

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-5055/Del/2016
(Assessment Year: 2011-12)**

Integrated Databases India Ltd. K-9, Connaught Circus, New Delhi. AAAC12809J	vs	ITO Ward 12(3) New Delhi
Assessee by	Sh. Salil Agrawal, Adv. Sh. Shailesh Kumar Gupta, CA	
Revenue by	Sh. Arun Kumar Yadav, Sr.DR	

Date of Hearing	20.12.2017
Date of Pronouncement	22.12.2017

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 17.08.2016 in appeal no. 381/15-16/119/16-17 passed by the Ld. Commissioner of Income Tax (Appeals)-12, New Delhi (for short called as the "Ld. CIT (A)) assessee preferred this appeal.

2. Briefly stated facts are that for the AY 2011-12 in respect of the assessee was completed u/s 143(3) of the Income Tax Act, 1961 (for short called as the "Act") by order dated 24.01.2014 at a loss of Rs. 12,88,331/-. However, during the course of audit scrutiny it was found that an amount of Rs. 5,68,304/- and Rs. 2,800/- have been routed through the profit and loss account, whereas expense was not paid by the assessee during the year under consideration. The AO, therefore, issued a notice dated 24.01.2014 u/s 154/155 of the Act

proposing rectification and proceeded to make an addition of Rs. 5,71,104/- and determined the net loss at Rs. 7,17,227/-. Appeal preferred by the assessee was dismissed by the Ld. CIT (A) by way of impugned order. Hence, the assessee is in this appeal.

3. Ld. AR argued that the details of expenses on account of the claim for provision of leave encashment were shown during the course of assessment and there was no mistake apparent on the face of record in this respect. He further submitted that it is a debatable issue which cannot be subjected to rectification u/s 154 of the Act. He placed on record order of the Hon'ble Jurisdictional High Court in the case of Universal Medicare (P) Ltd., 324 ITR 263, wherein the Hon'ble High Court has accepted substantial question of law on the issue of leave encashment as under:

“3. Whether on the facts and in the circumstances of the case, the ITAT in law is right in directing the Assessing Officer to allow the amount of provision for leave encashment without appreciating the fact that the disallowance was made as there was no proof of payment furnished to the effect that the same was paid before the due date of filing the return under section 139(1) of the Income-tax Act.”

4. We have considered the rival contentions and found from record that original assessment was completed u/s 143(3) vide order dated 24.01.2014. Thereafter provision made for leave encashment of Rs. 5,68,304/- was disallowed u/s 154 of the Act. The assessee had claimed deduction on account of provision for leave encashment relying upon the decision of the Hon'ble Calcutta High Court in the case of Exide Industries Ltd. 292 ITR 470, wherein the Hon'ble Court struck down the provisions of Section 43B(f), holding the same as arbitrary in nature, unconscionable and de hors the Apex Court's decision in the case of Bharat Earth Movers 245 ITR 428. It was not a mistake apparent from record and further the issue in dispute is still pending for adjudication before the Hon'ble Apex Court and hence it is

not a case falling within the purview of Section 154 of the Act, in view of various judicial pronouncements. It is well settled proposition of law that debatable issue and the issue requiring long deliberation cannot be subjected to rectification u/s 154 of the Act.

5. Similar view has also been accepted by the Hon'ble Bombay High Court as substantial question of law, therefore, the same cannot be rectified u/s 154 of the Act.

6. Accordingly, we set aside the order of lower authorities on this issue, passed u/s 154 of the Income Tax Act.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.12.2017

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Dated: 22.12.2017

*Kavita Arora

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI