

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM**

**ITA No. 550/Del/2014 : Asstt. Year : 2007-08**

Deputy Commissioner of Income Tax, Circle-6(1), New Delhi	Vs	M/s Mehta Print Arts Pvt. Ltd., E-27, Basement, Naraina Vihar, New Delhi-110028
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACO8042K</b>		

**Assessee by : Sh. Pranshu Goel, CA &  
Ms. Priyanka Mongia, CA  
Revenue by : Sh. Rajesh Kumar, Sr. DR**

<b>Date of Hearing : 23.05.2017</b>	<b>Date of Pronouncement : 30.05.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 11.11.2013 of Id. CIT(A)-IX, New Delhi.

2. The only effective ground raised in this appeal relates to the deletion of disallowance of additional depreciation amounting Rs.60,99,500/-, made by the AO by holding that the assessee was not engaged in the business of manufacturing or production of any article or thing.

3. Facts of the case in brief are that the assessee filed the return of income on 31.10.2007 declaring an income of Rs.1,88,41,594/-

which was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act) and subsequently, the case was selected for scrutiny, the AO framed the assessment u/s 143(3) of the Act on 24.09.2009 and accepted the returned income. Subsequently, the AO issued the notice u/s 154 of the Act on 17.08.2011 stating that the assessee had claimed excess depreciation and was of the view that lower rate of depreciation was to be applied, as the status of the assessee was not a manufacturer. Accordingly, the AO passed the order u/s 154/143(3) of the Act by making the disallowance of Rs.60,99,501/- on account of additional depreciation claimed by the assessee.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the assessee is registered with Central Excise as manufacturer and the AO rejected the claim of the assessee on the basis that in the tax Audit Report, the business of the assessee was mentioned as printing which could not be assumed to be business of manufacturing to be entitled the additional depreciation. It was stated that the assessee was engaged in the printing of envelopes, forms, invoices and books etc. which is a manufacturing process. It was further stated that the issue relating to printing of envelopes etc. was a debatable issue and hence could not have been considered u/s 154 of the Act. It was submitted that the making of envelopes, public

issue forms, brochures, information memorandum, annual reports etc. was nothing but manufacture/production of an article or thing.

5. The reliance was placed on the following case laws:

- *CIT Vs Delhi Press Patra Prakashan Ltd. (2013) 253 CTR 260 (Del.)*
- *Kadarkarai V CWT (1988) 176 ITR 121, (Mad. HC)*
- *Empire Industries Ltd. (1986) 162 ITR 846 (SC)*
- *Aspinwall Vs CIT 251 ITR 323 (SC)*
- *CIT Vs Commercial Law of India 107 ITR 822*
- *CIT Vs Datacons 155 ITR 66*
- *CIT Vs Oswal 223 ITGR 735*
- *CIT Vs Computerised Accounting 235 ITR 502*
- *CIT Vs Technotive Eastern 255 ITR 253*
- *CIT Vs Oracle Software India (SC) CA No. 235/2010 @ SLP(C) No. 4719/2008*

6. The ld. CIT(A) after considering the submissions of the assessee observed that an identical issue was decided by his predecessor for the assessment year 2009-10 vide order dated 23.04.2013 and the AO was directed to allow the additional depreciation. The ld. CIT(A) by following the said order allowed the claim of the assessee.

7. Now the department is in appeal. The ld. Counsel for the assessee submitted that the issue was a debatable, since the AO himself accepted the claim of the assessee in the assessment order passed u/s 143(3) of the Act and even the ld. CIT(A) for the succeeding assessment year 2009-10 had also accepted the claim of

the assessee. Therefore, the debatable issue could not have been a subject matter of rectification u/s 154 of the Act and the Id. CIT(A) rightly directed the AO to allow the claim of the assessee.

8. In his rival submissions the Id. DR supported the order of the AO.

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO himself allowed the claim of the assessee while framing the assessment u/s 143(3) of the Act vide order dated 24.09.2009. Later on, he changed his mind by invoking the provisions of Section 154 of the Act and disallowed the claim of the assessee by holding that the printing of envelopes, brochures, annual reports, information memorandum etc. was not a manufacturing activity. Therefore, the issue was a debatable, particularly when, the CIT(A) in the succeeding assessment year 2009-10 has directed the AO to allow the claim of the assessee, considering the activity of the assessee as manufacturing. In our opinion, the patent mistake apparent from the record only, can be rectified u/s 154 of the Act but a debatable issue cannot be a subject matter of the rectification u/s 154 of the Act. Since the issue under consideration is highly a debatable issue, therefore, the AO was not justified in making the disallowance by passing the order u/s 154 of

the Act and the ld. CIT(A) rightly deleted the disallowance made by the AO, therefore, we do not see any merit in this appeal of the department.

10. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Open Court on 30/05/2017)

Sd/-

**(Beena A. Pillai)**

**JUDICIAL MEMBER**

**Dated: 30/05/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(N. K. Saini)**

**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**