**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**

(समक्ष)Before **श्री महावीर सिंह,** न्यायीक सदस्य **एवं/and श्री शामीम याहया**, लेखा सदस्य)

[Before Shri Mahavir Singh, JM & Shri Shamim Yahya, AM]

आयकर अपील संख्या / I.T.A No.1915/Kol/2012

निधॉरण वषॅ/Assessment Year: 2011-12

Mohan Kant Bansal Vs. Income-tax Officer, Wd-32(3), Kolkata

(PAN:ADZPB7762Q)

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

Date of hearing: 25.06.2014

Date of pronouncement: 25.06.2014

For the Appellant: Shri J. M. Thard, Advocate

For the Respondent: Shri Rajendra Prasad, JCIT, Sr. DR

आदेश/**ORDER**

**Per Shri Mahavir Singh, JM :**

This appeal by assessee is arising out of order of CIT(A)-XIX, Kolkata in Appeal No. 196/CIT(A)-XIX/Ward-32(3)/Kol/11-12 dated 10.10.2012.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in processing the return u/s. 143(1) of the Act and by virtue of the same charging of higher rate of tax on income from capital gains.

3. Briefly stated facts are that the assessee filed his e-return of income for AY 2011-12 on 29.07.2011. The assessee declared total income in his e-return i.e. in the original return at Rs.67,07,043/- and also declared taxes paid at Rs.14,00,729/- and claimed refund of Rs.35,320/-. Subsequently, he revised his return of income on 07.09.2011 declaring total income at Rs.67,07,043/- (the same return as returned originally) but computed the tax and interest payable at Rs.14,00,729/- as against the tax payable originally at Rs.13,65,409/-. The assessee received intimation u/s. 143(1) of the Act from the ACIT (CPC), Bangalore dated 17.12.2011 determining a sum payable at Rs.26,25,892/-. In the intimation it is noted that tax on special income i.e. long term capital gain on sale of property was determined at Rs.34,94,016/- as against the tax computed by the assessee at Rs.11,64,672/-. Accordingly, according to revenue, there was discrepancy in charging higher tax rate and thereby a demand was created at Rs.26,25,892/-. The assessee contended that the long term capital gain calculated @ 20% on the long term capital gain declared by the assessee on sale of property at Rs.58,23,362/- comes to Rs.11,64,672/- which has rightly been computed by the assessee while filing return of income. Accordingly, the assessee filed on line rectification application on 02.01.2012, which is enclosed in assessee’s paper book at page 3 and the reasons also stated at page 2 of his paper book which reads as under:

*“Tax on Special Income (Long Term Capital) of Rs.5823362/- has been charged at Rs.3494016/-. This Tax comes @ 60% in place of 20%. In ITR 4 in schedule Capital Gain in Serial “B3” particulars of Long Term Capital Gain was filled. Thereafter in Schedule “S1” figures are picked up by the system itself, according to which it is filled in Serial No. 1 code 21 and Tax @ 20% comes to Rs.1164672/- which is a correct amount of Tax on Special Income.”*

4. The assessee also filed a letter addressed to CIT(A), Kolkata dated 08.08.2012 wherein it was informed to the CIT(A) that they have contacted CPC, Bangalore regarding the status of rectification request made on 02.01.2012 and CPC replied on 6th August, 2012 over telephone that the rectification request has been rejected but no such order was passed. Aggrieved, assessee preferred appeal before CIT(A), who after hypothetical questions passed a very lengthy order and aggrieved assessee came in appeal before us. Before us assessee contended that the CIT(A) erred in not giving any final decision in respect of ground taken by the assessee in his appeal. The assessee further contended that the CIT(A) was not justified in observing that the assessee has shown his inability in producing the request made by him u/s. 154 of the Act for rectification of intimation passed by AO u/s. 143(1) of the Act. The assessee stated that the acknowledgment receipt of on line request made on 02.01.2012 along with the reasons for rectification was submitted before CIT(A) on 24.07.2012 and also the status of on line rectification was informed vide letter dated 08.08.2012. The Ld. counsel for the assessee argued that CIT(A) was not justified in making irrelevant observation regarding system of working and other matters but refraining from adjudicating the appeal. On the other hand, Ld. Sr. DR could not point out contrary except he produces a letter from the AO dated 23.06.2014 vide no. ITO,Wd-32(3),Kol/ITAT/2014-15/59 dated 23.06.2014 wherein the following is observed:

*“Sub: ITA No. ITA/1915K/12 A.Y. 2011-12 in the case of Mohan Kant Bansal*

*Vs ITO Ward 32(3), Kol-regarding PAN ADZPB7762Q.*

*This is to inform you that on verification of the available record from the AST System Module; it appears that the aforementioned assessee didn’t file any rectification petition for the said A.Y. before the CPC. The rectification petition u/s. 154 dt. 02.01.2012 with reference no. 328701180020112, as claimed by the assessee could not be traced in the AST System Module.*

*This is for your kind information and further necessary direction at your end.”*

5. We have heard rival submissions and gone through facts and circumstances of the case. First of all it is to be mentioned that the rate of tax at what rate long term capital gains is to be charged, the assessee has declared long term capital gain and charged tax on the same at 20% as is evident from the acknowledgment of return filed before us. Even the endorsement issued by CPC, Bangalore u/s. 143(1) of the Act clearly envisaged the rate of tax on long term capital gain at 60%. We have gone through the entire Income Tax Act and found that no such rate of taxes on long term capital gain as is devised by the parliament. Hon’ble Delhi High Court has issued remedial directions to improve hardships faced by tax payers while processing the e-returns at CPC, Bangalore. Hon’ble High Court has discussed the background that in order to fasten the processing of returns, the revenue has introduced electronic filing of income tax returns, TDS returns, e-tax payments and it operates Centralised Processing Centre (CPC) at Bangalore. This is manned by Higher Ranking Officers of Income Tax Department. The problem is faced by tax payers, when demand is raised or refund reduced on account of either suo motu adjustment by the Income Tax Department and refund against tax demands or mismatch of TDS credit or any other adjustment or disallowance of claim made by tax payer in the return and uploaded by the assessee in its e-returns. This is a general grievance among the tax payers that the AOs do not adhere to the time limit specified for the disposal of rectification applications and tax payers are invariably called upon to file duplicate application or new application. Further, no record or no receipt counters or registers for receipt of such applications are maintained. Thus, there is no record/register remained with the AO with details or particulars of rectification application made u/s. 154 of the Act as is evident from the present case. Similar directions were issued by Hon’ble Delhi High Court in the case of its own motion Vs. CIT, WP(C) No. 2659/2012 dated 14.03.2013. The Hon’ble Delhi High Court vide para 18 has issued dictum as under:

*“18. Each application under Section 154 has to be disposed of and decided by a speaking order. This is the mandate of the Act. The order has to be communicated to the assessee and there is a relevant column to be filled in the register, which is now required to be maintained. The Board should issue specific directions to ensure that there is full compliance of the said requirements and directions by the Assessing Officers, Dak counters and Aayakar Sewa Kendras. This is the first mandamus or direction we have issued in the present judgment.*

As the facts in the present case are very clear that charging of long term capital gain can only be @ 20% in assessment year 2011-12 and not @ 60% as charged in intimation u/s 143(1) of the Act by CPC, Bangalore which according to the provisions of the Income Tax Act is not legal. Hence, we quash the intimation and appeal of assessee is allowed. The jurisdictional AO is directed to amend the intimation issued by CPC, Bangalore, while giving appeal effect to this order.

6. In the result appeal of assessee is allowed.

7. Order is pronounced in the open court.

Sd/- Sd/-

**शामीम याहया,** लेखा सदस्य **महावीर सिंह,** न्यायीक सदस्य(Shamim Yahya ) (Mahavir Singh) Accountant Member Judicial Member

Dated : 25th June, 2014

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषितः- Copy of the order forwarded to:

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| 1. | अपीलार्थी**/**APPELLANT – Shri Mohan Kant Bansal, R. No. 35, 1st floor, Karnani Estate, 209, A.J.C. Bose Road, Kolkata-17. |
| 2 | प्रत्यर्थी/ Respondent –ITO, Ward-32(3), Kolkata. |
| 3. | |  | | --- | | आयकर कमिशनर (अपील)/ The CIT(A), Kolkata | |
| 4.  5. | |  | | --- | | आयकर कमिशनर/ CIT Kolkata | | विभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata | |

**सत्यापित प्रति/**True Copy, **आदेशानुसार/** By order,

सहायक **पंजीकार**/Asstt. Registrar**.**