IN THE INCOME TAX APPELLATE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

(THROUGH VIRTUAL COURT)

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.234/ALLD/2016
Assessment Year:2013-14

Krishnarpit Sevashram, Attai Nagar, Atarra, Banda-210201, U.P.	v.	Income Tax Officer, 6(3), Banda, U.P.
PAN:AAAAK4927B		
(Appellant)		(Respondent)

Appellant by:	Sh. Ashish Bansal, Adv
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	28.07. 2021& 13.08.2021
Date of pronouncement:	18.08.2021

O R D E R

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No.234/Alld/2016, is directed against an appellate order dated 29.09.2016 in Appeal No.CIT(A)-II/321/6(3) Banda/2014-15, passed by learned Commissioner of Income Tax (Appeals), Kanpur (hereinafter called "theCIT(A)"),for assessment year(ay):2013-14, the appellate proceedings had arisen before learned CIT(A) from intimation u/s 143(1) of the Income-tax Act, 1961, dated 16.11.2014 issued by Central Processing Center,Income Tax Department, Bangalore . We have heard both the parties through video conferencing mode through Virtual Court.

2. This appeal was heard by Division Bench(DB) on 28th July, 2021 . While studying the file and dictating order, it was observed that there was a request made by the assessee to transfer this appeal to ITAT, Lucknow Bench, Lucknow, but final order to transfer this appeal to ITAT, Lucknow Bench, Lucknow was not available in the file. The Registry at ITAT, Allahabad Bench, Allahabad wrote to ITAT, Lucknow Zone to clarify , but the final order to that effect was also not available with ITAT, Lucknow Zone. Then , it was considered appropriate ,in public interest, to place this appeal for clarification on 13.08.2021, to seek information to that effect from both assessee as well Department. On 13.08.2021, when this appeal was again heard by Division Bench, the ld. Counsel for the assessee stated at Bar before the Bench that there was infact an proposal moved by assessee seeking transfer of this appeal to ITAT, Lucknow Bench , Lucknow, mainly for the reasons that there were no Members posted at ITAT, Allahabad Bench, Allahabad , and in order to avoid delay in hearing of this appeal, request was made to transfer this appeal to ITAT, Lucknow Bench, Lucknow. It was also stated at bar before the Bench by ld. Counsel for the assessee that no administrative order from ITAT transferring this appeal to ITAT, Lucknow Bench , Lucknow was received by the assessee. It was also stated at bar by ld. Counsel for the assessee before the Bench that the assessee does not have any grievance left as now regular Members are posted at ITAT , Allahabad Bench, Allahabad . It was also stated at bar by ld. Counsel for the assessee before the Bench that the assessee is seeking withdrawal of its request for transfer of its appeal in ITA no. 234/Alld/2016 from ITAT, Allahabad Bench, Allahabad to ITAT, Lucknow Bench, Lucknow. The ld. DR also submitted that the department has not received any administrative order from ITAT transferring this appeal from ITAT, Allahabad Bench, Allahabad to ITAT, Lucknow Bench, Lucknow. On being asked by the Bench, the ld. DR stated before the Bench that the department does not have any objection if this appeal is heard and adjudicated by ITAT, Allahabad Bench, Allahabad.We have considered and taken note of the above facts and statements made by both the

parties before the Bench. The assessee is situated/located at Attai Nagar, Attarra, Banda-210201, U.P. . The intimation u/s 143(1) is issued in the instant case by CPC, Bangalore , while the regular assessment in this case is with ITO-6(3), Banda, U.P., as is discernible from Form No. 35 filed by assessee with ld. CIT(A) and Form No. 36 filed by the assessee with tribunal. It is also observed from copy of income tax return acknowledgement, dated 14.12.2013 for ay: 2013-14, that jurisdictional Assessing Officer is ITO 6(3), Banda(page 4 /PB).The assessee has also filed petition u/s 154 with ITO, Banda, U.P.(page 1 and 2/PB). Thus, the assessee is within the jurisdiction of the AO located at Banda, U.P.It is pertinent to mention that district Banda, U.P. falls under the jurisdiction of ITAT, Allahabad Bench, Allahabad, and not under the jurisdiction of ITAT, Lucknow Bench, Lucknow. Thus, the correct jurisdiction of the assessee in any case lies with ITAT, Allahabad Bench, Allahabad. The jurisdiction of tribunal is determined in accordance with the location of the Assessing Officer. Reference is drawn to Standing Order issued under sub-rule(1) of rule 4 of the Income-Tax (Appellate Tribunal) Rules, 1963(Refer Notification No.F.No.63-Ad(AT)/97, dated 16.09.1997 as amended by Notification No.F.No.63-Ad(AT)/2001, dated 19.10.2001,F.No.63-Ad(AT)/2001, dated 29.05.2001,F.No.63-Ad(AT)/2009, dated 16.03.2009, F.No.63-Ad(AT)/2013, dated 02.07.2013 and F.No.63-Ad(AT)/2019, dated 24.04.2019. Thus, we hold jurisdiction over the instant assessee. Now, we proceed to adjudicate this appeal on merits in accordance with law.

3. The brief facts of the case are that the assessee had filed return of income electronically on 14th December, 2013 (page 4 to 21 of the paper book) ,in Form No. ITR-V, declaring total income of Rs. 1,39,810/-. The break up of income declared by assessee as per return of income filed with Revenue, were Rs. 1166/- towards bank interest and Rs. 1,38,644/- towards income from other sources. The income tax payable on said income declared by assessee in the return of income filed with Revenue , was shown to be Rs. Nil.The aforesaid return of income was processed by

Revenue (CPC Bangalore) on 16.11.2014 u/s 143(1) of the 1961 Act, assessing the income of the assessee for ay: 2013-14 , at Rs. 1,39,810/-, and the tax including interest aggregating to Rs. 54,300/- was held by Revenue to be outstanding and payable by the assessee.

4. The assessee being aggrieved by intimation dated 16.11.2014 issued by CPC u/s 143(1) of the 1961 Act, filed first appeal before ld.CIT(A) . The assessee submitted before ld. CIT(A) that the person who filed return of income , declared gross receipts (before expenses) in the return of income filed with Revenue , instead of net income of the society of Rs. 436/- as per audited accounts and as per the auditors report dated 25.11.2013. The assessee submitted before ld. CIT(A) that The aforesaid error in filing the correct column in the return of income with correct figures have resulted into a huge demand of Rs. 54,304/- which was purely on account of ignorance on the part of the filing clerk. It was submitted by assessee before ld. CIT(A) that it was only when the return of income was electronically processed by CPC, the error committed by the clerk surfaced. The ld. CIT(A) rejected the contention of the assessee vide appellate order dated 29.09.2016, mainly on the grounds that income assessed is the same as returned income , and also that assessee has not filed revised return of income , by holding as under:-

> *"3.2 As a matter of fact the computation or the adjustments done in the processing of the return is purely on the basis of appellant's own disclosure and the appellant has not pointed out as to how the Intimation generated electronically is erroneous within the adjustments required to be done u/s 143(1} of the Act, In my understanding there was no error in the Intimation generated and when it is so it is not understood as to how the present appeal would lie when appeal by its very nature is always in the context of some decision taken at the first level. If claim is neither lodged nor is adjudicated by the first authority appeal is not the remedy. In the context of the present appeal, it is seen that if at all there was some wrong statement or mistake in the return so filed the appellant could have chosen to either revise the return or ought to have sought revision u/s 264 of theAct. Having failed to avail either of these opportunities, in my humble understanding appeal which is very limited in its scope is not the remedy. The appellant has filed this appeal without appreciating the limited scope available in appeal which scope is that in the appeal the mistake has to be pointed out within the ambit of the adjustments to be done.*
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> *4. In view of the above, rejecting all the three Grounds it is held that there was no error in the Intimation generated. Present appeal is accordingly dismissed."*

5. The assessee being aggrieved by appellate order dated 29.09.2016 passed by ld. CIT(A) has filed an appeal before the tribunal. This appeal was heard by Division Bench through video conferencing mode through Virtual Court. The learned counsel for the assessee drew our attention to paper book containing 44 pages filed by assessee before the tribunal. The main contention of the learned counsel for the assessee is that the assessee has in its return of income filed electronically with Revenue had erroneously declared income of Rs. 1,39,810/- , against the net income / surplus of Rs. 436/- . It was submitted that it was an error committed by the person who filed return of income with Revenue, wherein he declared gross revenue as income instead of net income . The ld. Counsel for the assessee drew our attention to audited accounts of the assessee (which are placed in paper book at page 22-26) and it was submitted that excess of income over expenditure is to the tune of Rs. 456/- , donation received were Rs. 139100/- and bank interest income were Rs. 1166/-, as per audited Income and Expenditure Account of the assessee for the year ended 31.03.2013(page 25/paper book). It was submitted that return of income was processed by Revenue u/s 143(1) of the 1961 Act.It was submitted that the assessee is an artificial juridical person and return of income was filed u/s 139(4A) of the 1961 Act. It was submitted by ld. Counsel for the assessee that income was assessed by Revenue at Rs. 1,39,810/- , while the tax and interest liability in aggregate outstanding and payable by assessee was computed by Revenue to be Rs.54,300/-. It was submitted that return of income filed was a defective return and no notice was issued by Revenue. It was submitted that assessee is registered u/s 12AA of the 1961 Act and it was merely wrong posting while filing return of income by the person who filed the return , which led to demand towards tax and interest being created against the assesee. The assessee relied upon decision of Hon'ble Allahabad High Court in the case of Smt. Raj Rani Gulati v. CIT (2013) 33 taxmann.com 670(Allahabad H.C.) and also decision of Hon'ble Bombay High Court in the case of CIT v. Pruthvi Brokers and Shareholders

Ltd.,(2012) 349 ITR 336(Bom.). The ld. Counsel for the assessee also relied upon decision of ITAT, Lucknow Bench decision in ITA no. 515/lkw/2018, dated 08.03.2019 in Cawnpore Cares Society v. ACIT. It was also submitted by ld. Counsel for the assessee that the assessee had moved a petition under section 154 of the Act, on 23rd December, 2014 before ld. ITO , 5(4), Banda, U.P. (page 1- of paper book) , which has not yet been decided by Revenue. The ld. Counsel for the assessee submitted that time limit for deciding petition u/s 154 of the 1961 Act is six months and if the same is not decided , then it will be deemed to have been allowed.

5.2 On the other hand, the learned DR opposed the contentions of the assessee and submitted that the income declared by assessee in its return of income filed with Revenue was accepted by Revenue and accordingly tax and interest payable was computed. It was submitted by ld. DR that the assessee did not revised the return of income and hence no benefit can be granted at this stage .

6. We have considered rival contentions and perused the materials on record. We have observed that the assessee had filed return of income electronically on 14th December, 2013 (page 4 to 21 of the paper book) ,in Form No. ITR-V, declaring total income of Rs. 1,39,810/-. The break up of income declared by assessee as per return of income filed with Revenue, were Rs. 1166/- towards bank interest and Rs. 1,38,644/- towards income from other sources. The income tax payable on said income declared by assessee in the return of income filed with Revenue , was shown to be Rs. Nil. The return of income filed by the assessee with Revenue along with computation of income and acknowledgement of filing of income tax return, are placed in paper book(page3-21). The aforesaid return of income was processed by Revenue (CPC Bangalore) on 16.11.2014 u/s 143(1) of the 1961 Act, assessing the income of the assessee for ay: 2013-14 , at Rs. 1,39,810/-, and the tax and interest aggregating to Rs. 54,300/- was held by Revenue to be outstanding and payable by the assessee. The intimation u/s 143(1) is placed in file. The assessee being

aggrieved by aforesaid intimation issued by CPC, Bangalore u/s 143(1), filed first appeal with ld. CIT(A) , which appeal stood dismissed by ld. CIT(A) on the grounds that the returned income was accepted by department and secondly the assessee has not filed revised return of income to correct the alleged error committed by filing clerk while filing return of income as claimed by assessee. The assessee has pleaded that there was an error in filing of return of income wherein erroneous income of Rs. 1,39,810/- which is gross receipt was declared by filing clerk in the return of income filed with department, instead of next taxable income of Rs. 436/- which ought to have been reflected as income chargeable to tax in the return of income. The assessee has filed in support thereof an Audit Report and Audited Accounts which are placed in paper book at pages 22 to 30. We have observed that the assessee has also claimed to have filed petition under section 154 of the 1961 Act on 23.12.2014 with Income Tax Officer, Ward-5(4), Banda, U.P., although the jurisdiction of the AO was vested with ITO, Ward-6(3), Banda, U.P. . The assessee has claimed that it has not received any communication from department after filing of the petition under section 154 on 23rd December, 2014. We are of the view that the objective of the taxing statute is to bring to tax correct income for the assessment year chargeable to tax in the hands of the correct tax-payer . We have also considered the decisions relied upon by the assessee in the case of Smt. Raj Rani Gulati(supra) Pruthvi Brokers and Shareholders Ltd. (Supra). We have also considered CBDT Circular No. 14(XL-35) of 1955 , dated 11.04.1955 , wherein the Department has given instruction to its officers and staff to assist the taxpayers in every reasonable manner in bringing to tax correct income. We have also observed that it is the assessee who has claimed to have made alleged mistake while filing return of income and now the assessee is resiling from its own position, thus , burden cast on assessee is very heavy. We are also of the view that the various documents/evidences filed by assessee in support of its contentions require verification. The claims of the assessee has been rejected by the CIT(A) only on the ground that returned income is accepted and secondly no revised return is filed. We have observed that Hon'ble Superior Courts have taken consistent view that appellate authorities have power to admit fresh claim , even if the same is not claimed through filing of revised return of income. Thus , keeping in view entire factual matrix of the case and in the interest of fair play and justice, we remit the matter back to the file of the CIT(A) for fresh determination of the issue and to pass detailed / speaking order. Needless to say that learned CIT(A) has powers which are co-terminus with the powers of Assessing Officer . The ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. The evidences/submissions/ explanations submitted by assessee in its defense shall be admitted by ld. CIT(A) and adjudicated on merits in accordance with law. Thus, the appeal filed by assessee is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal filed by the assessee with tribunal in ITA No. 234/Alld./2016 for ay: 2013-14 is allowed for statistical purposes, as indicated above.

Order pronounced on 18/08/2021at Allahabad

Sd/- *Sd/-*
[VIJAY PAL RAO] [RAMIT KOCHAR]
JUDICIAL MEMBER ACCOUNTANT MEMBER
DATED: 18/08/2021

Copy forwarded to:
1. Appellant –Krishnarpit Sevashram, Banda
2. Respondent –Income Tax Officer, Banda, U.P.
3. CIT(A) -Kanpur
4. CIT-Kanpur/Allahabad
5. DR –Sr. DR(ITAT), Allahabad

By order
Assistant Registrar