

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.390/Coch/2018 : Asst.Year 2008-2009

Sri.A.M.Fazil C/o.Ramgamani & Co, Rajarajeswari Bhavan Pazhaveedu P.O. Alappuzha - 688 009. PAN :AEAPM5689R.	Vs.	The Dy.Commissioner of Income-tax, Circle - 1 Alappuzha.
(Appellant)		(Respondent)

Appellant by : Sri R.Krishnan, CA

Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 13.03.2019	Date of Pronouncement : 15.03.2019
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ORDER

Per George George K., JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 25.06.2018. The relevant assessment year is 2008-2009.

2. The grounds raised read as follows:-

"(1) The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer, withdrawing TDS credit of Rs.2,57,500/- in an order u/s 154 on the ground that corresponding income has not been offered for tax in the relevant assessment year .

(2) The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the character of receipt in the hands of the appellant is that of an advance and therefore the question of offering the same as income does not arise.

(3) The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the issue is highly debatable and therefore would not fall within the purview of Section 154 of the Income Tax Act.

(4) The very fact that a third member has decided the appeal itself shows that the issue is debatable and such issues are outside the purview of Section 154 of the Income Tax Act.

Appellant prays that the order of the Assessing Officer, withdrawing credit of TDS of Rs.2,57,500/- may be struck down as bad in law."

3. The brief facts of the case are as follows:

The assessee is an individual, who is film producer and director. For the assessment year 2008-2009 the assessment was completed u/s 143(3) of the I.T.Act vide order dated 23.12.2012 on a total income of Rs.13,05,980. Subsequently, it was noticed by the Assessing Officer that tax credit for an amount of Rs.2,57,500 was wrongly granted to the assessee as the assessee did not offer corresponding receipt as income during the relevant assessment year. To rectify the said mistake, the Assessing Officer issued notice u/s 154 of the I.T.Act on 15.04.2014. The assessee objected to the proposed rectification. However, the objections raised by the assessee were rejected and order u/s 154 of the I.T.Act was passed by the Assessing Officer on 09.07.2014.

4. Aggrieved by the order of the Assessing Officer in passing the rectification order u/s 154 of the I.T.Act, the assessee preferred appeal to the first appellate authority. The CIT(A) by following the Third Member order of the Tribunal in

the case of *Pradeep Kumar Dhir (107 ITD 118)* held that the assessee cannot get benefit of tax credit since corresponding income was not disclosed in the relevant assessment year.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee had submitted that the issue is debatable one and resort to rectification u/s 154 of the I.T.Act cannot be taken on the facts of the instant case. The learned Counsel for the assessee submitted that the Delhi Bench of the Tribunal in the case of *Bikramjit Ahluwalia v. JCIT [ITA No.5842/Del/2013 – order dated 11.05.2017]* had held that “once the TDS was deducted and paid to the Central account, a credit of the same should be given to the assessee in order to avoid all sorts of complications in the year of deduction of TDS”. In view of the above order of the Tribunal, it was submitted that when there is conflicting orders of the ITAT on the issue, the same becomes debatable and rectification u/s 154 of the I.T.Act cannot be taken.

6. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax authorities.

7. We have heard the rival submissions and perused the material on record. The only issue that is raised is whether the credit of Rs.2,57,500 which was given in the assessment order can be withdrawn in an order passed u/s 154 of the I.T.Act on the ground that corresponding income was not

been offered for tax in the relevant assessment year? We are of the view that the issue is debatable and would not come within the purview of section 154 of the I.T.Act. The Delhi Bench of the Tribunal in the case of *Bikramjit Ahluwalia (supra)* had held that when tax has been deducted and paid into the Government account, the credit of the same should be given to the assessee in the year of deduction of TDS. The relevant finding of the Tribunal in this regard reads as follows:-

"10. From a careful perusal of the legal propositions laid down through the aforesaid orders by the Tribunal and the relevant provisions of the Act, we are of the view that once the TDS was deducted and paid to the Central Government, a credit of the same should be given to the assesseees in order to avoid all sorts of complications in the year of deduction of the TDS. Therefore, we find no infirmity in the order of the CIT(A) who has rightly directed the A.O. to allow the credit of the TDS in the impugned assessment year. Accordingly, the order of the CIT(A) is confirmed."

8. Similar view was held by the Visakhapatnam Bench of the Tribunal in the case of *ACIT v. Peddu Srinivasa Rao [ITA No.324/Vizag/2009 – order dated 03.03.2011]*. The very fact that the CIT(A) had placed reliance on the Third Member case in the case of *Pradeep Kumar Dhir v. ACIT [(2007) 107 ITD 118 (TM) (ITAT-Chandigarh)]* shows that the issue raised u/s 154 of the I.T.Act is a debatable one. For the aforesaid reasons, we are of the view that withdrawal of tax credit which was given in the assessment completed u/s 143(3) of

the I.T. Act by resorting rectification proceedings u/s 154 of the I.T.Act is legally untenable and cannot be sustained. However, we make it clear that TDS of Rs.2,57,500 which is given due credit in this assessment year, the same should not be given credit during any other assessment year when income was offered for taxation. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 15th day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 15th March, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

AR-ITAT- Cochin