

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 7852/Del/2019  
(Assessment Year: 2007-08)

&

SA No. 67/Del/2020  
(In ITA No. 7852/Del/2019)  
(Assessment Year: 2007-08)

Apex Tubes Pvt Ltd, 1/6-3, Asaf Ali Road, New Delhi PAN: AAACA2867N	Vs.	ITO, Ward-3(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Mayank Patwari, CA
Revenue by:	Shri Saras Kumar, Sr. DR
Date of Hearing	21/02/2020
Date of pronouncement	22/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-I, New Delhi dated 23.07.2019 for the Assessment Year 2007-08.
2. The assessee has raised the following grounds of appeal:-
  - “1. *On the facts and circumstances of the case, the order passed by Ld CIT(A) is bad both in eyes of law and on facts.*
  2. *That the Ld CIT(A) has erred in law as well as on facts confirming the demand raised by the Ld AO under section 115WE1 of Income Tax Act, 1961 for A.Y. 2007-08 without considering the rectification petition u/s 154 of the Income Tax, 1961.*
  3. *That the Ld. CIT(A) has erred in law as well as on facts by not considering the fact that bifurcation of the amount given in Part C of Computation of Fringe benefits and Fringe Benefit Tax on Fringe benefit tax value for each quarter of Rs. 6,93,986/-, Rs. 7,33,425/-, Rs. 8,14,860 and Rs. 6,34,037/- and not the assessable value of FBT.*
  4. *That the Ld. CIT(A) has erred in law as well as on facts by not considering the mistake apparent from record warranting any amendment in the processing u/s 115WE(1) of the Income Tax Act, 1961.*

5. *That the Ld. CIT(A) as well as the Ld.AO has erred in law as well as on facts by not appreciating the fact that the assessable value of FBT is of Rs. 5,09,560 and the quarter wise detail fed therein Part C of Computation of Fringe Benefits and Fringe Benefit Tax value the ITR is wrongly given and mistake was nothing but clerical mistake with matter since 2011 i.e. for seven years, in unit words, it is totally the harassment to the assessee.*
  6. *That the Ld. CIT(A) has erred in law as well as on facts by confirming the adjustment of the disputed demand with the refunds arising in subsequent years made by the Ld. AO.*
  7. *That the Ld. CIT(A) as well as Ld. AO has erred in law as well as on facts by not charging the interest us 220(2) of the Income Tax Act, 1961.*
  8. *That the appellatant craves leaves to add alter, delete, rectify and modify any of the grounds of appeal before or at the time of hearing the appeal.”*
3. Brief facts of the case shows that assessee is a company, who filed the return of income for assessment year 2007 – 08 declaring the income of ₹ 19477320/-. Total value of the fringe benefit tax was shown in the return of income at ₹ 509560 but figures of four quarters given in the return of income when corrected, it totaled at Rs 2 876309. Therefore the CPC on processing of return charged FBT on 2876309/-. According to assessee, the figures of four quarters were entered wrongly in ITR. The assessee filed an application under section 154 of the income tax act on 16/8/2017 before the learned assessing officer stating that assessee value of fringe benefit tax shown at ₹ 2 876308 is wrongly computed instead of ₹ 5 09560/-. The learned assessing officer disposed of the rectification application of the assessee on 17 January 2018 stating that assessee has given value of fringe benefits for four-quarters which amounts to Rs 2876309/- , however in the return of income it has been wrongly totaled at ₹ 5 09560/-. Therefore while processing the return of income on 30/10/2000 at the correct total amount of the fringe benefit value was adopted at Rs 2876309/-. The order was communicated by the central processing unit of the income tax Department. Assessee filed a rectification application under section 154 on a 1/8/2017 by the ld AO against which order under section 154 of the act was passed on 4/8/2017 stating that there is no mistake apparent from the record as the total of the four quarters admitted by the assessee amounts to Rs 2876308/- and therefore there is no error. Hence, the application was rejected. The assessee made another rectification

petition under section 154 on 21/8/2017 stating that the total value of the fringe benefit should be adopted at only ₹ 5 09560 and not at ₹ 2 876309 as taken by the revenue. The assessee explained that in the part C of the income tax return where the quarterly computation of the fringe benefit tax has been provided, the same consist of the total value of expenses liable to fringe benefit tax instead of value of taxable fringe benefit. It was further stated that there is a clerical mistake on the part of the assessee, which came to the knowledge of the assessee after pointed out by the central processing unit. Assessee further submitted a detailed computation of the expenses and the fringe benefit tax payable for assessment year 2007 – 08. Based on the above statement it was stated that the correct fringe benefit tax payable was only ₹ 5 09560. Against this the learned and income tax Officer Ward 3 (1), New Delhi passed an order under section 154 of the income tax act rejecting the application of the assessee stating that assessee itself has accepted on 21/8/2017 that the wrong particulars were feed by it in the field return on account of clerical mistake on their part. The mistake was not rectified by it by filing a revised return within the due time. Thus, there being no mistake in processing by the Department. The learned assessing officer held that there is no mistake apparent from record warranting any amendment in the processing under section 115WE (1) on 30/10/2008 and rejected the rectification application of the assessee.

4. Therefore, the assessee filed an appeal against the order dated 17 January 2018 passed by the learned assessing officer under section 154 of the income tax act before the Commissioner of income tax (appeals) -1 , New Delhi. He passed an order dated 23/7/2019 at ₹ 2 876309 as processed by the central processing unit. Accordingly the finding of the learned CIT – A that the return of income has been processed according to the information submitted by the assessee in the return of income. Accordingly, appeal of the assessee was dismissed.
5. Aggrieved with the order of the learned CIT – A assessee is in appeal before us. The learned authorised representative submitted that assessee has wrongly put the value of fringe benefits at part C of its return of income. He submitted that there is an error in the return of income while calculating value of the fringe benefits. He submitted that assessee has admittedly

wrongly given the figures of the four quarters and a wrong total of those four quarters. He submitted that the figure for the first quarter was entered at ₹ 6 93986/- , second quarter at Rs. 733425/- , third quarter at Rs 814860/- and fourth-quarter at Rs 634037/-. The total of all these fourth quarter was mentioned at ₹ 5 09560/-. He submitted that the correct total of these four quarters is 2876308/-, however, the correct total of this actual fringe benefit value for all the four quarters comes to only ₹ 5 09560 as the figures of total expenses of each quarter was inserted in those columns. He submitted that the figures of the four quarters entered into by the assessee in the income tax return is wrongly mentioned. Therefore, there is a mistake apparent from the record, Which needs to be rectified. He submitted that while processing the return of income the central processing centre has taken the correct total at Rs 2876308/-, however the correct value of total fringe benefit is only ₹ 5 09560/- . He stated that assessee has wrongly entered the figures for first quarter to fourth-quarter. Even otherwise he submitted that the tax can be levied on the correct value of the fringe benefit which is shown at ₹ 5 09560. Therefore, there is an apparent mistake in the return of income, which needs to be rectified. He submitted that lower authorities have ignored this submission of the assessee and has merely gone on figures of the four quarters inserted in return but has clearly ignored the total mentioned by the assessee at ₹ 5 09560.

6. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that assessee has given wrong figures in the return of income. The central processing centre has merely corrected the total. The assessee has wrongly put total at ₹ 5 09560 instead of ₹ 2 876308. Therefore, as per the information available in the return of income provided by the assessee, central processing unit has processed the return of income of the assessee. Hence, lower authorities are fully justified in rejecting the application under section 154 of the income tax act of the assessee.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee is constantly saying that there is an error in the value of fringe benefits shown by the assessee in the income tax

return of income in part C computation of fringe benefits and fringe benefit tax are mentioned as under:-

	Value of fringe benefits	amount
A	For first-quarter	693986/-
B	For second quarter	733425/-
C	Four third-quarter	814860/-
D	Four fourth-quarter	634037/-
E	Total of fringe benefits	509560/-
	Fringe benefit tax payable at the rate of 30%	152868/-

Thus apparently the total of four quarters is only ₹ 2 876308/- however the assessee has also put a figure of total of fringe benefits as 509560. Therefore, apparently there is an error apparent from the record. Either the total of Rs 2876308/- is correct or actual value of total fringe benefits is ₹ 5 09560 is correct. Hence, there is an apparent error, which needs to be rectified. The central processing centre has taken the correct value of the fringe benefits automatically whereas it did not pay any heed to the figures mentioned of total fringe benefits of ₹ 5 09560. Naturally, there is an error in the return of income filed by the assessee apparently. Assessee cannot be asked to pay the tax on incorrect computation. He can be burdened with the tax liability only on the correct value of the fringe benefits. The assessee is saying that there is an error in input of figures of four quarters , which is the total of expenses and not the value of fringe benefit in those expenses. We do not find any infirmity in the request of the assessee. Merely because assessee has inserted some figures, which are not in coherence with the other figures in the income tax return, there is a mistake apparent from the record, which needs to be rectified. Thus, the lower authorities are not justified in rejecting the application under section 154 of the act of the assessee. In view of this, we allow the appeal of the assessee and direct the assessee to substantiate the correct figure for all the four quarters before

the assessing officer, who is further directed to charge the correct fringe benefit tax payable by the assessee after proper verification.

8. In the result, appeal of the assessee is allowed for statistical purposes.
9. In view of our above finding in appeal of the assessee, stay petition number 67/Del/2020 filed by the assessee in the above income tax appeal becomes infructuous and hence dismissed.
10. In the result, appeal of the assessee is allowed for statistical purposes and stay petition of assessee is dismissed.
11. Order pronounced in the open court on 22/05/2020.

-Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 22/05/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi