

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1494/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2008-09

Johnson Controls-Hitachi Conditioning India Ltd., 9 th Floor, Abhijeet, Mithakhali Six Roads, Ellisbridge, Ahmedabad-380006. PAN: AABCA2392K	Air	Vs.	D.C.I.T., Circle-2(1)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Bandish Soparkar, A.R
Revenue by :	Shri S.S. Shukla, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **12/08/2021**
घोषणा की तारीख /**Date of Pronouncement**: **09/11/2021**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2,Ahmedabad, dated 13/04/2018 arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the learned CIT (Appeals) erred in dismissing the relevant Grounds of Appeal raised by the appellant, challenging the validity of the Assessing Officer's order dated 14.-02-2017 u/s. 154 of the Income-tax Act for the following reasons:*

(a) *The aforesaid order u/s. 154 was time barred.*

(b) *No opportunity of hearing was allowed by the Assessing Officer before passing the said order u/s. 154 and the denial of opportunity renders the order bad in law.*

(c) *There was no mistake or error apparent on the face of the record and the impugned order u/s. 154 was passed by the Assessing Officer in respect of issues which were debatable and on which two opinions were possible.*

2. *On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in rejecting the relevant Ground of Appeal raised by the appellant to the effect that the said order passed by the Assessing Officer u/s. 154 was against the relevant provisions of the Income-tax Act inasmuch as the book profit u/s. 115JB should have been reduced by Rs. 1,11.63.445 being amount withdrawn from the provision for bad debts created in earlier years and also amount of Rs. 12,24,000 withdrawn from the provision for advances created in earlier years.*

3. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of*

3. The assessee in the first ground of appeal bearing No. 1(a) has challenged the validity of the rectification order passed by the AO under section 154 of the Act vide order dated 14th February 2017 being barred by time.

4. The facts in brief are that the assessee in the present case filed its return of income dated 27th September 2008 declaring total income under normal computation of income at Rs. 17,24,92,018/- after claiming deduction under section 80IB(4) of the Act for Rs. 24,25,07,320/- and book profit of Rs. 46,28,99,248/- under the provisions of section 115JB of the Act. Subsequent to the filing of return of income, there was an amendment brought under the statute by the Finance Act 2009 (No.2) by adding clause (i) to explanation-1 of section 115JB of the Act. As per the said clause, the amount set aside as provision for diminution in the value of any asset shall be added to the book profit. This amendment was made effective from the retrospective effect from 1st April 2001.

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4.1 Subsequently, the case of the assessee was selected under scrutiny and therefore a notice under section 143(2) of the Act was issued upon the assessee dated 26th August 2009.

4.2 Because of the amendment as discussed above, the assessee by way of letter dated 25th November 2011 requested the AO during the assessment proceedings to give the effect of such amendment. As such, the assessee by way of this letter requested the AO to make the addition under clause (i) of explanation-1 to section 115JB of the Act for Rs. 48,91,287/- which was representing the provision for the bad and doubtful debts. The assessee likewise, also requested to allow the deduction for the amount of Rs. 1,11,63,445/- and Rs. 12,24,000/- representing the withdrawal of the provision for a bad & doubtful debts created in the earlier years.

4.3 However, the AO completed the assessment under the provisions of section 143(3) of the Act vide order dated 23rd January 2012 without taking any cognizance of the letter written by the assessee dated 25th November 2011. In other words the assessment was completed under section 143(3) of the Act and income was assessed at Rs. 26,77,14,320/- after making the addition/disallowances on account of upward adjustment under transfer pricing , disallowances of warranty expenses, disallowances of part deduction under section 80IB etc. Similarly the book profit under section 115JB of the Act was also revised at Rs. 50,26,70,465/- after making addition of TP adjustment and disallowances of warranty expenses.

4.4 On appeal, the learned CIT (A) deleted all the addition/disallowances made by the AO under computation of income as well book profit u/s 115JB of the Act vide order dated 25th July 2013. Consequently, the AO has passed order to give effect to the direction of the learned CIT (A) dated 30th September 2013.

4.5 However, the assessee being dissatisfied in the order giving effect dated 30 September 2013 by the AO on account of certain mistakes which were apparent from record has moved rectification application under section 154 of the Act dated 27th July 2016. The AO took a note of the rectification application filed by the assessee and passed the order accordingly dated 14th February 2017. The AO in the rectification order besides rectifying the mistake in the order giving effect dated 30th September 2013 as pointed by the assessee has also taken note of the application filed by the assessee dated 25th November 2011, as discussed above. As such the AO, was pleased to give partial effect to the letter filed by the assessee dated 25 January 2011.

4.6 However, the assessee before the learned CIT (A) contended that the rectification application dated 27th July 2016 was filed to rectify the mistake apparent from record in the order giving effect order dated 30th September 2013. As such, there was no mention in such rectification application dated 27th June 2016 for giving effect of the amendment brought by the Finance Act 2009 by adding clause (i) to explanation -1 of section 115JB of the Act. Accordingly, no effect can be given under section 154 of the Act with respect to the application filed by the assessee dated 25th November 2011. Furthermore, if the AO wishes to give effect to the objection filed by the assessee vide letter dated 25th November 2011 then the same can be done in the assessment order framed under section 143(3) of the Act dated 23rd January 2012. However, the time limit to rectify the assessment order framed under section 143(3) of the Act dated 23rd January 2012 has already lapsed. Thus the rectification order dated 14th February 2017 is barred by time as it was passed after 4 years with respect to the application dated 25th November 2011.

4.7 However, the learned CIT (A) disregarded the contention of the assessee by observing that the assessment order passed under section 143(3) of the Act vide order dated 23rd January 2012 got merged with the order of the learned CIT

(A) which was passed under section 250 of the Act dated 25th July 2013. Thus the time limit for passing the rectification order shall be reckoned from the date of the effect giving order of the learned CIT (A) dated 30th September 2013.

5. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

6. The learned AR before us contended that the rectification application was made dated 25-11-2011 during the proceedings under section 143(3) of the Act. Therefore, the assessment order needs to be rectified for which the time limit has already been passed. Thus the rectification order passed by the AO with respect to the application dated 25-11-2011 is barred by time.

7. On the other hand the learned DR before us vehemently supported the order of the lower authorities.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The 1st issue that arises before us for our consideration whether the order of the AO with respect to the issues raised by the assessee in the application dated 25th November 2011 has merged with the order of the learned CIT (A). It is a fact on records that the AO has not taken any cognizance while framing the assessment under section 143(3) of the Act with respect to the issues raised by the assessee in the application filed during the assessment proceedings dated 25th November 2011. In other words, the issue raised by the assessee in the application dated 25-11-2011 were not dealt by the AO in his assessment order.

8.1 However, on perusal of the order of the learned CIT (A), we note that the assessee has raised its grievance i.e. not adjudicated the application dated 25

November 2011 by the AO before the learned CIT (A) vide ground No. 8 which reads as under:

The eight ground of appeal is regarding not allowing the deduction in respect of net provision for bad debts written back of Rs.62,72,158/- and provision for advances written back for Rs.12,24,000/- while computing book profits u/s.115JB.

8.2 The above ground of appeal raised by the assessee was adjudicated by the learned CIT (A) in his order dated 25th July 2013 by observing as under:

I have carefully considered the facts of the case and the appellant submission. The appellant has submitted that since the amendment has been brought in the statute subsequent to the filing of return by the appellant company the appellant could not claim the deduction from book profit. The appellant had given a request to the A.O requesting the reduction in book profit vide letter dated 23/11/2011. However, it is noted that the A.O has not given any comments on the issue nor has rejected the application of the appellant. Accordingly, A.O is directed to consider the application of the appellant and decide the issue as per the law. The ground of appeal is considered to be allowed for statistical purposes. .

8.3 However, the AO while passing giving effect order to the direction of the learned CIT (A) under section 250 of the Act again has not considered the direction of the learned CIT(A) with regard to the application filed by the assessee dated 25th November 2011.

8.4 Subsequently, the assessee in the giving effect order by the AO dated 30th September 2013 observed certain mistakes which were apparent from record. These mistakes were in addition to the grievance of the assessee appearing in the application dated 25th November 2011. Therefore, the assessee moved an application under section 154 of the Act with respect to the giving effect order passed by the AO dated 27th June 2016 without highlighting the grievance filed by the assessee in the application dated 25th November 2011. However, the AO in the rectification order dated 14th February 2017 while considering the rectification application of the assessee dated 27th June 2016 has also taken the cognizance of the application filed by the assessee dated 25th November 2011.

8.5 Now the grievance of the assessee is that the AO in his order dated 14th February 2017 under section 154 of the Act cannot entertain the grievances filed

by it in the application dated 25th November 2011. It is for the reason that the grievance raised in the application dated 25th November 2011 relates to the assessment order framed under section 143(3) of the Act dated 23rd January 2012 which is barred by time. Accordingly, the learned AR before us contended that the rectification order passed by the AO under section 154 of the Act dated 14th February 2017 with respect to the grievances raised by the assessee in the application filed dated 25th November 2011 is barred by time.

8.6 However, we disagree with the contention of the learned AR of the assessee. The provisions for rectification of the mistake under section 154 of the Act reads as under:

Rectification of mistake.

⁸⁹**154.** ⁹⁰[(1) *With a view to rectifying any mistake apparent from the record⁹¹ an income-tax authority referred to in section 116 may,—*

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(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 ¹³no amendment under this section shall be made after the expiry of four years ¹⁴[from the end of the financial year in which the order¹⁵ sought to be amended was passed.]

8.7 The time limit specified is 4 years from the end of the financial in which the order sought to be amended was passed. In the present case, the assessee has raised the ground of appeal filed before the learned CIT (A) with respect to its grievance raised in the application dated 25th November 2011 which was also adjudicated by the learned CIT (A). The same has been elaborately discussed in the preceding paragraph. Accordingly, we hold that the issue raised by the assessee in the application dated 25th November 2011 got merged with the order of the learned CIT (A) dated 25-07-2013 which was not considered by the AO while passing giving effect order by the AO dated 30th September 2013. Therefore, the mistake occurred in the AO order dated 30th September 2013. Thus, the time period for passing the rectification order in connection with the grievance of the assessee raised in the application dated 25 November 2011 shall be reckoned from the date of the passing of the giving effect order to the direction of the Id.

CIT-A learned CIT (A) order i.e. 25-07-2013 which expires on 31-3-2018. Thus the order passed by the AO under section 154 of the Act dated 14th February 2017 is well in time as provided under the provisions of section 154 of the Act. In view of the above we hold that the issues raised by the assessee in the application dated 25 November 2011 were merged with the order of the learned CIT (A) and therefore the issues were not intact as alleged by the assessee in the rectification application dated 25-11-2011. Hence the ground of appeal raised by the assessee is dismissed.

9. The 2nd issue was raised by the assessee is that learned CIT (A) erred in holding the rectification order passed by the AO is valid though the same was passed without affording the opportunity of being heard.

9.1 The facts of the case have already been discussed in the 1st ground of appeal. Therefore, we are not inclined to repeat the same for the sake of brevity and convenience. It was contended by the assessee that the rectification order under section 154 of the Act with respect to enhancing the books profit has been passed without giving the opportunity of being heard to the assessee as provided under subsection 3 of section 154 of the Act. Accordingly, the assessee claimed that rectification order dated 14th February 2017 is not sustainable to the extent of enhancing the books after considering only part grievance of the assessee raised in the application dated 25th November 2011.

9.2 However, the learned CIT (A) rejected the grievance of the assessee by observing that the assessee in itself has moved an application for rectification under section 154 of the Act dated 25th of November 2011 which was acted upon by the AO by way of passing the order under section 154 of the Act.

9.3 Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

9.4 The learned AR before us contended that it was necessary for the AO to extend the opportunity of being heard to the assessee before enhancing the book profit under section 115JB in the order under section 154 of the Act.

10. On the other hand the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The amendment brought under clause i.e. explanation 1 of section 115JB of the Act was to bring under the net of taxes the provisions made for the diminution in the value of assets. The assessee accordingly moved an application dated 25 November 2011 during the assessment proceedings to the AO in order to make the addition of the provision made by the assessee under clause (i) to explanation 1 of section 115JB of the Act. In the same application, the assessee also sought the deduction of the provisions written back in the year under consideration amounting to Rs. 1,11,63,445/- and Rs. 12,24,000/-. However the AO partially admitted the claim of the assessee made in the application dated 25th of November 2011 which was having effect of increase in the book profit. But the AO has not given the benefit to the assessee on account of reversal of the provisions made in the books of accounts amounting to Rs. 1,11,63,445/- and Rs. 12,24,000/

11.1 Thus, there remains no ambiguity that the AO has not entertain the application of the assessee dated 25th November 2011 in totality. The provisions which were beneficial to the revenue has been accepted by the AO after ignoring the contention of the assessee seeking certain relief while computing the book profit. In our considered view, it was sine qua non for the AO to provide the opportunity of being heard to the assessee before denying the relief sought by the assessee in the application dated 25th November 2011. The test for providing the

opportunity of being heard to the assessee has already been inbuilt under the provisions of subsection (3) of section 154 of the Act which reads as under:

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard

11.2 From the above, there remains no doubt that the rectification order has been passed by the AO without complying the provisions of law as discussed above to the extent of the items rectified in response to the rectification application dated 25th November 2011.

11.3 We find that the Hon'ble co-ordinate bench of Mumbai ITAT in case of ACIT vs. Linklaters reported in 51 taxmann.com 412 in similar fact and circumstances held that the order under section 154 of the Act enhancing the income without giving opportunity is not sustainable. The relevant finding of the Hon'ble bench reads as under:

It is admitted fact that the proceedings under section154 have been initiated on the application filed by the assessee pointing out the mistake in the quantum of the receipts taken in the original assessment order. The same has been rectified by the Assessing Officer. However, the Assessing Officer, without issuing any notice to the assessee, has enhanced the assessment by certain sum which is in clear violation of the provisions of sub-section (3) of section154, which provides that an amendment having effect on the enhancement of assessment shall not be made, unless a notice is given to the assessee and a reasonable opportunity of hearing is given. On this ground alone, the impugned addition which has been made in the rectification proceedings under section154, cannot be sustained.

11.4 Before parting, a question also struck to our mind whether should we set aside the issue to the file of the AO to pass the fresh assessment order after affording the opportunity of being heard to the assessee? In this regard, we note that the Revenue officer being a judicial authority is not expected to be so much ignorant while deciding the issue. It is for the reason that the assessee 1st time moved application dated 25th November 2011 but the same was not considered by

the AO during the assessment proceedings while framing the assessment under section 143(3) of the Act.

11.5 Likewise, AO again in the giving effect order of the direction of the learned CIT (A) dated 30th September 2013 has not considered the direction given by the learned CIT(A) to consider the assessee's application dated 25th November 2011 and decide the issue as per law.

11.6 However, the AO in the 3rd attempt when assessee pointed out mistake with regard to other issue has taken the cognizance of the application filed by the assessee dated 25 November 2011 and that too without affording the opportunity of being heard to the assessee which was sine qua non in the justice delivery system. Accordingly, we are of the view that no more opportunity shall be extended to the Revenue in the given facts and circumstances. Furthermore, the learned DR at the time of hearing has also not advanced any argument requesting to grant one more opportunity of being heard to the assessee. Accordingly, in view of the above we hold that the rectification order passed under section 154 of the Act dated 14th February 2017 is not sustainable to the extent of the rectifications carried out by the AO in response to the application filed by the assessee dated 25 November 2011. The Id. DR at the time of hearing has also not brought anything on record contrary to the argument advanced by the Id. AR of the assessee. Hence the ground of appeal of the assessee is allowed.

11.7 As we have held that the rectification order made by the AO dated 14th February 2017 with respect to the issues raised by the assessee vide application dated 25th November 2011 is invalid, therefore we do not find any reason to adjudicate the issue raised by the assessee on merit in the said application. As such the issues raised by the assessee on merit become infructuous and deserve to be dismissed. Accordingly we dismiss the same.

12. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 09/11/2021 at Ahmedabad.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 09/11/2021
Manish

आदेश की प्रतिलिपि प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR,
ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad