

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI**

**BEFORE SHRI. G. D. AGRAWAL, PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.4508/DEL/2014
Assessment Year:2009-10

ACIT Circle 28(1) New Delhi	v.	Shri Suresh Kumar Rawal 6694, Khari Baoli Delhi
		TAN/PAN:AAJPK1839J
(Applicant)		(Respondent)

Applicant by:	Shri Ateeq Ahmed, D.R.		
Respondent by:	Shri Tarun Kumar, Advocate		
Date of hearing:	30	08	2017
Date of pronouncement:	18	09	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 26/5/2014, passed by the Id. CIT (Appeals)-XXV, New Delhi for quantum of assessment passed by ITO, CPC Bangalore u/s. 154 of the Income Tax Act, 1961 for assessment year 2009-10. The grounds raised by the Revenue in the grounds of appeal are as under:-

1. *"Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in adjudicating the issue without appreciating the fact that that assessee's application u/s 264 of the Act has already been rejected by the CIT-X, New Delhi and therefore the Ld. CIT(A) has no power to adjudicate."*

2. *"Whether on the facts and in the circumstances of the case the Ld. CIT (A) has erred in law in not appreciating the fact that the Return of Income was processed and the income as returned by the assessee was accepted."*

3. *"On the facts and circumstances of the case and in law the Ld. CIT (A) has set- aside the case of the AO, ignoring the fact that the CIT(A) has no power to set- aside the case."*

4. *"The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal."*

2. The brief facts are that the assessee filed his return of income through online on 26/9/2009 showing 'Nil' income. The said return of income was processed under section 143(1) by CPC, Bangalore. Later on the assessee received an intimation dated 17/6/2010 showing income tax liability of Rs.17,83,680/- based on some figure of Rs.51,17,630/-. The assessee moved a petition for rectification u/s 154 of the said intimation on the ground that no such figure pertains to the assessee. However, CPC, AO Bangalore passed the order under section 154 dated 5/7/2011 rejecting the rectification urged by the assessee. The assessee, then filed revision petition under section 264 dated 24/1/2011 before the CIT-X, New Delhi praying for revision of rectification order passed by CPC, Bangalore. However, the said petition was rejected by the CIT on the ground that the said revision cannot be entertained.

3. Aggrieved by rejection of the said rectification, assessee preferred first appeal before the Ld. CIT(A), stating that CPC, Bangalore has wrongly taken the total taxable income after deduction of Rs.50,40,040/- instead of loss of Rs.(-) 31,64,491/-

The Id. CIT(A) noted down the assessee's pleading in the following manner:-

"It is respectfully submitted that the above observations are wrong and it can be seen from the return of income filed that the assessee has entered of Rs.(-)31,64,491/- at Sl.No.1 of Schedule BP and an amount of Rs.(-)31,64,491/- shown at S.No.43 of Schedule Part-A -P&L which can be verified from the copy of return of income enclosed herewith. There is no difference in the amounts entered in SI. No. 1 of Schedule BP and S No. 43 of Sch. Part-A-P&L and therefore, an addition of Rs 50,40,040/- has been erroneously made and the same needs to be deleted.

4. The Id. CIT(A) after taking note of the facts placed on record held that assessee's submissions have been found to be true, because item No.1 of Schedule BP and sl. No.43 of Schedule Part-A – P&L account do indicate the same amount of Rs. (-) 31,64,491/- at both places claimed by the assessee and, therefore, addition of Rs.50,40,040/- was absolutely wrong, as it was result of incorrect treatment of speculative loss of Rs.25,84,485/- and loss of Rs.14,166/- by CPC, Bangalore.

5. Now the Revenue has taken a technical ground that once assessee's application under section 264 has been rejected by the CIT, the first appellate authority has no power to adjudicate the same.

6. First of all, in the interest of substantial justice, it would be unfair to the assessee to close the doors of legal remedy when huge tax liability is fastened upon him and that to be when there is apparent mistake and erroneous fastening of huge tax liability. The assessee had filed rectification application under section 154

which has been rejected and thereafter if the CIT has rejected revision petition u/s 264 on the ground that the same is not maintainable, then assessee cannot be left remediless when the statute has provided for filing of appeal in case of such rectification. Assessee may have taken recourse of revision route u/s 264 instead of first appeal u/s 246, but statutory right of filing appeal cannot be denied. Thus we hold that for the cause of justice the ld. CIT(A) was well within his jurisdiction to entertain and decide the appeal on merits. On merits also, we find that the ld. CIT(A) has correctly appreciated the facts and after verification of the return of income and other material filed before him, he has rightly come to the conclusion that addition of the amount of Rs.50,40,040/- was wrong. We do not find any infirmity in such order of the ld. CIT (A). Accordingly, the same is confirmed and Revenue's appeal is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18th September, 2017.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED:18th September, 2017

JJ:3108

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

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