward No. 25(3), Kolkata,
Aayakar Bavan Dakshin,
2, Gariahat Road (South),
Kolkata-700 068***
 - (3) ***Commissioner of Income Tax (Appeals)-XXXIII, Kolkata;***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.