

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before
Shri A. Mohan Alankamony, Accountant Member
AND
Shri S.S. Godara, Judicial Member

ITA No.1579/Hyd/2014		
Assessment Year: 2009-10		
N. Surya Prakash Rao, Hyderabad – 82. PAN : ABEPN6337L.	Vs.	The Asst. Commissioner of Income Tax, Circle – 3(2), Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri P Murali Mohan Rao	
Revenue by:	Dr. Sunil Goutham	
Date of hearing:	25/11/2021	
Date of pronouncement:	30/11/2021	

ORDER

Per S. S. Godara, J.M.

This assessee’s appeal for A.Y. 2009-10 arises from the Commissioner of Income Tax (Appeals)-IV, Hyderabad’s order dated 08.08.2014, in case No.82/AC-3(2)/CIT(A)-IV/2013-14, involving proceedings u/s. 154 of the Income Tax Act, 1961 [in short, ‘the Act’].

Heard both sides. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal.

- “1. The order of the Ld. CIT (A)-IV, Hyderabad is erroneous both on facts and in law.*
- 2. The Ld. CIT (A)-IV, Hyderabad erred in rejecting the appeal of the assessee filed against the order u/s 154 dated 05/08/2014 passed by the AO.*
- 3. The Ld. CIT (A)-IV ought to have admitted the appeal and ought to have made adjudication on facts of the case.*
- 4. The Ld. CIT (A)-IV has ought to have appreciated the fact that order passed u/s 154 of the Act is appealable before CIT(A).*
- 5. The Ld. CIT (A)-IV ought to have directed the AO to consider the petition of the assessee u/s 154 and rectify the mistake appearing in the order of AO passed U /s 179(1) of the Act.*
- 6. The Ld. CIT (A)-IV, Hyderabad erred in dismissing the appeal filed u/s 154 taking into consideration that order u/s 179(1) not being appealable u/ s 246A*
- 7. The Ld. CIT (A)-IV, Hyderabad erred in upholding the interpretation made by the AO relating to the applicability of sec 179(1) to the assessee company.*
- 8. The assessee may add, alter or modify or substitute any other point to the Grounds of appeal at any time before or at the time of hearing of the appeal.”*

3. A perusal of the case file reveals that this tribunal’s earlier order dated 31.03.2015 had dismissed the assessee’s instant appeal as not maintainable since the Assessing Officer has taken recourse to section 179(1) mechanism which was not covered under the specific instance of appellate proceedings to be initiated before the CIT(A) u/s 246A of the Act. It thus upheld that CIT(A)’s impugned order deciding the maintainability of issue against the taxpayer. The assessee thereafter filed his M.A.No. 30/Hyd/2019 that his foregoing 2nd to 5th substantive grounds had not been adjourned in 31.03.2015 order. This tribunal’s latter order dt.17.08.2021 has accepted the same. It has been further made clear that the tribunal’s earlier common order dated 31.03.2015 declining the assessee’s 6th and 7th substantive grounds held good.

It is in this backdrop of facts that we are only taking up the assessee’s instant 2nd and 5th substantive grounds for adjudication.

Suffice to say, learned CIT(A) has observed that the Assessing Officer's section 179(1) order is not appealable. He has refused to entertain the assessee's lower appeal preferred against section 154 rectification declined by the Assessing Officer vide order dated 20.03.2013 therefore.

4. We have given our thoughtful consideration to vehement rival conditions. The Revenue has been represented by learned CIT-DR Dr. Rajendra Kumar and Dr. T. Sunil Goutham who have filed elaborate written submissions in support of the CIT(A)'s detailed discussion on maintainability issue.

5. We find no merit in the Revenue's arguments regarding non-maintainability of assessee's first appeal preferred before the CIT(A). It is made clear that although section 246A of the Act does not include an order passed u/s 179(1) of the Act as an appealable one, the fact remains that there is no such embargo in section 154 of the Act since sub-section (1) thereof provides that an income tax authority; referred in section 116 of the very statute, may "amend any order" passed by it under the provisions of this Act". Learned DRs fail to dispute that the Assessing Officer's section 179(1) order does not suffer from the foregoing pre-condition of maintainability of appeal mutatis mutandis in section 154 rectification proceedings which are independently applicable in their own right. More so, the clinching statutory expression "any order" has to be interpreted in wider sense only.

6. We also wish to observe here that the learned co-ordinate bench's first and foremost order dt.31.03.2015(supra) took due note of case law M. Rajamoni Amma and another Vs. DCIT (1992) 195 ITR 873(SC) that section 179 proceedings are not maintainable in a case involving a public limited company. We thus are of the opinion that the assessee's instant 2nd and 5th substantive grounds dealing with the maintainability of this appeal before the CIT(A) only (supra) are

accepted for statistical purposes. The instant issue of section 154 rectification is restored back to the learned CIT(A) for his appropriate adjudication as per law within three effective opportunities of hearing.

7. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 30th November, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 30th November, 2021.

TYNM/sps

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2	The Asst. Commissioner of Income Tax, Circle – 3(2), Hyderabad
3	CIT(Appeals)-IV, Hyderabad.
4	CIT-III, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order