

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "C", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.5718/Mum/2011

Assessment Year: 2007-08

ACIT Central Cir-20, Room No. 402, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	Vs.	M/s Parekh Aluminex Ltd. 601, Auto Commerce House, Kennedy Bridge, Mumbai-400007. PAN: AAACP4696C
(Appellant)		(Respondent)

Revenue by : Shri Prakash Kumar Agarwal
(DR)

Assessee by : Shri Prakash Pandit (AR)

Date of hearing : 22.04.2016

Date of Pronouncement : 30.06.2016

ORDER

PER PAWAN SINGH, JM:

1. The present appeal is filed by the Revenue against the order dated 16.05.2011 passed by the CIT(A)-39, Mumbai on the following grounds:

"a. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete the additional interest charged u/s 234B and 234C of the IT Act in the order u/s 154 of the IT Act.

b. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee had not paid advance tax of Rs.33,00,000/- and self assessment tax of RS.20,08,000/- and no challans for the said amounts were furnished at the time of assessment, hence A.O. has rightly disallowed the credits for the said amounts and charged interest u/s 234B and 234C of the IT Act in the order u/s 154 of the IT Act.

2. The Appellant craves to leave to add, to amend and / or alter any of the grounds of appeal, if need be.

2. Brief facts of the case are that the assessee was subjected to search on 14.03.2007. During the search a sum of Rs. 33,00,000/- were found and seized on 13.03.2007

and Rs. 20,08,000/- were found and seized on 20.04.2007. And in response to the notice after search the assessee filed return of income for the relevant AY on 26.02.2008, declaring total income of Rs. 5,54,63,875/- and the assessment was completed. u/s. 143(3) r.w.s. 153B(1)(b) of the Act on 30.12.2009 determining the total income at Rs. 5,60,42,792/-, the assessment was completed. While filing return the assessee claimed credit for advance tax of Rs. 33,00,000/- being an amount seized on 14.03.2007 which was lying in PD account and also claimed credit for Rs. 20,08,000/- as self-assessment tax paid as the amount seized on 20.04.2007 the assessee was intimated about the credit for advance tax of Rs. 54,00,000/- and self-assessment tax paid of Rs. 20,08,000/- and accordingly interest u/s. 234B and 234C was calculated at Rs. 2,64,928/- and Rs. 61,88,335/- which includes the amount paid in PD account in the assessment order passed u/s. 143(3) r.w.s. 153B(1)(b). Assessing Officer (AO) gave credit of Rs. 33,00,000/- for advance tax paid and Rs. 20,08,000/- for self-assessment tax paid and accordingly calculated interest u/s. 234B, 234C and raise the demand of tax which was paid by the assessee on 12.01.2010.

3. The AO further issued a notice u/s. 154 dated 24.02.2010 and asked the assessee as to why the credit given for Rs. 33,00,000/- and advance tax Rs. 20,08,000/- for self-assessment tax should not be withdrawn. The assessee filed objection to the notice u/s. 154. And contended that withdrawal of credit already given is amounts to 'change of opinion' and the same cannot be rectified u/s. 154. The objection of assessee rejected and AO rectified the assessment order dated 30.12.2009 vide order dated 15.03.2010 and calculated interest u/s. 234A and 234B at Rs. 20,86,682/- and u/s. 234C at Rs. 4,50,288/-.
4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A) raising the ground that AO erred in rectifying the order u/s. 154 and thereby withdrawing the credit granted for advance tax and in levying interest u/s. 234B & 234C. The CIT(A) after hearing of the appeal of the assessee allowed the appeal in the impugned order dated 16.05.2011 against which the present appeal is filed before us.
5. We have heard the Departmental Representative (DR) of the Revenue and Authorised Representative (AR) for the assessee and perused the material available on record.

