

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 5545/MUM/2016 : (A.Y : 2008-09)

M/s. Amphray Investment and
Properties Pvt. Ltd.
146/147, Lakdi Bunder Road,
Darukhana Reay Road,
Mumbai 400 010 (Appellant)
PAN : AACCA8072H

Vs. ITO-2(1)(1),
Mumbai (Respondent)

**Appellant by : Ms. Neha Barve
Respondents by : Shri Aarju Garodia**

Date of Hearing : 18/04/2018

Date of Pronouncement : 25/04/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-4, Mumbai dated 15.06.2016 pertaining to the Assessment Year 2008-09, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 26.03.2014 u/s 154 of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary grievance of the assessee is that the Assessing Officer erred in law as also on facts in amending the assessment order passed u/s 143(3) of the Act dated 27.12.2010 by invoking Sec. 154 of the Act.

3. Briefly put, the relevant facts are that the appellant filed its return of income on 06.08.2009 showing an income of Rs.85,82,872/-, which was subject to scrutiny assessment u/s 143(3) of the Act dated 27.12.2010 wherein the total income was assessed as such at Rs.85,82,872/-. Subsequently, the Assessing Officer issued a notice u/s 154 of the Act noting that a mistake apparent from record had occurred inasmuch as a sum of Rs.25,53,800/- debited in the Profit & Loss Account under the head 'Donation' paid to World Pranic Healing Foundation was not an allowable item while determining the total income. The Assessing Officer notes that in response to the show cause notice u/s 154 of the Act dated 24.02.2014, no explanation was furnished by the assessee. Accordingly, he amended the total income determined u/s 143(3) of the Act dated 27.12.2010 by adding the sum of Rs.25,53,800/- thereto and in this manner, the revised total income was computed at Rs.1,11,36,672/-.

4. Before the CIT(A), assessee assailed the stand of the Assessing Officer by contesting that the order u/s 154 of the Act was bad in law and on facts. The CIT(A) dismissed the plea of the assessee and noted that even in the appeal proceedings, assessee was not able to produce any evidence for the donation and nor there was any explanation as to how the expenditure was related to the business. Against such a decision of the CIT(A), assessee is in further appeal before us.

5. Before us, the sum and substance of the argument set-up by the assessee is that invoking of Sec. 154 of the Act in the present case is untenable inasmuch as the impugned adjustment to the assessed income is not permissible u/s 154 of the Act since it is not a mistake apparent from record. According to the learned representative, from a perusal of the record it was not possible to make out that there was an apparent mistake in disallowing the donation paid while computing the total income. In particular, reliance has been placed on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs Jindal Stainless Ltd., 337 ITR 495 (Delhi)* to canvass that the rectification permissible u/s 154 of the Act would not apply on points which are debatable in law and also in a situation where originally the Assessing Officer has failed to apply the correct law to the set of facts.

6. On the other hand, the Id. DR appearing for the Revenue has defended the orders of the authorities below.

7. We have carefully considered the rival submissions. It is quite well-settled that the Assessing Officer's jurisdiction u/s 154 of the Act is confined to only rectifying mistakes which are apparent from the record. It is also judicially well-settled that a mistake apparent on record must be obvious and a patent mistake and it cannot mean to be something which can be established only by a long-drawn process of investigation and reasoning. In this context, reference to the judgment of the Hon'ble Supreme Court in the case of *T.S. Balaram vs M/s. Volkart Brothers, 1972 SCR (1) 30* is quite apt. At this point, we may also refer to a proposition of law laid down by the Hon'ble Delhi High Court in the case of *Jindal Stainless Ltd. (supra)* in the

context of Sec. 154 of the Act, which is to the effect that the rectification powers u/s 154 of the Act does not empower the Assessing Officer to investigate a particular point which has been missed out at the time of finalisation of assessment. In this background, we may now examine the fact-situation in the instant case.

8. In the course of hearing, the learned representative for the assessee referred to page 6 of the Paper Book, wherein is placed copy of the Profit & Loss Account. Such Profit & Loss Account *per se* does not contain entry of any donation of Rs.25,53,800/-, but it was explained that the said amount is part of Rs.38,29,524/- debited under the head 'General Office Expenses' in the Profit & Loss Account. The learned representative furnished the details of General Office Expenses which, *inter-alia*, contains donation paid to World Pranic Healing Foundation of Rs.25,53,800/-. Ostensibly, the allowability of donation as an expense is subject to either Sec. 80G or Sec. 35 or even under Sec. 37(1) of the Act, as the case may be. The point that has been made out before us is that looking at the narration contained in the details of 'General Office Expenses' it cannot be made out that the impugned sum is clinchingly disallowable unless it is examined as to what is the purpose of donation, to whom it has been paid, whether the recipient is an entity recognised under Sec. 80G or 35 of the Act, as the case may be, and so on and so forth. The learned representative pointed out that all these aspects would require some investigation and culling-out of appropriate facts so as to determine whether the said sum is disallowable or not. In our view, all these aspects are outside the scope and ambit of rectification permissible in terms of Sec. 154 of the Act, inasmuch as in the absence of aforesaid investigations, it is not an obvious conclusion that

donation of Rs.25,53,800/- is a disallowable expenditure. Therefore, in our view, the Assessing Officer clearly erred in invoking Sec. 154 of the Act in order to make the impugned addition, having regard to the facts and circumstances of the case.

9. Though at the time of hearing, the learned representative has also referred to the merits of the claim by referring to the status of the recipient, World Pranic Healing Foundation, etc., we are not going into these aspects since we have already held that the action of Assessing Officer u/s 154 of the Act is lacking in jurisdiction. In the result, order of the CIT(A) is set-aside and the Assessing Officer is directed to delete the addition of Rs.25,53,800/- made to the assessed income u/s 154 of the Act.

10. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 25th April, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 25th April, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai