

आयकर अपीलीय अधिकरण, न्यायपीठ – “A(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) Before श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

I.T.A. No. 1624/Kol/2018
Assessment Year: 2007-08

M/s. Rabindra & Co. (PAN: AAGFR7111P)	Vs.	Income-tax Officer, Wd-44(2), Kolkata
Appellant		Respondent

Date of Hearing	20.12.2018
Date of Pronouncement	28.12.2018
For the Appellant	Shri Soumitra Choudhury, Advocate
For the Respondent	Smt. Madhumalati Ghosh, Addl. CIT

ORDER

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-13, Kolkata dated 03.04.2018 for AY 2007-08.

2. The only grievance of the assessee is against the action of the Ld. CIT(A) in confirming the addition of Rs.2,54,443/- as cessation of liability by rectifying the order by passing section 154 order thereby the original assessment order passed u/s. 143(3) of the Act was rectified.

3. Brief facts of the case are that the AO had passed the original assessment order u/s. 143(3) of the Act on 30.12.2009 wherein the AO did not had any issue with regard to the sundry creditors. However, the order passed which is impugned is passed under section 154 of the Act dated 30.12.2011 wherein the AO added an amount of Rs.2,54,443/- taking note of the difference between the closing balance of sundry creditors as on 31.03.2006 and opening balance as on 01.04.2006. We note that in the original assessment passed on 30.12.2009 u/s. 143(3) of the Act, the AO has noted that the assessee firm is engaged in milling of moong dal and had filed required documents and evidence and had produced

books of account, bills and vouchers which the AO has examined. The AO also acknowledges that he has received confirmation from parties pursuant to notice sent u/s. 133(6) of the Act and which has been examined by him. After that he has framed assessment u/s 143(3) by making certain ad hoc disallowance in respect of general charges, godown repairs and machine repair and made an addition of Rs.7462/-. Thereafter, by the impugned order [after two years] on 30.12.2011, the AO has exercised his rectification powers u/s. 154 of the Act to make the addition taking note of the difference in the closing balance shown of sundry creditors as on 31.03.2006 at Rs.13,93,383/- and the opening balance of total of sundry creditors as on 01.04.2006 at Rs.11,38,940/-. And, the difference of Rs.2,54,443/- was added as cessation of liability. We note that Section 154 of the Act empowers the AO to rectify any mistake apparent from the face of the record. The original assessment passed u/s. 143(3) of the Act was on 30.12.2009, and that the AO has not made any addition in respect to sundry creditors. After two years after framing assessment u/s. 143(3) of the Act, the AO has ventured to make the disallowance u/s. 41(1) of the Act taking note of difference in the sundry creditors shown as on 31.03.2006 and 01.04.2006 which according to us is not a mistake apparent from the record and thus the AO has no jurisdiction to make the impugned addition u/s. 154 of the Act since it is not a clerical or typographical or arithmetical error stemming from the scrutiny assessment framed u/s 143(3) of the Act as 30.12.2009. Therefore, the impugned order passed by the AO u/s. 154 is without jurisdiction as noted above is null in the eyes of law. Further, we observe after going through the merit of addition, we find that assessee's books of account are audited and on perusal of pages 4 and 5 of the paper book we note that the assessee's sundry creditors as on 01.04.2006 is Rs.13,93,382/- and not Rs.11,38,940/- as erroneously taken note by AO. We also note that the assessee had made payment to various sundry creditors in this assessment year. Therefore, there is no merit also in the addition so looking from any angle the addition was not warranted. Assessee's ground of appeal is allowed.

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

Order is pronounced in the open court on 28th December, 2018.

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 28th December, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – M/s. Rabindra & Co., 17, Krittibash Mukherjee Road, Ultadanga, Kolkata-700 067.
- 2 Respondent – ITO, Ward-44(2), Kolkata.
- 3 CIT(A)-13, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar