

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F” MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 6618/MUM/2019
(Assessment Year: 2010-11)**

M/s J.V Gokal & Company Pvt. Ltd; 2nd Floor, Kasturi Building, J. Tata Road, Churchgate, Mumbai – 400 020. Vs. Commissioner of Income-tax (Appeals)-2, Room No. 529, 5th Floor, Aaykar BHavan, M.K Road, Mumbai – 400 020.

PAN No. AAACJ1222A

(Assessee)

(Revenue)

Assessee by : Ms. Rituja Pawar, A.R
Revenue by : Shri. Jitendra Kumar, D.R

Date of Hearing : 17/06/2021
Date of pronouncement : 18/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee company is directed against the order passed by the CIT(A)-2, Mumbai [for short “CIT(A)”, dated 30.07.2019, which in turn arises from his order dated 29.03.2016 that was passed while disposing off the appeal filed by the assessee against the assessment order passed by the A.O under Sec. 143(3) r.w.s 92C of the Income-tax Act, 1961, dated 05.12.2013 for assessment year 2010-11.

2. Briefly stated, the assessee company which is engaged in the business of export of tea & other traditional/non-traditional items had e-filed its return of income for A.Y 2010-11 on 24.09.2010, declaring an income of Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. Original assessment was framed by the A.O vide his order passed u/s 143(3) r.w.s 92C, dated 05.12.2013, wherein he had after inter alia, viz. (i). disallowing the expenses that were

incurred by the assessee as regards its liaison office at Moscow amounting to Rs. 29,91,324/-; and (ii). capping the assessee's claim for exemption u/s 10AA at Rs. 3,92,84,237/- (as against its claim of exemption of Rs. 7,54,73,966/-), therein assessed the income of the assessee company at Rs. 3,91,81,050/- under the normal provisions of the Act.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A) on both the aforesaid issues, viz. (i). disallowance of its claim for deduction of expenses incurred as regards its liaison office at Moscow amounting to Rs. 29,91,324/-; and (ii). capping of its exemption u/s 10AA at Rs. 3,92,84,237/- (as against its claim of exemption of Rs. 7,54,73,966/-). The CIT(A) while disposing off the appeal vide his order dated 29.03.2016 found favour with the assessee's claim for deduction of the expenditure that were incurred w.r.t the Moscow Liaison Office, and directed the A.O to allocate the said expenses in the ratio of exports of the assessee's units (10AA units and non 10AA units). However, the CIT(A) failed to address the assessee's grievance that the A.O had erred in capping its claim for exemption at an amount of Rs. 3,92,84,237/- as against Rs. 7,54,73,966/- so claimed by it.

5. Seeking rectification of the aforesaid mistake, the assessee filed an application dated 13.03.2019 with the CIT(A), wherein it was stated that the assessee's specific grievance as regards the capping of its exemption u/s 10AA at Rs. 3,92,84,237/- as against its claim of Rs. 7,54,73,966/- had remained omitted to be addressed while disposing off the appeal. However, the CIT(A) holding a conviction that the ground on deduction u/s 10AA had already been decided while disposing off the appeal, thus, vide his impugned order dated 30.07.2019 rejected the aforesaid application of the assessee.

6. Aggrieved, the assessee has assailed the rejection of its application filed u/s 154 in appeal before us. Ld. A.R took us through the genesis of the controversy in question. It was submitted by the ld. A.R that though the CIT(A) while disposing off the appeal had addressed the assessee's grievance as regards the disallowance of the expenses that were incurred w.r.t its Moscow Liaison Office, however, he had omitted to address the specific grievance that was raised by the assessee as regards capping of its exemption u/s 10AA of the Act. It was submitted by the ld. A.R that the failure on the part of the CIT(A) to dispose off the aforesaid specific ground of appeal that was raised by the assessee, was beyond any doubt, a mistake, that was glaring, patent, obvious and apparent from record, which, thus, rendered the same

amenable for rectification u/s 154 of the Act. It was, thus, submitted by the Id. A.R that the CIT(A) had erred in declining to rectify his aforesaid mistake and had wrongly rejected the assessee's application.

7. Per Contra, the Id. D.R relied on the order of the CIT(A). It was submitted by the Id. D.R that as no mistake did emerge from the order of the CIT(A), therefore, no infirmity could be attributed to the rejection of the application that was filed by the assessee u/s 154 of the Act.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the order that was passed by the CIT(A) while disposing off the assessee's appeal, we find, that though the assessee had specifically vide 'Ground No. ii' assailed the capping of its exemption u/s 10AA at Rs. 3,92,84,237/- as against its claim of Rs. 7,54,73,966/-, however, the same had not been addressed and therein adjudicated upon by the first appellate authority. In our considered view, the failure or omission on the part of the CIT(A) to dispose off a specific ground of appeal that was raised before him, as claimed by the assessee, and rightly so, would clearly fall within the realm of a mistake that is glaring, patent, obvious and apparent from record, which therein would render his order amenable for rectification u/s 154 of the Act. We, thus, not being able to persuade ourselves to subscribe to the rejection of the application filed by the assessee u/s 154 of the Act, thus, set-aside the order of the CIT(A). Accordingly, we restore the application filed by the assessee to the file of the CIT(A), with a direction to dispose off the same by way of a speaking order as regards the specific 'Ground No. ii' that was raised by the assessee in its appeal before him. Needless to say, the CIT(A) in the course of the set-aside proceeding shall afford a reasonable opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 18/06/2021.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 18.06.2021

PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai