

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 568/JP/2018
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Kiran Infra Engineers Ltd. Rachana (JV) B-141, Road No. 9D, VKI Area, Jaipur.	बनाम Vs.	The ITO, Ward 4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABAK 5143 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 569 & 570/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15

M/s Kiran Infra Engineers Ltd. Rachana (JV) B-141, Road No. 9D, VKI Area, Jaipur.	बनाम Vs.	The ACIT, Circle- 4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABAK 5143 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agrawal (C.A.)
राजस्व की ओर से / Revenue by : Shri Jai Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 31/07/2019
उदघोषणा की तारीख / Date of Pronouncement: 05/08/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These three appeals by the assessee are directed against three separate orders of the Id. CIT(A)-2, Jaipur all dated 15.03.2018 for the assessment years 2012-13 to 2014-15. For the assessment year 2012-13 the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law, Id. CIT(A) erred in confirming the disallowance of Rs.9,01,730/- made by Id. AO on account of Interest on mobilization advance by upholding the same as "Mistake apparent from record". Appellant prays that the fact of incurrance of interest expenditure by assessee is not in dispute and thus the issue of allowability thereof in the hands of assessee at best can be termed as "debatable" and it cannot at all be treated as mistake apparent from record and therefore disallowance of interest expenses by passing Rectification order u/s 154 is not in accordance with law and order so passed is void ab initio.

1.1 That, the Id.CIT(A) has further erred in upholding the action of Id.AO in making "reassessment" in the guise of "rectification" by ignoring the fact that interest expenditure claimed by assessee was allowed in the assessment completed u/s 143(3) after examining the facts and material available on record, thus the order so passed u/s 154 deserves to be held bad in law.

Without prejudice to above and in the alternative:

2. On the facts and in the circumstances of the case and in law, Id. CIT(A) erred in confirming the disallowance of interest on

mobilization advance by Id.AO by completely ignoring the undisputed fact that interest of Rs.9,01,730/- was actually paid by the assessee and merely because the principal amount (on which interest is paid) was disbursed to sub contractor (M/s Kiran Infra Engineers Ltd.) towards execution, the assessee cannot be denied deduction of interest paid by it on the ground that interest should be claimed by sub contractor when the same was neither incurred nor paid by sub contractor. Appellant prays impugned order deserves to be held bad in law and consequent disallowance deserves to be deleted.

2.1 Ld. CIT(A) has further erred in not appreciating the fact that deduction u/s 80IA was not available to the sub-contractor on contract activity, thus the sole basis of Id. AO of making disallowance of interest is contrary to the fact and therefore disallowance deserves to be deleted.

2.2 That , Id.CIT(A) has further erred in confirming the disallowance of Rs.9,01,730/- by ignoring the fact that it ultimately remains a revenue neutral exercise in as much as if the same is not allowed to assessee, then the same shall be claimed by and allowable to the sub contractor M/s Kiran Infra Engg. Ltd. whose taxable income shall reduce to that extent more particularly when both the entities, i.e. the assessee and M/s Kiran Infra Engg. Ltd. are in same tax bracket of 30%. and contract activities undertaken by M/s Kiran Infra Engg. Ltd., are not eligible for exemption u/s 80IA, thus no useful purpose would be served in claiming the deduction in wrong hands.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

2. The assessee has challenged the disallowance made by the AO of Rs. 9,01,730/- on account of interest on mobilization advance received by the joint venture from Rail Vikas Nigam Ltd. (in short RVNL) for the execution of work awarded. The brief facts leading to the dispute are that the assessee is an AOP, works as joint venture between M/s Kiran Infra Engineers Ltd. (in short KIEL) and M/s Rachana Construction Company. The assessee AOP/joint venture is engaged in the business of contract work awarded by RVNL. As per the joint venture agreement between the two partners dated 31.10.2011 the parties agreed to distribute the share and responsibility between the lead partner of KIEL and the other partner of M/s Rachana Construction Co. in the ratio of 80:20. The lead partner of KIEL took the responsibility to execute and complete project as well as administration, financial and legal documentation related to the project whereas the other joint venture partner took the responsibility to provide technical support to the lead partner in execution of earth and bridge work. Therefore all the execution work of the project awarded by the RVNL was to carried out by the KIEL. The AO while passing the assessment order U/s 143(3) on 22.01.2015 accepted the return of income of the assessee. Subsequently the AO issued notice dated 17.08.2015 U/s 154 of the Act

to rectify the mistake in respect of the claim of interest of Rs. 9,01,730/- claimed and allowed in the Profit and loss account. The AO then passed the order U/s 154 of the Act whereby the said interest of Rs. 9,01,730/- was disallowed and income of the assessee was enhanced to Rs. 13,73,340/-. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before us, the Id. Counsel for the assessee has submitted that the claim of interest on mobilization funds received from RVNL is debatable issue and does not fall in the ambit of 'mistake apparent on record'. He has further contended that the expenditure incurred on account of interest paid RVNL is not in dispute then the issue of allowability of the same cannot be treated as mistake apparent on record which can be rectified U/s 154 of the Act. The Id. AR has further contended that since the entire work was to be executed by KIEL and also to deal with financial and administration matter therefore, the said fund was handed over to the said lead partner of the joint venture to be used for execution of the work of the joint venture. Once the said mobilization advance received from the RVNL was utilized for execution of the work awarded then the interest on the said advance is an allowable expenditure of the assessee AOP. In support of his contention, he has

relied upon the decision of Hon'ble Supreme Court in case of **T.S. Balaram, ITO vs. M/s Valkart Brothers 82 ITR 50 (SC)** and submitted that the Hon'ble Supreme Court has held that a mistake apparent on record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. A decision on a debatable point of law is not a mistake apparent from the record. Thus, the Id. AR has submitted that the issue of allowability of interest is beyond the scope of rectification of mistake apparent on record U/s 154 of the Act. Hence, the impugned order passed by the AO is beyond the jurisdiction and liable to be quashed.

3.1. **On merits:-**

The Id. AR has submitted that as per the agreement the partner the joint venture agreement the expenditure in respect of execution of the contract work has to be incurred from the amount received as mobilization advance from RVNL. Therefore the said fund was handed over to the lead partner who has took the responsibility of execution of the work and to incur all the expenditure in respect of execution of the contract work. The interest paid to RVNL is allowable business expenditure as the said amount was given only for execution of the

contract work awarded and was actual utilized for execution of the work therefore, it is allowable business expenditure. The Id. AR has further submitted that KIEL has been regularly assessed to tax and is paying tax @ 30% of the profit declared including the profit earned on the work sub-contracted by the assessee. He has pointed out that the deduction claimed U/s 80IA of the Act by the KIEL is only in respect Wind Mill Plant and therefore, no such deduction was claimed in respect of contract income. Thus, the contract income of KIEL is also subjected to the highest rate of tax and there is not revenue effect even if the said amount of interest is allowed in the hand of the KIEL. He has referred to the return of income filed by the KIEL in support of his contention that the KIEL has also paid tax @ maximum marginal rate. The Id. AR has submitted that even on merits this interest expenditure is allowable in the hand of the assessee AOP when expenditure is incurred for the business of the AOP.

4. On the other hand the Id. DR has submitted that the Assessing Officer has given the reasons in the notice issued U/s 154/155 and pointed that the mobilization advanced received from the RVNL was disbursed to lead partner namely KIEL and therefore, the interest on the said amount paid to RVNL can be claimed only in the hand of KIEL

and not allowable deduction in the hand of the assessee AOP. He has relied upon the orders of the authorities below and submitted that the AO is justified in passing the rectification order U/s 154 of the Act.

4.1 On merits the Id. DR has submitted that since this amount of mobilization advance was disbursed to the leading partner M/s KIEL and remained with the said partner therefore, the interest in respect of the said amount cannot be allowed in the hand of the assessee. Though the said partner as not claimed the said expenditure against the income to enjoy the benefit of deduction U/s 80IA of the Act. He has relied on the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The first objection of the assessee against the order passed U/s 154 of the Act by the AO is that the said order is beyond the scope of rectification of mistake apparent on record. The Id. AR has relied upon the decisions on this point and contended that the claim of interest proposed to disallow by the AO while passing the order U/s 154 is debatable issue. There is no dispute that the scope of rectification U/s 154 of the Act is very limited and circumscribed only to rectify the mistake apparent on record which does not require any long drawn process of reasoning on the issue which may have two views. Thus only

the mistake apparent on record which is obvious and patent can be rectified in the proceedings U/s 154 of the Act. In the case in hand the AO has given the reasoning running into 3 pages for disallowance of the claim of interest in respect of mobilization advance received from RVNL in respect of the contract work awarded to the joint venture. We have already discussed the facts that as per the joint venture agreement the lead partner M/s KIEL took the responsibility of execution of the work under the contract and also the responsibility of financial and administrative affair for execution of the work. The second partner of the joint venture namely M/s Rachana Construction Company took the responsibility to provide technical support to lead partner for execution of earth and bridge. Therefore, the second partner had to provide only technical support in respect of execution of work of earth and bridge. Thus, the AO while passing the order U/s 154 has taken a decision on the allowability of claim of interest and therefore it is not a case of apparent obvious and patent mistake on record which can be rectified within the ambit of Section 154 of the Act. The Hon'ble Supreme Court in case of T.S. Balaram, ITO vs. M/s Valkart Brothers (supra) has observed on the point of scope of rectification of mistake U/s 154 as under:-

"4. From what has been said above, it is clear that the question whether s. 17(1) of the Indian IT Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the ITO was not justified in thinking that on that question there can be no two opinions. It was not open to the ITO to go into the true scope of the relevant provisions of the Act in a proceedings under s. 154 of the IT Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale (1960) 1 SCR 890, this Court while spelling out the scope of the power of a High Court under Art. 226 of the Constitution ruled that an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on debatable point of law is not a mistake apparent from the record [see Sidhramappa Andannappa Manvi vs. CIT (1952) 21 ITR 333 (Bom) : TC 8R.1234]. The power of the officers mentioned in s. 154 of the IT Act, 1961, to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record." In this case it is not necessary for us to spell out the distinction between the expression "error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the ITO was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."

Accordingly, in the facts and circumstances of the case when the issue of allowability of the claim of interest paid to RVNL is a debatable issue on which a decision is required on the basis of the relevant facts of the

case then it is not an apparent mistake on record which is obvious and patent that can be rectified without the process of long drawn reasoning. Accordingly, we hold that the order passed by the AO U/s 154 of the Act dated 29.12.2015 is beyond the scope and jurisdiction of the AO and consequently the same is liable to be quashed.

5.1 On merits:-

We find that the AO has not disputed that the said interest of Rs. 9,01,730/- was paid by the assessee to the RVNL in respect of mobilization advance received for execution of the work awarded by the RVNL. It is also not in dispute that the work was awarded by the RVNL to the assessee AOP and as per the joint venture agreement the lead partner M/s Kiran Infra Engineers Ltd. had to execute the work on the ground whereas the second partner i.e. M/s Rachana Construction Company had to provide technical support service to the lead partner for execution of specific work of earth and bridge. Therefore, the lead partner KIEL had to incur all the expenditure in execution of the work on behalf of the assessee joint venture. It is noted from the financial statement of the assessee joint venture that out of the total amount of Rs. 4.32 Crores disbursed to KIEL a sum of Rs. 2.4 Crores was incurred during the year under consideration in respect of execution of the work.

It is pertinent to note that the interest of Rs. 9,01,730/- was paid on the entire amount of mobilization advance of Rs. 4.42 Crores out of which the disbursement was made to KIEL of Rs. 4.32 Cores. Thus the amount which was disbursed to KIEL was utilized for execution of the work. Hence, the amount which was utilized by the KIEL for execution of the work of the assessee joint venture cannot be considered as utilized from the business of M/s KIEL. Further, the AO has not disputed the fact that the said amount was received as mobilization advance only for the execution of work contract in question and M/s KIEL the lead partner responsible for the execution of the work and incurring all the expenditure on behalf of the joint venture has actually incurred the expenditure and utilized the said amount only for execution of the work under the joint venture. Once the said amount was not utilized by M/s KIEL otherwise than the execution of the contract work of the assessee joint venture then the interest paid on the mobilization advance is an allowable expenditure in the hand of the joint venture. It is also not disputed that KIEL is also paying tax @ 30% though the AO pointed out that the said interest was not claimed by the KIEL to maximize the claim of deduction U/s 80IA of the Act. We find that the contract work received by the KIEL are not eligible for deduction U/s 80IA of the Act

and only the wind mill power generation was eligible U/s 80IA of the Act. Thus, the said reasoning of the AO is contrary to the facts while disallowing the claim of interest. Hence, in view of the above facts and circumstances of the case we hold that even on merits the claim of the interest on paid to RVNL on mobilization advance is allowable expenditure of the assessee joint venture.

6. For the assessment years 2013-14 and 2014-15, the assessee has raised common grounds on disallowance of interest paid to RVNL against the mobilization advance received therefore, the solitary issue for both the assessment years is common to the issue on merits for the assessment year 2012-13. In view of our finding on the merit of the issue for the assessment year 2012-13 the claim of interest is allowed and addition made by the AO for the assessment years 2013-14 and 2014-15 are deleted.

In the result, these three appeals of the assessee are allowed.

Order pronounced in the open court on 05/08/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/08/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

***Santosh.**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-A- M/s Kiran Infra Engineers Ltd.
Rachana (JV), Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(2), Jaipur
ACIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 568 to 570/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar