IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.987/Bang/2014
(Assessment Year : 2009-10)

Shri. S. B. Patil,
PWD Contractor, Belagali Village, Jade,
Soraba taluk, Shimoga District .. Appellant
PAN : AJMPP3714F

v.

Commissioner of Income-tax,
Davangere .. Respondent

Assessee by : Shri. B. S. K. Rao, Advocate
Revenue by : Shri. Farhat Hussain Qureshi, CIT

Heard on : 22.06.2015
Pronounced on : 29.06.2015

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee, it assails an order u/s.263 of the Income-tax Act, 1961 ('the Act'in short), dt.02.07.2014, passed by the CIT, Davangere, for the A. Y. 2009-10.

02. Facts apropos are that assesse, a PWD contractor, had filed his return declaring an income of Rs.7,29,590/-, for the impugned assessment year. Assessee during the course of assessment proceedings was required to produce books of account and details in support of the return filed. AO has stated in the

assessment order that assessee had produced books of account and other details, but all expenses charged to the P & L account were not supported by proper bills and vouchers. AO also mentioned that he was unable to fully verify the details filed by the assessee since it was furnished at the fag end of the year. In order to cover up the deficiencies and lapses that might arise, AO made an adhoc disallowance of 5% of material purchased and labour and wages; and 15% of remuneration paid to supervisors, drivers, accountants, vehicle maintenance expenditure and sundry expenditure. Against income of Rs.7,29,590/- returned by the assessee, assessed income came to Rs.15,24,460/- on account of the above disallowances.

03. AO later sent a proposal u/s.263 of the Act, to the CIT for setting aside the assessment. CIT after going through the proposal found it to be correct and issued a show-cause notice to the assessee. As per this show-cause notice, bank account of the assessee with Corporation Bank and Indian Overseas Bank (IOB) were not correctly reflected in the balance sheet. In reply to the show-cause notice, assessee filed letters stating inter alia that the difference in Corporation Bank account was only Rs.1,398/- and the bank account of IOB might have been omitted due to over sight. Assessee also submitted that the bank account with IOB was held in HUF capacity. CIT was not impressed by the above reply. According to him, records of IOB proved that assessee's account with IOB was opened in his individual capacity and converted to HUF account only on 13.02.2014. Further according to him,

assessee could not explain the difference of Rs.1,398/- in Corporation Bank account. Therefore, invoking the powers vested u/s.263 of the Act, CIT (A) set aside the assessment with a direction to the AO to redetermine the income by including the difference of Rs.1,398/- with Corporation Bank and balance of Rs.1,27,017/- with IOB.

04. On 21.04.2014 assessee moved a rectification application before the CIT. Said rectification read as under :

"2. If your good office kindly look at last para of 143(3) order passed by Income-Tax Officer, Ward-2, Shimoga (See Marked portion of Exhibit-1), you will find that ITO, Ward-2, Shimoga (Assessing Officer) has stated that "the additions so made on account of disallowance under various heads will cover-up any deficiency or lapse if any that may arise in this case". Further, in the instant case of my client Deptt. got the legitimate tax on Income assessed at 10.08 of total work receipts (After adding back Chapter VI-A deduction). This assessed income is far above the rate of 8 required to be declared by my client U/s 44AD of Income-Tax Act. Whereas in the order passed U/s 263, your gqod office already gave directions to re-determine the income by making additions of Rs.1 ,28,425/- to the assessed income (See Exhibit-2). As the gap between the income returned Rs.7,29,5901- & assessed income Rs 15,24,460/- is far more than Rs.1 ,28,425/-, it requires action U/s 154 of Income-Tax Act.

Therefore, it is prayed before your good office to kindly rectify the order passed U/s 263 of Income-Tax Act Uls 154 and restore the original order of learned Income-Tax Officer, Ward-2, Shimoga passed U/s 143(3) oflncome-Tax Act."

CIT rejected the above rectification application with a finding that the assessee was unable to point out any mistake or error which was borne from record, in the order passed by him u/s.263 of the Act.

05. Now before us, Ld. AR strongly assailing the order of CIT u/s.263, submitted that the error was apparent since the AO had made additions to cover deficiencies or lapses which fact was not considered by the CIT while invoking the powers vested on him u/s.263 of the Act. According to him, the

recommended additions, even if totalled, was much less than the actual additions made by the AO in the assessment order. Thus, Ld. AR submitted that there was a mistake apparent on record, which fell within Section 154 of the Act.

06. Ld. DR supported the order of CIT.

07. We have perused the orders and heard the rival contentions. Section 154 of the Act is reproduced below :

Rectification of mistake.

Sec.154(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,—

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143.
(c) amend any intimation under sub-section (1) of section 200A.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assesse [or the deductor], and where the authority concerned is the [Commissioner (Appeals)], by the [Assessing Officer]] also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [Assessing Officer] shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund [already made, the] [Assessing Officer] shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed].

[(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee [or the deductor] on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order. within a period of six months from the end of the month in which the application is received by it,—

(a) making the amendment; or

(b) refusing to allow the claim.]

08. The above power can be invoked where there is a mistake apparent from the record. Hon'ble Apex Court in the case of T. S. Balaram, ITO v. Volkart Brothers & Ors. [(1971) 82 ITR 50], has clearly held that for a mistake to be apparent from record it should be glaring on the face of the record. Case of the assessee is that the additions recommended by the CIT in the order u/s.263 of the Act, even if done would still be much less than the difference between the assessed income and the actual returned income. Whether addition made on account of deficiencies and lapses by the AO would cover non-reflection of bank balances in the account statement submitted by the assessee, is a question which is debatable and Hon'ble Apex Court in Volkart Brothers (supra) has held that debatable issues are beyond the realms of rectification u/s.154 of the Act. We are one with the CIT that order u/s.263 of the Act did not have in it a mistake apparent from record which would warrant a rectification. Remedy of the assessee lie by way of an appeal against the order u/s.263 of the Act and

against the order u/s.154 of the Act. elsewhere. We have therefore, no option but to confirm the order of CIT.

09. In the result, appeal of the assessee stands dismissed.

Order pronounced in the open court on 29th day of June, 2015.

Sd/-	Sd/-
(VIJAYPAL RAO) JUDICIAL MEMBER	(ABRAHAM P GEORGE) ACCOUNTANT MEMBER