6. DR of the Revenue has argued that the assessee has not made any specific request for adjustment of cash deposited in the PD account towards the tax liability and in absence of challan of advance tax or self-assessment tax, the AO passed the rectification order. DR further argued that the order of AO be upheld and that the order passed by the CIT(A) be reversed.
7. AR of the revenue has argued that the assessee made its intention clear in return of income by treating Rs. 33,00,000/- found and seized on 31.03.2007 as advance tax and remaining 20,08,000/- as self-assessment tax and the AO accepted the assessee's request to treat the said amount as self-assessment tax and thus all calculated interest u/s. 234B and 234C of the Act while invoking the provision u/s. 234B(ii) of the Act. AR of the assessee further argued that the assessee has made its intention clear at the time of filing the return of income which was duly accepted by the AO and hence, there was no reason with assessee to given in writing to adjust the cash deposit in the PD account towards tax liability. AR further argued that the rectification was based on change of opinion and beyond the scope of section 154 of the Act.
8. We have considered the rival contentions of the parties and perused the material available on record. We have seen that AO duly accepted that Rs. 33,00,000/- was claimed as advance tax and for the last quarter Rs. 20,08,000/- was claimed as self-assessment tax. This amount was with the department as the cash seized during the search proceeding. Moreover, the request of assessee was accepted during the assessment proceeding. The CIT(A) also observed in its order that the AO treated the seized money as advance tax and self-assessment tax and computed the interest u/s. 234B and 234C and lateron AO passed the rectification order for the interest payable u/s. 234B and 234C. The CIT(A) after considering the decision of ITAT in Sudhakar Shetty Vs. ACIT 10 DTR Mumbai (Tribunal) 173 gave the relief to the assessee. The relevant part of the order of CIT(A) are reproduced herein below:

“I have gone through the decision in the case of Sudhakar Shetty (supra). In para 10,10,1 and 11, the Hon'ble ITAT has held as follows:

“10. As stated above, keeping in mind the difficulties faced by the assessee, the provisions have been amended. As per the amended provisions of law, now the AO is empowered to take into consideration the seized cash against various demands, i.e. old or in view of the income detected during the course of search.

10.1 Even as per the amended provisions of law, there is no requirement to seek any request from the assessee for adjustment. However, in the present case, the assessee has requested to adjust the remaining cash seized during the search against the tax liability of the assessee. Therefore, in our considered view the Department has to adjust the amount seized at the time of search towards the advance tax, etc., from the date when the amount was seized. It is incorrect on the part of the AO, who has taken into consideration the adjustment from the date of assessment. It is a matter of commonsense that once the amount is lying with the Department that has to be adjusted; otherwise that amount where will be adjusted and in which account the Department will keep the amount. The seizure of the amount is for the' obvious reason that the same has to be adjusted against any demand raised against the assessee or against any demand which is pending before the date of search.

11. In view of the above facts and circumstances, we direct the AO to adjust the remaining cash seized by the Department from the date of seizure because if any amount is to be adjusted against any liability the date of payment of that liability shall be the date of seizure and not the date of adjustment and/or the date of order. The A.O. is therefore, directed to modify his order accordingly." Further the appellant has contended that the Issue is debatable and it is not a mistake apparent from records and hence cannot be rectified u/s.154 of the IT Act."

"I agree with the views of the appellant. It is seen that the Hon'ble ITAT, Mumbai held that the seized cash has to be adjusted for advance tax and self assessment tax and the Hon'ble ITAT has held that there is no requirement to seek any request from the assessee for adjustment. In view of this decision, the issue whether the cash seized is to be adjusted for advance tax/self assessment tax or not is itself a debatable issue and hence such issue cannot be considered u/s. 154 of the I.T. Act."

9. The Hon'ble Supreme Court in P.S. Balaram (ITO) vs. Volkart Brothers and Others 82 ITR 50 has categorically held,

"That a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on debatable point of law is not a mistake apparent from the record".

10. The Hon'ble Calcutta High Court in case of Vijay Mallya vs ACIT while following the judgment of T.S. Balaram vs. Volkart Brothers had held,

"That Section 154 of the Income-tax Act, 1961, empowers the income-tax authority to rectify a mistake apparent from the record. The mistake contemplated under section 154 must be a mistake apparent on the face of the records. It must be obvious, clear and patent. It must not be a mistake, to establish which a long and elaborate reasoning and arguments is required on points on which there may conceivably be two opinions. It must not be a debatable point of law"

11. In view of the above factual and legal discussions we do not find any reason to interfere in the finding of Ld. CIT(A), which is reasoned one. Ld. CIT(A) rightly held that the issue of cash seized is adjustable against the advance tax/self

assessment tax or not is itself a debatable issue and hence such issue cannot be considered u/s. 154 of the I.T. Act.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 30th June, 2016.

Sd/-

(G.S.PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 30/06/2016

S.K.PS

आदेशकीप्रतिलिपिअद्येपित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR,
ITAT, Mumbai
6. गार्डफाईल / Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

**आदेशानुसार/BY
ORDER,**

**उप/सहायकपंजीकार
(Asstt.Registrar)**

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai