



IN THE INCOME TAX APPELLATE TRIBUNAL “H”, BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.3151/Mum/2016

(Assessment Year :2007-08)

M/s. Tata Motors Ltd., Bombay House, 24 Homi Mody Street Hutama Chowk Mumbai – 400 001	Vs.	Deputy Commissioner of Income Tax LTU-2, 29 th Floor, Centre-1 World Trade Centre Cuffe Parade Mumbai – 400 005
PAN/GIR No.AAACT2727Q		
Appellant)	..	Respondent)

Assessee by	Shri Rajan Vora & Shri Nikhil Tiwari
Revenue by	Shri K.S.Rajendra Kumar
Date of Hearing	19/04/2018
Date of Pronouncement	17/07/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by assessee against the order of CIT(A)-I, Mumbai dated 23/02/2016 for A.Y.2007-08 in the matter of order passed u/s.154 of the IT Act, 1961.

2. The following grounds have been taken by the assessee:-

1.1 The learned CIT (A) has erred in law and on facts in upholding the action of AO of invoking the provisions of section 154 of the Act. The learned CIT (A) ought to have appreciated that there is no mistake apparent from record which could be rectified under section 154 of the Act. Hence the proceedings initiated by the AO under section 154 of the Act are invalid and bad in law.

1.2 The learned CIT (A) has erred in law and on facts in upholding the action of AO of invoking the provisions of section 154 of the Act on a debatable issue. The learned CIT(A) has further erred in not following the decision of the Hon'ble Appellate Tribunal in appellant's own case for earlier years wherein it has been held that an order passed under section 154 on a debatable issue is invalid and bad in law.

1.3 The learned CIT (A) has erred in law on facts in relying on the interim order of Hon'ble Supreme Court dated 08.05.2009 in the case of Exide Industries Ltd. and concluding that issue is not a debatable after the said interim order of Hon'ble Supreme Court. The learned CIT(A) ought to have appreciated that a debatable issue which is seized off before the Hon'ble Supreme Court for the final decision on merits cannot be considered as stood settled based on an interim order so as to invoke the provisions of section 154 of the Act.

2. Without prejudice - Disallowance of Provision for Leave encashment of Rs.30,14,40,000.

2.1 The learned CIT (A) has erred in law and on facts in upholding the disallowance of provision for leave encashment amounting to Rs 30,14,40,000 for the year under consideration which was provided on the basis of actuarial valuation report.

2.2 The learned CIT (A) has erred in law and on facts in upholding the disallowance under section 43B(f) of the Act when section 43B is not applicable on the said provision. The learned CIT (A) has erred in law and on facts in disregarding various judgements on similar issue wherein it has been held that provision for leave encashment is allowable as a deduction.

2.3 The learned CIT (A) has erred in law and on facts in stating that the appellant has not brought any fact on record as to whether it had paid taxes as if section 43B(f) is on statute books but at the same time it would be entitled to make a claim in its return as per the interim order of the Hon'ble Supreme Court. The learned CIT(A) ought to have appreciated the submissions made by the appellant before the assessing officer as well in the course of proceedings before him to the effect that all taxes have been paid by the appellant and further there is a refund claimed as per the return of income.

2.4 Without prejudice to the above, in an event it is held that section 43B of the Act is applicable on the said provision, it is prayed that direction should be given to allow the provision for leave encashment

of the current year in the subsequent years in which actual payment is made.

The appellant craves leave to add to, alter, delete or substitute all or any of the aforesaid ground of appeal.

3. Rival contentions have been heard and record perused.
4. In this case, scrutiny assessment order was passed u/s.143(3) wherein assessee has supplied all the details asked by the AO with regard to deduction on account of provision for leave encashment. Thereafter, AO issued notice under section 154 of the Act, it was stated that there was an under assessment of income due to mistake apparent from record in the assessment order dated 26 May 2011 to the extent of Rs. 30,14,40,000 on account of provision for leave encashment under section 43B of the Act being unpaid. Hence, the Assessing officer vide the said notice sought to rectify the said mistake apparent from record and provided the appellant an opportunity to make relevant submission. After considering assessee's submission AO added provision for leave encashment in assessee's income.
5. We have gone through the orders of the authorities below and found that issue is squarely covered by the decision of Co-ordinate Bench in case of Concorde Motors (India) Ltd., vide order dated 02/08/2016 in ITA No.5811/Mum/2014. Precise observation of the Tribunal was as under:-

4. We have considered rival contentions and found from record that original assessment was completed u/s.143(3) vide order dated 30-12-2010. Thereafter provision made for leave encashment of Rs.17,58,000/- was disallowed u/s.154 by invoking provisions of

sec.43B. 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 'n 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 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 I.T.Act.

6. By the impugned order CIT(A) confirmed the action of AO against which assessee is in further appeal before us.

7. As the facts and circumstances in the instant case are perimeteria respectfully following the same, we do not find any merit for the order passed u/s.154.

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

Order pronounced in the open court on this 17/07/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 17/07/2018
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai