

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 3086/Mum/2018 (Assessment Year 2009-10)

DCIT 1(3)(1) Room No. 540 5 th Floor Aayakar Bhavan M.K. Road Mumbai	Vs.	M/s. Rreef India Advisors Pvt. Ltd. Block B, 222 Kodak House Dr.D.N. Road, Fort Mumbai-400 001. PAN : AAACU7837J
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri V. Vinod Kumar
Date of Hearing	07.09.2020
Date of Pronouncement	14.09.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 22.12.2017 and pertains to A.Y. 2014-15.

2. The grounds raised is, whether learned CIT(A) is justified in deleting the disallowance of Rs. 9.88 crores as pre-operative expenses.

3. Brief facts are that in this case the assessee filed its return of income on 26.9.2009 declaring loss of Rs. 6,76,27,275/-. The assessee also filed the report in Form No. 3CEB for international transactions dated 29.9.2009. The assessment order u/s. 143(3) was passed determining total income of the assessee on Rs. (-) 6,69,18,983/-. Subsequently the AO issued the notice u/s 154 dated 11/03/2013 proposing to rectify the order. In the letter the AO stated as under :-

"It was seen that during the current AY as well as previous AY, no income was offered by the company under the business income. The

major income consists of interest income on fixed deposits. On the other hand, the company showed huge expenses of Rs. 9.54 crore on salary and operational expenses. Other than salary expenses, the major expenses involved payment to recruitment companies. Thus, the company was in the process of setting up of the business in India.

The company's expenses so far can be classified as pre-operative expenses only as it is yet to start any business."

4. In response the appellant filed a reply dated 12/02/2016. After considering the submissions of the appellant the AO passed an order u/s 154 of the Act disallowing the expenses of Rs. 9.88 crores. The order u/s 154 is reproduced below :-

"On verification from the record, it is noticed the assessee has claimed Rs. 9.88 crores as expenses. While there has been no big activity in the company for 3 years. Therefore, these expenses of Rs. 9.88 crores are disallowed as preoperative expenses. Further, interest income of Rs. 1,79,69,269/- is brought to tax under the head of income from other sources.

Revised income is as under:

Business loss as per order u/s. 143(3) of the I.T. Act

DT. 17.11.2011	Rs. (8,48,82,252/-)
Add : As discussed above	Rs. 9,88,45,410/-
Total business income	Rs. 1,39,63,269/-
Income from other sources	Rs. 1,79,63,269/-
Total income	Rs. 3,19,26,427/-
Revised total income	Rs. 3,19,26,430/-

5. Upon assessee's appeal learned CIT(A) deleted the addition by holding as under:-

"I have considered the submissions of the appellant of the appellant. I found that the AO himself assessed the business income of Rs. 1,39,63,158/-. The finding of the AO that there is no business activity in the company is contradictory to his finding that the appellant has business income of Rs. 1,39,63,158/- during the previous year 2008-09. Therefore I agree with the contention of the appellant that finding of the AO is wrong. In any case the finding of the AO is not apparent from record. I, therefore, cancel the order u/s 154 of the Act and allow ground No. 1."

6. Against the above order the Revenue is in appeal before us.

7. We have heard learned Departmental Representative and perused the records. Upon careful consideration, we find that the Assessing Officer in this case has already passed order u/s. 143(3) of the I.T. Act, wherein he has made computation under the head "income from business" and he has computed business loss at Rs. 8,48,82,252/-. Now by way of order u/s. 154 the Assessing Officer is purportedly trying to correct a mistake apparent from record, in earlier assessment u/s. 143(3) by holding that Rs. 9.88 crores is to be disallowed as pre-operative expenses as the assessee has not done big activity.

8. Section 154(1)(a) provides that with a view to rectifying any mistake apparent from record an income tax authority may amend any order passed by it. It is settled law that u/s. 154 only those mistakes can be corrected which are apparent from record.

9. By no stretch of imagination Assessing Officer's order u/s. 154 that expenses incurred of Rs. 9.88 crores are to be disallowed as assessee has not done 'big' activity can be said to be a mistake apparent from record. If the Assessing Officer has passed an incorrect order, he cannot review his order u/s. 154 of I.T. Act. In this regard, we refer to the decision of Hon'ble Supreme Court in the case of T.S. Balaram, ITO v. Volkart Brothers & Others (82 ITR 50), wherein it was observed that 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.

10. Examining the present issue on the touchstone of above said Hon'ble Supreme Court decision, it is abundantly clear that the Assessing Officer's order u/s. 154 that Rs. 9.88 crores of expenses has to be classified as pre operative expenses, as the assessee has not done 'big' activity, after the same having been allowed in assessment u/s. 143(3) of the Act, is not correcting a obvious and patent mistake. It is a review of the earlier order passed and change of opinion by the Assessing Officer. This is impermissible under section

154 of the I.T. Act. In this view of the matter in our considered opinion there is no infirmity in the order of learned CIT(A). Accordingly we uphold the same.

11. In the result, this appeal filed by the Revenue stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules on 14.09.2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14/09/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS