

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER**

**ITA No.195/RJT/2022
Assessment Year :2014-15**

Dinumatiben Damjibhai Shilu "Kaushik", Kailash Nagar Khanpara Road Jasdan, Rajkot. PAN : AGBPS 7764 C.	Vs.	ITO, Ward-2(2)(5) Rajkot.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assessee by :	Shri D.M. Rindani, Id.AR
Revenue by :	Shri B.D.Gupta, Ld.Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **15/02/2023**
घोषणा की तारीख /**Date of Pronouncement**: **28/02/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax (Appeals),National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "Id.CIT(A)"] dated 11.5.2022 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short)pertaining to Asst.Year2014-15.

2. As transpires from orders of authorities below and the documents placed before us, the present appeal is arising on account of rectification application filed by the assessee seeking rectification in the intimation made by the Department under section 143(1) of the Act on the return of income filed for the

impugned year. The rectification sought u/s 154 of the Act to the intimation, being rejected both by the AO and the Id.CIT(A). As transpires, the assessee had filed return of income for the impugned assessment year i.e.Asst.Year 2014-15, disclosing income from salary of Rs.34,07,604/- and the tax payable on the same being Rs.8,77,664/- against which he had claimed relief under section 89(1) of the Act of Rs.30,43,597/-, thus reflecting NIL taxes payable for the impugned year. The details furnished in his return copy of which was placed before us at PB Page No.2 & 3 being ITR-1 for the impugned year filed on 19.6.2014, are as under:

Income from Salary	:	Rs.34,07,604/-
Deduction under section 80C	:	<u>Rs. 600/-</u>
Total Taxable income	:	Rs.34,07,004/-
Tax payable thereon including Surcharge and cess	:	<u>Rs. 8,77,664/-</u>
Relief under section 89(1)	:	<u>Rs.30,43,597/-,</u>
Net Tax Payable	:	NIL

3. Thereafter, an intimation was made u/s 143(1) of the Act on the assessee for the impugned return filed, raising a tax demand of Rs.8,77,664/- denying grant of relief under section 89(1) of the Act. Interest under sections 234A/B/C was included therein amounting to Rs.1,02,679/- resulting in aggregate tax liability raised on the assessee of Rs.9,80,342/-. The said intimation was made on 17.11.2014. Thereafter on 31.8.2018, the assessee filed rectification application before the AO stating that his income returned for tax had been wrongly returned by including therein exempt income to the extent of Rs.30,83,039/-. The assessee contended that he was

an Asstt. Teacher in a Girls' School and had retired in the impugned year; that on retirement he was given tax free retirement benefits being gratuity of Rs.6,37,131/-, commuted pension of Rs.4,51,029/- general provident fund of Rs.16,39,240/-, leave salary of Rs.2,78,829/-, insurance contribution of Rs.16,788- and Insurance Savings of Rs.60,022/-; in all total of Rs.30,83,039/-; that all these amounts were tax free, but were inadvertently included in his income from salary returned to tax. All evidence proving aforesaid facts were filed to the AO. The assessee also furnished copy of his Form No.16 reflecting the salary received during the year only to the extent of Rs.1,66,956/-. The AO however rejected the assessee's request for rectification of intimation stating that exempt income had not been returned as such in the return of income filed; that the assessee needed to file a revised return within the time allowed by law for revising this original return and in the absence of such revised return, the assessee's application for rectification of intimation could not be entertained. The same was upheld by the Id.CIT(A).

4. We have heard both the parties.

5. The issue for consideration before us is whether the inclusion of tax exempt income of Rs.34,07,004/- in the total income returned to tax by the assessee could be said to be any error apparent from record for allowing its rectification u/s 154 of the Act as sought by the assessee. The fact that income to the said extent of Rs.34,07,004/- being exempt is not disputed being accepted by the AO in remand proceedings.

The facts on record reveal that the error was patent.

6. The income reflected in the return filed by the assessee was of Rs.34,07,604/-. Form No.16 , being TDS certificate pertaining to salary income, reflected salary income of Rs.1,66,956/- received by the assessee during the year. Coupled with this is the fact that the assessee claimed relief in the ITR filed of Rs.30,43,597/- under section 89(1) of the Act which was denied while making intimation under section 143(1) of the Act for the lack of any basis for making the claim. Clearly while on the one hand the income from salary reflected in the return of income far exceeded that reflected in the TDS certificate at the same time there was no basis for claiming relief u/s 89(1) of the Act. On records itself the information pertaining to income of the assessee was incorrectly returned. Therefore when the assessee explained that incomes which were actually exempt from tax had been included in the income returned and the relief claimed under section 89(1) of the Act had been inadvertently so claimed, it tantamounted to nothing but seeking rectification of mistakes apparent from record.

7. Having found, as above, that there were apparent and obvious mistakes in the return filed by the assessee, from the record itself, which was brought to the notice of the AO immediately on receiving intimation, and which mistake on merits the AO admitted to also, we find no reason for rejecting the assessee's claim of rectification under section 154 of the Act. Even otherwise, CBDT vide its Circular No.014(XL-35)/1955 dated 11.4.1955 has long back laid down the duty of its officer to compute correct income in law and even advise the assessee as to its benefit. In the present case, it appears that the Revenue officers have not acted in accordance with their duty so laid down by the CBDT.

8. In view of the above, we direct that rectification sought by the assessee of excluding the exempt income from its computation of income be done by the AO and necessary relief to that extent be granted to the assessee.

10. In view of the above, the appeal of the assessee is allowed.

Order pronounced in the Court on 28th February, 2023 at Ahmedabad.

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 28/02/2023